FOURTH AMENDATORY AGREEMENT

THIS FOURTH AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (hereinafter referred to as the "City"), and **HOPSKIPDRIVE, INC.**, a Delaware corporation, with an address of 1320 E. 7th Street, Suite 200, Los Angeles, CA 90021. (the "Contractor"), individually a "Party" and jointly the "Parties."

The City and the Contractor entered into an Agreement dated **November 27, 2018**, an Amendatory Agreement dated **August 20, 2019**, a Second Amendatory Agreement dated **March 13, 2020**, and a Third Amendatory Agreement dated **June 26, 2020** to provide services delineated in the Scope of Work (the "Agreement"). The Parties now wish to modify the Agreement as set forth below.

The Parties agree as follows:

1. Effective upon execution, all references to **Exhibit A, A-1, A-2 and A-3** in the existing Agreement shall be amended to read **Exhibits A, A-1, A-2, A-3, and A-4**, as applicable. **Exhibit A-4** is attached and will control from and after the date of execution.

2. Section 3 of the Agreement titled "**TERM**" is amended by deleting and replacing it with the following"

"**3.   TERM**: The Term of this Agreement ("Term") shall commence on **October 1, 2018**, and expire, unless sooner terminated, on **June 30, 2022**. 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 of the Agreement will extend until the work is completed or earlier terminated by the Executive Director."

3. Section 4.D.1 of the Agreement, titled "**Maximum Contract Amount**," is amended by deleting and replacing it with the following:

"**(1)**   Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **SIX HUNDRED ELEVEN THOUSAND DOLLARS AND ZERO CENTS ($611,000.00)** (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 the Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** or performed outside the Term are performed at the Contractor's risk and without authorization under the Agreement."

4.   Except as amended here, the Agreement is affirmed and ratified in each and every particular.

5.   This 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 Exhibits follow this page.

Exhibit List
Exhibit A-4

Contract Control Number: SOCSV-202158664-04
                                     Alfresco No. SOCSV-201845500-04
Contractor Name: HOPSKIPDRIVE 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
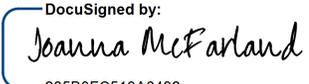
By: By:

_____   _____

By:

_____

Contract Control Number: SOCSV-202158664-04
                                 Alfresco No. SOCSV-201845500-04
Contractor Name: HOPSKIPDRIVE INC

DocuSigned by:

By: _____ Joanna McFarland _____
          285B0FC513A6432

Name: ____ Joanna McFarland _____
      (please print)

Title: ____ CEO _____
       (please print)

ATTEST: [if required]

By: _____

Name: _____
      (please print)

Title: _____
       (please print)

HopSkipDrive, Inc.
SCOPE OF WORK
SOCSV-202158664-04

I.   Purpose of Agreement
The purpose of the contract is to establish an agreement and Scope of Work between Denver Human Services (DHS) and HopSkipDrive, Inc. (Contractor). Under this agreement, Contractor shall maintain a ready and available pool of approved drivers and will provide the most economical and appropriate vehicle for door to door transportation services of children/youth ensuring clients receive services in a safe environment.

II.   Services
Contractor will provide both pick-up and drop-off transport services to minor children/youth between placement and school or school-related activity(s) ensuring a safe environment and maintain current records of each youth's name, dates of trips, and services. Contractor will maintain staffing levels and vehicle availability necessary for operation of these transportation services to provide the most economical and appropriate transport services, including but not limited to, all management, personnel, scheduling, dispatching and route coordination, reporting and work schedules. Under this agreement, Contractor will adhere to the following:

A. Mandatory Requirements:

The following shall be provided to DHS:

1. *Service Log*: Contractor will maintain accurate daily records of transportation service provided, including dates of service, mileage per route, pricing per route, pricing per individual, trips by individual and ensure records are secure and confidential. The total mileage must be calculated and included on the log.
    a. Contractor will not record any personally identifiable information on service logs except for child's full name and location addresses.

