

REVIVAL AND THIRD AMENDATORY AGREEMENT

THIS REVIVAL AND THIRD AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **MILE HIGH UNITED WAY, INC.**, a Colorado nonprofit, whose address is 711 Park Avenue West, Denver, CO 80205 (the “Contractor”), individually a “Party” and collectively the “Parties.”

WHEREAS, the City and the Contractor entered into an Agreement dated February 12, 2018, an Amendatory Agreement dated February 19, 2019, and a Second Amendatory Agreement on January 13, 2020, to provide transitional and permanent supportive housing services to youth within the City (the “Agreement”); and

WHEREAS, The Agreement expired by its terms on December 31, 2020, and rather than enter into a new agreement, the Parties wish to revive and reinstate all terms and conditions of the Agreement as they existed prior to the expiration of the term and to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and amend the Agreement as follows:

1. Effective January 1, 2021, all references to Exhibits 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. Exhibit A-3 is attached and will control from and after January 1, 2021.

2. Section 1 of the Agreement, titled “**COORDINATION AND LIAISON**,” is amended to read as follows:

“1. **COORDINATION AND LIAISON**: The Contractor shall fully coordinate all services under the Agreement with the Executive Director (“Director”) of the Department of Housing Stability (“Agency” or “HOST”), or the Director’s Designee.”

3. Section 3 of the Agreement, titled “**TERM**,” is amended to read as follows:

“3. **TERM**: The Agreement will commence on January 1, 2018, and will expire unless sooner terminated, on December 31, 2021. 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.”

4. Section 4.e(1) of the Agreement, titled “**Maximum Contract Amount**,” is amended to read as follows:

“(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed Six Hundred Six Thousand Two Hundred Twenty-Five Dollars (\$606,225.00) (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 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 the Contractor’s risk and without authorization under the Agreement.”

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

6. This Revival and 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.

Exhibit List
Exhibit A-3

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Contract Control Number: HOST-202157595-03 / Alfresco 201738668-03
Contractor Name: MILE HIGH UNITED WAY, INC.

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

HOST-202157595-03 / Alfresco 201738668-03
MILE HIGH UNITED WAY, INC.

By:  _____
BF1DA489DF0449C...

Name: Michael Burke
(please print)
Title: Michael.Burke@unitedwaydenver.org
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

I. Purpose of Agreement

The purpose of the contract is to establish an agreement and Scope of Work between Denver Department of Housing Stability (HOST) and Mile High United Way, Inc. (MHUW) to provide transitional and permanent supportive housing services to youth within the City and County of Denver.

II. Services to be provided

The Contractor MHUW will provide transitional housing for youth between the ages of eighteen (18) and twenty-four (24) (not yet 25) through the Bridging the Gap Program (BTG). BTG will provide youth empowering, supportive services to the youth as they transition from the child welfare system to independence.

These services include, but are not limited to:

- A.** Independent Living Coaches (ILC) who will work collaboratively with staff at HOST, Department of Youth Corrections (DYC) and community partners to identify and provide services to Family Unification Program (FUP) eligible youth. The ILCs will coordinate and facilitate access to critical basic needs and services that relate to the youth's transition to self-sufficiency.
- B.** ILCs will work closely with each youth to establish their goals, navigate available resources, and create plans that will lead to increased self-sufficiency once the youth exit the program. This includes helping youth get connected with peers and caring adults through networking, recreational activities and community involvement.
- C.** Whether completing their high school diploma/GED and/or enrolling in vocational or college classes, all BTG participants will be offered a range of educational support services including coaching and resources to help successfully navigate the educational system.
- D.** BTG will provide opportunities for youth to work to define themselves as capable, competent and resilient adults.
- E.** BTG empowers youth to be a voice in their community on issues that affect children and families. Young people are encouraged to be strong leaders, to share their stories and advocate on behalf of their peers and children still in care to improve the foster care system at both the local and state level.
- F.** ILCs will provide assistance in building a network to support ongoing connections with family, friends, mentors, and the broader community to support a learning and living environment, including engaging community partners in mentoring youth in jobs, providing training to youth in money management, banking, credit, basic home maintenance, shopping on a budget, educational advocacy, housing, job search assistance, public benefits, wellness, nutrition, wellness avoidance of high risk behaviors, prevention of pregnancy and sexually transmitted diseases and other independent living skills.
- G.** Providing guidance with employment including soft skills development, connections to job shadowing opportunities and job readiness skills (resume writing, job search, interviewing preparation, etc.). Youth choose to participate in

