

## THIRD AMENDATORY AGREEMENT

**THIS THIRD AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **THE SALVATION ARMY**, a California corporation with an address of 30840 Hawthorne Blvd., Rancho Palos Verdes, CA 90275 (the “Contractor”), collectively “the Parties”.

### RECITALS:

**A.** The Parties entered into an Agreement dated January 20, 2017, and amended it on March 13, 2018 and July 31, 2018, to provide emergency shelter facilities and services for the homelessness (together, 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 “Exhibit A, A-1 and A-2” in the existing Agreement shall be amended to read: “Exhibits A, A-1, A-2 and A-3, as applicable”. The scope of work and budget marked as Exhibit A-3 is attached and incorporated by reference. Effective as of January 1, 2019, Exhibit A-3 will govern and control the services to be provided from January 1, 2019, until December 31, 2019.

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

“**3. TERM:** The Agreement will commence on January 1, 2017, and will expire unless sooner terminated, on December 31, 2019. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the Executive Director.”

**3.** Article 4.d.(1) of the Agreement, entitled “**Maximum Contract Amount**”, is hereby amended to read as follows:

“**d. Maximum Contract Amount:**

**(1)** Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed Two Million Nine Hundred Seventy-Five Thousand Three Hundred Sixty-Eight Dollars and Zero Cents (\$2,975,368.00) (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, A-2 and A-3. Any services performed beyond those in Exhibits A, A-1, A-2 and A-3 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 Third 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-3 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-201631673-03

**Contractor Name:** THE SALVATION ARMY

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

Name: Tom Melott  
(please print)

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

**ATTEST: [if required]**

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

Name: Douglas Tollerud  
(please print)

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



**SCOPE OF WORK**  
**The Salvation Army**  
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**I. Purpose of Agreement**

Denver Human Services (DHS) and Denver's Road Home (DRH) will partner with The Salvation Army to oversee Overnight Shelter operations for homeless men.

**II. Services**

**A. Crossroads Shelter**

1. The funds will assist clients and provide support services at the Crossroads Overnight Shelter located at 1901 29<sup>th</sup> St. Denver, CO 80216.
2. The contractor's staff shall provide assistance and help with the general functions of the facility throughout the duration of this contract.
3. Service Delivery will include providing shelter to men depending on space availability.
4. The contractor shall maintain a log with the following information:
  - a. Full name of the individual receiving the mat
  - b. Date that the mat was provided
  - c. Date for which the mat is eligible
5. Contractor shall retain records up to 7 years
6. Crossroads will take additional clients during severe weather, once overflow provided through Denver's Road Home and Denver Rescue Mission has been filled. This is contingent upon available space basis.

**B. Time and Manner of Service Delivery:**

1. Hours of operation for the shelter are 4:30 p.m. – 8:00 a.m., with intake procedures beginning at 4:30 p.m.
  - a. Extenuating circumstances are where an individual in need of a mat is accompanied by an employee of the contractor or a member of the Denver Police Department (DPD), or an outreach worker and is brought to the shelter location after 8:00 p.m.
2. Doors to the shelter will open at 4:30 p.m. The contractor may open the courtyard or shelter earlier than 4:30 p.m. as severe weather dictates.
3. Each man possessing a ticket may arrive to the shelter location beginning at 4:30 p.m. and must enter the shelter through the side door.
4. The contractor will complete intake procedures no later than 6:00 p.m., except for those individuals who are working and provided verification as such.
5. Each man possessing a ticket must place their full name on a sign-in log provided by the contractor.
6. The contractor shall maintain a sign-in log at the shelter location that includes the first and last name of each man that has presented a ticket.
7. The contractor will work in partnership with DPD to facilitate compliance checks on transient offenders registered to the block of Crossroads located at 1901 29<sup>th</sup> St., Denver, CO 80216.
8. If a resident leaves the shelter, he will not be allowed to re-enter for the night.
9. Showers for residents will be available between the hours of 8:00 p.m. and 10:00 p.m. Use of a shower will be made consistent with rules established by the contractor.
10. A light breakfast and dinner will be provided in-kind by the contractor before the men leave the shelter on a regular basis.