2. *Schedule Change:* All schedules shall be in keeping with safety to minor children/youth to deliver minor children/youth within a reasonable time (approximately 15 minutes) prior to the start of school or school-related activity(s). Any planned variance must be approved.

3. *Late Protocol:* If drivers will be late on pick-up or drop-off of minor children/youth, they must notify Caregivers, Caseworker, and DHS Navigator or Supervisor as soon as possible.

4. *Initiate/Change Approval:* DHS will communicate and authorize transportation using specific details. Only authorizations from DHS Navigator or Supervisor are valid. Caseworkers and Caregivers are not authorized to initiate service. Caregivers will be authorized to change/cancel requests without DHS involvement. Contractor will notify DHS immediately of any cancellations and the amount of notice Contractor received so that billing records will be accurate. Caregivers are not authorized to change services to use Contractor for non-school related locations.

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

Contractor will not exceed authorization without prior approval from DHS Navigator or Supervisor. Specific details include:
   a. child's name and age
   b. Placement's name, address, phone number, and email.

5. ***Driver Log and Compliance Requirements:*** Contractor shall maintain log of drivers' names and compliance with screening requirements.

6. ***Background Checks:*** Contractor will ensure all drivers/employees coming in contact with minor youth/children through this contract meet background check standards as specified in Section V. Contractor will regularly monitor drivers for changes in background and driving records.

7. ***Incident Reports:*** Contractor will notify placements, Caseworker, DHS Supervisor, school and/or DHS navigator identified on service authorization immediately if any service disruption(s), emergencies, or irregularities occur and complete an incident report. Examples of incident: flat tire, child not at pick-up location, unable to pick up child, and any concerning behaviors.

8. ***Authorization Response:*** Contractor will respond to authorization within twenty-four (24) hours.

9. ***Transport Service:*** Contractor will provide at minimum both pick-up and drop-off transport services to minor children/youth between placement and school or school-related activity(s) ensuring a safe environment.

10. ***Mandatory Reporter:*** Contractor will report any suspected child maltreatment following mandatory reporter protocol to Denver Child Abuse Hotline (1-844-264-5437)

11. ***Permits:*** Contractor will maintain active Colorado Public Utilities Commission Permit to operate as a Transportation Network Company (Exhibit B).

12. ***Safety Program:*** Contractor will ensure a Safety Program is in place and strictly adhered including but limited to: safe driving policies, procedures and requirements, privacy of riders, phone usage during rides, to include no texting or talking, usage of seatbelts, booster seats and/or car seats, confirmation of rider identity via photo, birthday and password, and emergency procedures.

13. ***Safe Ride Specialists:*** Contractor will provide Safe Ride Specialists to monitor rides via GPS from start to finish ensuring communication is maintained and minor children/youth are delivered safely at authorized location.

![DENVER HUMAN SERVICES logo]

HopSkipDrive, Inc.
SCOPE OF WORK
SOCSV-202158664-04

14. *Crisis Plan:* Contractor will have crisis plans in place to address serious incidents, including without limitation to: earthquakes, terrorism/riots, accidents, allegations of driver misconduct, and data breaches.

B. Driver Requirements:

1. All drivers must, at minimum, meet background check standards as specified in Section V. Contractor will regularly monitor drivers for changes in background and driving records. Contractor shall immediately discharge a driver if at any point in time criminal and/or vehicle code violations would disqualify the driver from employment. No driver shall be permitted who has a Driving Under Influence (DUI) on their record.

2. Drivers will not permit outside passengers or adults on rides.

3. All drivers must carry full coverage insurance, abide by traffic laws, and ensure vehicles are in safe operating conditions at all times.

4. All drivers will conduct themselves in a professional manner at all times. Contractor will not allow any person to drive a vehicle whose conduct might in any way expose minor children/youth through this contract to any impropriety of word or conduct. Nor shall the Contractor allow any person to drive a vehicle who is not, at the time, in a condition of mental and emotional stability. Use of drugs, alcohol, and tobacco while driving a vehicle is prohibited.