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

- a variety of employment activities that best meet their individual needs and interests.
- H.** Providing basic financial information to youth about earning money, spending it wisely, saving and budgeting so that they may maintain the sufficient economic resources to meet their daily needs.
 - I.** Assisting youth with the process of understanding and opening a bank account (if they don't already have one) to save for assets that help move them toward independence.
 - J.** Facilitating the completion of housing paperwork and grant-required reporting for FUP/ Homeless Prevention funds with the Mile High United Way Bridging the Gap Housing Coordinator.
 - K.** When serving HOST identified youth, MHUW ILCs will work in partnership with HOST staff and FUP-eligible youth to develop and monitor a 36-month independent living plan that supports the youth's understanding and practice of behaviors and skills that can develop confidence and promote their independence.
 - L.** When serving Nurse Family Partnership (NFP) identified youth, MHUW ILCs will work in partnership with the NFP nurses to provide supportive services to homeless parenting youth with infant children benefiting from the FUP Housing Choice Voucher. ILCs and NFP nurses will work with these twenty-two (22) youth (and their partners when applicable) to develop and monitor an independent living plan that supports youth understanding and practice of behaviors and skills that can develop confidence and promote their independence.

Program Eligibility will be based on the Family Unification Program (FUP) voucher requirements:

- A.** Youth must be between the ages of eighteen (18) and twenty-four (24) (not yet 25).
- B.** Youth must have been in a foster care placement (where the Title IV-E agency has placement and care responsibility) for at least one night on or after their 16th birthday.
Under the Federal definition of foster care, placement can include but is not limited to:
 - 1.** Foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions and pre-adoptive homes,
 - 2.** Youth that were in non-certified kinship placement, where the youth lived with family and the County Department maintained legal custody, and
 - 3.** Youth in community placement through the Division of Youth Corrections.
- C.** Youth must currently lack adequate housing or be at risk of losing housing. Lack of adequate housing or being at risk of losing housing includes: living in substandard or dilapidated housing, being homeless, living in transitional housing, displaced by domestic violence, living in an overcrowded unit, being in imminent risk of losing housing or living in housing not accessible due to the nature of a disability.

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

III. Process and Outcome Measures

A. Process Measures

1. Participants will be offered educational support services, employment guidance and job readiness skills.
2. Participants will be provided basic financial information and education.

B. Outcome Measures

• **Household Characteristics**

1. Number of households that exited the program within the reporting period and contract period to date
 - a. Source: HMIS
2. Number and percentage of heads of household by race, ethnicity, gender, age, and income at entry (if reported in HMIS for program type) and household size
 - a. Source: HMIS

• **Data quality**

1. In order to determine the accuracy and comprehensiveness of the reporting on the performance measures, Contractor will submit an HMIS Data Quality Report on the program for each reporting period.
 - a. Data source: HMIS

• **Rehousing Interventions – Transitional Housing**

1. Process Measure: Number and percentage of households served in a literally homeless or episodically homeless living situation at entry
 - a. Source: HMIS
 - b. Benchmark: 100% of households were in a literally homeless or episodically homeless living situation at entry
 - c. Note: This will be measured through living situation at program entry
2. Process Measure: Number and percentage of households served who receive employment and/or benefits acquisition services
 - a. Source: HMIS
 - b. Benchmark: At least 80% of households
3. Process Measure: Average length of program enrollment
 - a. Source: HMIS
4. Process Measure: Number and percentage of households served by length of program (less than 3 months, 3 to 6 months, 6 to 12 months, longer than 12 months)
 - a. Source: HMIS
5. Outcome Measure: Number and percentage of households who increase or maintain income (earned and unearned) and/or non-cash benefits
 - a. Source: HMIS
 - b. Benchmark: At least 80% of households
6. Outcome Measure: Number and percentage of households who exit the program exit to permanent housing