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11. Shelter lights will be turned out at 10:30 p.m., except on occasions where hours of operation are extended by an emergency situation (e.g. a snowstorm).
12. Each man must leave the shelter by 8:00 a.m. except under extenuating circumstances such as snowstorm or emergency.

**C. Responsibilities of the Contractor:**

1. Ensure that the number of individuals sleeping overnight at the Crossroads facility do not exceed the limits set by the City.
2. Ensure the rules of the shelter are followed by communicating the shelter rules to men as they enter the shelter and by providing signage that displays the shelter rules. Signage must be displayed inside and outside the shelter in locations that are easily seen by shelter residents.
3. Take action with any person from the shelter that does not follow the shelter rules. This may include discharge from the shelter for acts of physical or verbal abuse.
4. Provide full-time and part-time staff at the shelter location for shelter operations. Maintain staffing 24 hours a day at 1901 29<sup>th</sup> St. for security purposes. This shall include video surveillance and a building perimeter walk through no less than four (4) times a day.
5. Provide a sufficient amount of additional lighting near and around the shelter. Sufficiency has been determined based on a joint assessment made by DPD and The Salvation Army.
6. Provide physical space on first floor at Crossroads to be used by the overnight residents that are part of the overnight shelter system.
7. Provide laundry facilities (machines where blankets will be laundered by staff or volunteers).
8. The Salvation Army's rescue vehicle will be available for pick-up calls from DPD and Street Outreach from 4:00 p.m.-10 p.m. and on an emergency basis only from 10:00 p.m. until 2:00 a.m.
9. Provide a process for outreach teams, members of the DPD and resource providers including agencies and hospitals in the community to contact the contractor on occasions when a man is found outdoors and has need for shelter for the night.
10. The Salvation Army shall establish a working relationship with The Denver Anti-Discrimination Office and commit to post signage about anti-discrimination within the shelter facility. The City will provide signage materials to assist with compliance.

**D. Responsibilities of the City and County of Denver through Denver Human Services and Denver's Road Home**

1. Provide the name of an outreach coordinator from the city who will serve as a liaison for concerns or questions that the contractor may have.
2. The liaison will serve as the connection between the City and County of Denver, shelters/resource providers and the contractor.
3. Inform the contractor, outreach teams, the DPD and DRH's partners and providers about when shelters will be operational.

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4. Organize periodic community meetings to obtain feedback concerning shelter activity.
5. Coordinate a communication meeting that allows residents and business owners in the shelter area to provide immediate feedback and concerns about Crossroads shelter.

**III. Process and Outcomes Measures**

**A. Process Measures**

1. Communicate rules of the shelter to all men sleeping in the Crossroads Shelter upon entry, both verbally and by providing signage both inside and outside the shelter.
2. Take appropriate action with any client who does not follow the rules of the shelter, up to and including discharge from the facility, to ensure the safety of staff and other clients.

**B. Outcome Measures**

1. Provide safe shelter to 100% of men sleeping in the Crossroads Shelter.
2. Report all critical safety issues to the DRH Program Manager on a monthly basis .

**IV. Performance Management and Reporting**

**A. Performance Management**

Monitoring will be performed by the program area, Contracting Services, and Financial Services. Contractor may be reviewed for:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual goals. Contracting Services will provide performance monitoring and reporting to program area management. Contracting Services, in conjunction with the DHS program area, will manage any performance issues and will develop interventions to resolve concerns.
3. **Compliance Monitoring:** Will ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards and policies.
4. **Financial Monitoring:** Will ensure that contracts are allocated and expended in accordance with the terms of the agreement. Contractor is required to provide all invoicing documents for the satisfaction of Financial Services. Financial Services will review the quality of the submitted invoice monthly. Financial Services will manage invoicing issues through site visits and review of invoicing procedures.

**B. Reporting**

The following reports shall be developed and delivered to the City as stated in this section.