C. Vehicle Requirements:

1. Vehicles must comply with current State of Colorado regulations governing transportation network companies (TNC), including the requirement to pass the mandated 19-point inspection completed by a certified mechanic.

2. Vehicles will be equipped with window and door lock overrides. All drivers will engage window and door lock overrides when transporting minor children/youth through this contract.

3. Seat belts will be provided in all vehicles as required by law. Drivers will require pupils to use seat belts.

4. Contractor will ensure all drivers shall have access and be responsible for installation booster seats using Safe Carrier/Car seat installation instructions. All car seats and booster seats shall meet appropriate Federal Motor Vehicle Safety Standards and required crash tests.

D. Administration and Supervision of Transportation Service:

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

1. Contractor will maintain staffing levels and vehicle availability necessary for operation of these transportation services to provide the most economical and appropriate transport services, including but not limited to, all management, personnel, scheduling, dispatching and route coordination, reporting and work schedules.

2. All client confidential information must be communicated using secured methods such as encrypted emails. All client confidential information and service logs must be kept in a locked file storage and/or secured electronic location and must be available for inspections upon DHS request.

E. Accident Reports:

All accidents which involve personnel while in operation pursuant to this contract shall be reported to DHS immediately. Accidents involving injuries to minor children/youth or other persons shall be reported to DHS immediately after Contractor is notified of same. Accident reports may be delivered verbally; however, a written report which includes all available and pertinent information must be provided by the Contractor as soon as reasonably possible after each occurrence, but in no event later than three (3) business days after the accident. Either the Police or Colorado Highway Patrol must be notified if required by law.

III. Process and Outcome Measures

A. Process Measures

1. Contractor will provide safe transportation services for children/youth.

B. Outcome Measures

1. Contractor will use its best efforts to ensure clients receive transportation services in a safe, professional, and timely manner at least 95% of the time ("Outcome Measure"). As part of the Performance Management and Reporting process identified in Section IV, DHS and Contractor will develop and implement intervention(s) if Contractor is unable to meet the Outcome Measure. DHS agrees it shall not take any action as a result of Contractor's inability to meet the Outcome Measure until the parties have developed corrective plan(s) to help Contractor meet the Outcome Measure and ninety (90) days have passed since the implementation of the plan(s) without meeting the Outcome Measure.

IV. Performance Management and Reporting

A. Performance Management

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

Monitoring will be performed by the program area and other designated DHS 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 DHS program area and other designated DHS staff, will provide performance monitoring and reporting reviews. DHS staff 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 to be sent to:
1. Monthly Report	Reports will describe the dates of service, mileage per route, pricing per route, pricing per individual, trips by individual	Monthly report will be submitted with the monthly invoice by the 15th of the month following the month of service.	Child Welfare Program Manager or designee AND DHS_Contractor_Invoices@denvergov.org
2. 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.	Contract End, within 45 days after Term End.	Child Welfare Program Manager or designee

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

3. Incident report	Report shall be submitted any time there is a disruption in service	Each occurrence	CW Program Manager or designee
4. Other reports as reasonably requested	TBD	TBD	TBD

V.   Background Checks

Contractor shall provide background checks for all current and prospective employees of Contractor, and/or any subcontractor who has any direct contact with a child involved in any phase of an open child welfare case including, without limitation, those in the process of being placed and those who have been placed in out of home care. Each employee, prospective employee and/or subcontractor shall submit a complete set of fingerprints to the Colorado Bureau of Investigation (CBI) that were taken by a qualified law enforcement agency to obtain any criminal record held by the CBI.

A. Contractor Employees and Subcontractors
1. The person's employment is conditional upon a satisfactory criminal background check and subject to the same grounds for denial or dismissal as outlined in 26-6-104(7), C.R.S., including:
   a. Checking records and reports; and
   b. Individuals who have not resided in the state for two years shall be required to have Federal Bureau of Investigation (FBI) fingerprint-based criminal history.
2. Payment of the fee for the criminal record check is the responsibility of the Contractor or at Contractor's option individual being checked. In either case, DHS will not reimburse any of the costs associated with background checks.