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

- a. Source: HMIS
 - b. Benchmark: At least 80% of households who exit
 - c. Note: This will be measured from the destination at exit field in HMIS, categories will be grouped into permanent housing, stable housing, and other destinations.
7. Outcome Measure: Number and percentage of households who remain stably housed one year after program exit (as measured by not having a service or program enrollment that indicates homelessness)
- a. Source: HMIS
 - b. Benchmark: At least 80% of households who have been exited for at least one year

C. Indicators

- 1. HOST Required
 - a. Qualitative narrative report on program successes and challenges
 - b. Participant success stories
 - c. Money Leveraged (Funds by source)
 - d. Number of Households served:
 - i. Households proposed to be served over contract term
 - ii. Total households served this report period
 - iii. Unduplicated households served this report period
 - iv. Unduplicated households served contract period to date
 - e. Number of households served who are experiencing homelessness
 - f. Number of households by race and ethnicity of head of household:
 - g. Number of households that include someone age 62 and older
 - h. Number of households that include a person with a disability
 - i. Income Levels of people/family: *optional for Homelessness Resolution program types that do not require income collection (e.g., shelter)
- 2. Specific to this Scope of Work
 - a. Number and type of proposed outcomes
 - b. Additional household characteristics:
 - i. Number of households living in or coming from subsidized housing (for HUD funded only)
 - ii. Age of head of household
 - iii. Number of households by gender of head of household
 - iv. Household size

IV. Performance Management and Reporting

A. Performance Management

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

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 HOST program area, will manage any performance issues and will develop interventions to resolve concerns.
3. **Compliance Monitoring:** Will ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards and policies.
4. **Financial Monitoring:** Will ensure that contracts are allocated and expended in accordance with the terms of the agreement. Contractor is required to provide all invoicing documents for the satisfaction of Financial Services. Financial Services will review the quality of the submitted invoice monthly. Financial Services will manage invoicing issues through site visits and review of invoicing procedures.

B. Reporting

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

Report #	Description	Frequency	Reports to be sent to:
1. Quarterly Report	Reporting in Salesforce is due quarterly. Reporting in HMIS is due ongoing throughout contract term. These reports will include the demographics and status of families enrolled in the project, tracking of services provided, number obtaining income, length of time retained in project, and housing status at program exit. The report will also include tracking of the number of vacancies/turnovers/vouchers that were put into the OneHome system, and the number of vacancies filled by someone referred from OneHome each quarter. In addition, the report will include narrative	Quarterly, on the 30 th day of the month following the quarter	Program Officer

**Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03**

	responses on successes or challenges faced by the project that quarter.		
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V. 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 HOST’s preferred invoice template, if requested. Invoicing supporting documents must meet HOST requirements.

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

Attn: Financial Services
Dept. of Housing Stability
201 W. Colfax Ave.
Denver, Colorado 80202

Contractor Name:	Mile High United Way			
Project :	Bridging the Gap (BTG) Program			
Contract Dates:	1/1/2021	to	12/31/2021	
Program Year:				
Budget Category	Agency Total (All Funding Sources for Agency)	Program Costs HOST BTG program	Budget Narrative	
Personnel: Name and Job Title	Total	Amount	%	
Program Manager	\$55,000.00	\$55,000	100.00%	Provides general direction and oversight of BTG Independent Living Coaches.
Independent Living Coach(es)	\$42,000.00	42,000	100.00%	May be multiple Independent Living Coaches. Helps secure housing and provides coaching services to pregnant or parenting Bridging the Gap clients receiving additional support from the Nurse Family Partnership.
Director: Youth Initiatives	\$5,000.00	5,000	100.00%	Portion of Director of Youth Initiatives time working on this program.
Total Salary:	\$102,000	\$102,000	100.00%	Salaries and wages will be reimbursed at cost. HOST will not pay for bonuses; severances; or payouts of leave when an employee separates from job.