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Report Name	Description	Frequency	Report to be sent to:
1. Quarterly Report	Report shall demonstrate achievement of Outcome measures in Section III above as well as the following Outcome Evaluation Plan criteria. Reports must include utilization of beds/mats available each night and the number of recorded incidents of physical harm, if any, involving a client.	Quarterly	DRH Program Manager  DHS_Contracting Services_Documents@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.	DRH Program Manager & DHS_Contracting Services_Documents@denvergov.org

**V. Outcome Evaluation Plan: Denver Road Home Program: The Salvation Army, Crossroads Center**

Goals	Objectives	Measurement	Time frame for Data Collection	Outcomes
#1 Provide safe shelter	#1 Provide safe shelter for men at Crossroads Shelter in 2019	The Salvation Army Crossroads Shelter will maintain incident reports of any incident involving the physical harm of a client.	Daily	All men sleeping at Crossroads will be provided with safe shelter.

**VI. Budget**

- A. Contractor shall provide the identified services for the City under the support of Denver Human Services using best practices and other methods for fostering a sense of collaboration and communication.





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- B. 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 DHS' preferred invoice template, if requested.

Invoices shall be submitted to: [DHS Contractor Invoices@denvergov.org](mailto:DHS_Contractor_Invoices@denvergov.org) or by US Mail to:

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

<b>BUDGET (Fee for Service)</b>		
<b>Contractor Name: Salvation Army Crossroads</b>		
<b>Contract No.: SOCSV 2016-31673-03</b>		
<b>Contract Term: 1/1/2019 to 12/31/2019</b>		
<b>Unit of Service</b>	<b>Total</b>	<b>Budget Narrative</b>
<b>Night Per Mat Client</b>	<b>\$990,756</b>	\$11.31 per unit, not to exceed \$990,756 up to a maximum of 87,600 mats for the term
<b>TOTAL BUDGET</b>	<b>\$990,756</b>	\$990,756 added to the budget to be used between the dates of 1/1/2019-12/31/2019

**Funding History:**

- Base Contract: SOCSV-2016-31673: Added \$826,000
- 1<sup>st</sup> Amendment SOCSV-2016-31673-01: Added \$667,306 for a new contract total of \$1,493,306
- 2<sup>nd</sup> Amendment SOCSV-2016-31673-02: Added \$491,306 for a new contract total of \$1,984,612
- 3<sup>rd</sup> Amendment: SOCSV-2016-31673-03: Adds \$990,756 for a new contract total of \$2,975,368.

**VII. 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 governs the Homeless Management Information System (HMIS). HUD requires recipients and sub recipients of McKinney-Vento Act funds to collect electronic data on their homeless clients through HMIS. Programs that receive funding through McKinney-Vento that produce an Annual Progress Report (APR) must also collect program level data elements.

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These programs include but are not limited to: Continuum of Care (CoC), Section 8 Mod Rehab, Emergency Solutions Grant (ESG), and Housing Opportunities for Persons With AIDS (HOPWA). Project types include, but are not limited to: Emergency Shelter, Transitional Housing, Rapid Rehousing, Diversion, Permanent Housing, Supportive Services, and Street Outreach. Participation in HMIS is a requirement for recipients of City of Denver homeless funding.

The Contractor, in addition to the HUD requirements, shall conform to the HMIS Policies and Procedures established and adopted by the Metro Denver Homeless Initiative (MDHI) Continuum of Care.

Technical assistance and training resources for HMIS are available to the Contractor via the Colorado HMIS Helpdesk based on requests by the Contractor to DHS and by periodic assessments of participation, compliance, and accuracy of data collection.