B. Volunteers and Students (if applicable)
1. If volunteers or students are used by Contractor, Contractor shall define specifically the services to be given by that individual.
2. Volunteers and students who are assigned to work directly with the children/youth shall:
   a. Be subject to reference checks similar to those performed for employment applicants.
   b. Be supervised by Contractor's paid and qualified staff and report any concerns or issues to that staff
   c. Be oriented and trained in the confidential nature of their work and the specific job which they are to do prior to assignment.
3. Provisions for employment and volunteer/student related background check inquiries will be followed as outlined in Section 7.701.32 "Use of Reports and Records of Child Abuse or Neglect for Background and Employment Inquiries."

VI.   DHS funding information:
   A. Program Name: Child Welfare

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

B. Funding Source: CW Block

VII.   Budget

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

Invoices shall be submitted to: DHS_Contractor_Invoices@denvergov.org or by US Mail to:

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

Contractor: HopSkipDrive, Inc.		
Fiscal Term: 7/1/2021 – 6/30/2022		
Contract Number: SOCSV-201845500-04 & SOCSV-202158664-04		
Fiscal Term Amount: $180,000		
Program: Child Welfare		
Fee for Service Budget		
Budget Categories	**Contractual Rate Schedule**	**Budget Narrative**
Base Fee per Route	$19.00	Base Fee per Route is a fixed cost trip mobilization fee per trip.
Fixed Service Rate	$2.99 per mile	Daily records of student names, pickup and drop off location and time, which includes mileage. Total mileage for each ride is calculated and included within the logs.
Cancellation/No Show Fee	See Narrative	• 8 hours or more prior to pick up time: $0; • Between 8 hours and 1 hour prior to pick up time: 50% of the total ride fee (Base Fee per Route + Service Rate); • Within 1 hour of pickup time: 100% of the total ride

		fee (Base Fee per Route + Service Rate) • Not to exceed $10,000 for term of contract.
Additional Rider Cost	$0.00	No charge for additional rider with same points of origin and destination
Multiple Rider Cost with either differing points of origin or destination	$0.50	Carpooling with either a differing points of origin or destination incur an additional $0.50 for the shared ride distance.

Contract Summary of Amounts:

Contract Version	Term	Previous Amount	Additional Amount	New Contract Total
Base	10/1/2018 – 6/30/2019	$0	$100,000	$100,000
1st Amendment	7/1/2019 – 6/30/2020	$100,000	$100,000	$200,000
2nd Amendment	7/1/2019 – 6/30/2020	$200,000	$51,000	$251,000
3rd Amendment	7/1/2020 – 6/30/2021	$251,000	$180,000	$431,000
4th Amendment	7/1/2021 – 6/30/2022	$431,000	$180,000	$611,000

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 e x i s t 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.

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

DENVER
HUMAN SERVICES

HopSkipDrive, Inc.
SCOPE OF WORK
SOCSV-202158664-04

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:

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

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.

3. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

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

   a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

   b. The unauthorized person who used the PHI or to whom the disclosure was made;

   c. Whether the PHI was actually acquired or viewed; and

   d. The extent to which the risk to the PHI has been mitigated.

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

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

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

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

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

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.

HopSkipDrive, Inc.
SCOPE OF WORK
SOCSV-202158664-04

2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.l03 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

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

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

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

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

2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.

2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.

2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

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

2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

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

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

3. **OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.**

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

DENVER
HUMAN SERVICES

HopSkipDrive, Inc.
SCOPE OF WORK
SOCSV-202158664-04

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

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

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

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

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

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

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

3.08   CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.

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

3.10   CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

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 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.

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

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.l 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.

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

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.**

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

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

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. <u>OBLIGATIONS OF CITY.</u>

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. <u>BUSINESS ASSOCIATE TERMINATION.</u>

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.

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04

    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.

EXHIBIT A-4
City Alfresco No. SOCSV-201845500-04