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

	Total	Amount	%	Description
Fringe Benefits	\$25,000	\$25,000	100.00%	Fringe benefits and payroll taxes will be reimbursed at cost. Fringe includes employer portion of the following items: payroll taxes; insurance (medical, dental, vision, disability, accident & life insurance, and workers' compensation); and pension or retirement plans.
Total Salary and Fringe:	\$127,000	\$127,000	100.00%	
Other Direct Costs	Total	Amount	%	Description
Client Support	\$8,114.00	\$8,114	100.00%	Client Support Costs are for move-in kits (kits to include an inflatable bed, kitchen items, and toiletries) and assistance with application fees and security deposits. Additional items will only be allowed with written preapproval from the Program Manager and FSD.
Mileage	\$1,250.00	\$1,250	100.00%	Reimbursement of personal vehicle mileage (not to exceed the standard IRS rate at the time of travel). This includes parking and toll costs associated with program related travel. Not to include Uber/Lyfts/Taxis or other rideshares.
Total Other Direct Costs	\$9,364	\$9,364	100.00%	
Indirect Costs	\$13,636	\$13,636	100.00%	Indirect rate is 10% of Total Direct Costs.
Total Project Cost (Direct + Indirect)	\$150,000	\$150,000	100.00%	
Grand Total	\$150,000	\$150,000	100%	

Funding History:

- Base Contract: SOCSV-2017-38668-00, 1/1/18 to 12/31/18, \$152,075
- 1st Amendment: SOCSV-2017-38668-01, 1/1/19 to 12/31/19, \$152,075
- 2nd Amendment: SOCSV-2017-38668-02, 1/1/20 to 12/31/20, \$152,075
- 3rd amendment: SOCSV-2017-38668-03, 1/1/21 to 12/31/21, \$150,000
- Total Contracted Amount: \$606,225

VI. Other

A. Homeless Management Information System:

The Contractor agrees to fully comply with the Rules and Regulations required by the U.S. Dept. of Housing and Urban Development (HUD) which governs the Homeless Management Information System (HMIS). HUD requires recipients and sub recipients of McKinney-Vento Act funds to collect electronic data on their homeless clients through HMIS. Programs that receive funding through McKinney-Vento that produce an Annual Progress Report (APR) must also collect program level data elements. These programs include but are not limited to: Continuum of Care (CoC),

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

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 HOST 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.

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

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.

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

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

VII. HIPAA/HITECH (Business Associate Terms)

1. GENERAL PROVISIONS AND RECITALS

- 1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.
- 1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and the CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.
- 1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information ("PHI") as defined below, to be used or disclosed in the course of providing services and activities.
- 1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.
- 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.

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

- 2.02 "Agreement" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.
- 2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
- 2.03.1 Breach excludes:
1. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
 2. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.
 3. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- 2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
- a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - 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.

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

- 2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.
- 2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.10 "Immediately" where used here shall mean within 24 hours of discovery.
- 2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.
- 2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 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.

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

- 2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
- 2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.
- 2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

- 3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.
- 3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.
- 3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.
- 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.

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

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

- 3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.
- 3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will 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.

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

5. BREACH DISCOVERY AND NOTIFICATION.

- 5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.
- 5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.
- 5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have been known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.
- 5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY HOST Executive Director or other designee.
- 5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.
- 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

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

- 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.

- 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.

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

- 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.

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.

Exhibit A-3
SCOPE OF WORK
Mile High United Way, Inc.
2017-38668-03 / HOST2021-57595-03

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.