## **B. Security**

The Contractor must conform to the HMIS Security, Privacy, and Data Quality Plan. The importance of the integrity and security of HMIS cannot be overstated. **All** workstations, desktops, laptops, and servers connected to the Contractor's network or computers accessing the HMIS through a Virtual Private Network (VPN) must comply with the baseline security requirements:

1. All HMIS workstations must be placed in secure locations or must be manned at all times if they are in publicly accessible locations. (This includes non-HMIS computers if they are networked with HMIS computers).
2. All printers used to print hard copies from the HMIS are in secure locations.
3. All HMIS workstations must use password protected lock screens after five minutes of inactivity.
4. All HMIS workstations must have a password protected log on for the workstation itself.
5. All HMIS end user computer screens must be placed in a manner where it is difficult for others to see the contents or must have a blackout filter.
6. Passwords must be memorized, not written down in a publicly accessible location, and must never be shared.
7. Confidential data CANNOT be stored on ANY unencrypted mobile device.
8. Confidential data CANNOT be transmitted via unencrypted wireless devices or unsecured public lines.
9. Internet browser must be compatible with 128-bit encryption.
10. Internet browser must be a current/most up-to-date version
11. HMIS must not be accessed via unsecured wi-fi or other unsecured internet connection
12. Any email containing confidential data must utilize at least 128-bit encryption.
13. All HMIS workstations must have an active firewall turned on.
14. All HMIS equipment must have approved anti-virus software installed and configured to automatically download current signature file.
15. Antivirus software must be set to scan emails and file downloads in real time.

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16. HMIS agencies must have their entire network behind a firewall and must routinely monitor for intrusion attempts.
17. All Windows-based computing equipment must have Microsoft updates set to automatically download and install any critical update.
18. All HMIS workstations must be running a current operating system and internet browser security.
19. Systems must be scanned at minimum of weekly for viruses and malware.
20. End Users who have not logged onto the system in the previous 90 days will be flagged as inactive.
21. Under no circumstances shall Contractor demand that an end user hand over his or her username and password.

**C. HUD Continuum of Care Data Standards:**

Contractor is required to collect data based on the most recent HUD Data Standards. For the MDHI Continuum of Care (CoC), the City of Denver and its Contractor's will collect Universal and CoC program specific elements. The Contractor is required to attend the HMIS training on the data collection requirements for these revised standards.

**D. Data Quality Standards:**

Data quality standards ensure the completeness, accuracy, timeliness, and consistency of the data in HMIS. The Contractor must conform to the HMIS Security, Privacy, and Data Quality Plan.

1. The Contractor must enter HMIS data (program enrollments and services) into the system within seven (7) calendar days of the actual enrollment or service provided date.
2. MDHI reserves the right to request Data Quality reports from Colorado HMIS for Contractor's programs on a monthly basis.
3. MDHI reserves the right to participate in on-site HMIS audits.
4. MDHI reserves the right to request Data Timeliness tests from Colorado HMIS at any time on Contractor's programs in HMIS.
5. MDHI reserves the right to detailed APRs (displaying client-level data) and summary APRs (displaying aggregate-level data) from Colorado HMIS at any time during the project's operating year. APRs are used to review and monitor the Contractor's program data quality and progress toward achieving annual project goals and outcomes for HUD and MDHI requirements. The Contractor's APR data will be consolidated with other Contractor's and MDHI data to fulfill HUD annual reporting requirements.

**E. Participation**

Contractor is required to identify a Data Partner Agency Liaison (DPAL) to work with MDHI and the City of Denver on overseeing data quality and compliance. Additionally,

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DPAL will be required to conduct internal monitoring of HMIS workflow at Contractor organization and participate in HMIS related meetings.

**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 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.

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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;
- 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.

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- 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.
- 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.

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- 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 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

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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.
  - 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.



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- 5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.
- 5.03 CONTRACTOR'S notification shall include, to the extent possible:
- 5.03.1 The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
- 5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:
- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
  - d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
  - e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.
- 5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as 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.

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- 5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.
- 5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.
- 5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

**6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.**

- 6.01 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, CITY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by CITY.
- 6.02 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.
- 6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:
- 6.03.1 The Disclosure is required by law; or
- 6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the 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.**

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

**8. BUSINESS ASSOCIATE TERMINATION.**

- 8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:
  - 8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or
  - 8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.
- 8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.
  - 8.02.1 This provision shall apply to all PHI that is in the possession of subcontractors or agents of CONTRACTOR.
  - 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.



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