

THIRD AMENDATORY AGREEMENT

THIS THIRD 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 **THE ST. FRANCIS CENTER**, a Colorado nonprofit, with an address of 2323 Curtis Street, Denver, Colorado 80205 (the “Contractor”), who may individually be called a “Party” and collectively the “Parties.”

The City and the Contractor entered into an Agreement dated February 12, 2018, a Revival and Amendatory Agreement dated March 15, 2019, and a Revival and Second Amendatory Agreement dated February 28, 2020, to provide services (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 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 the date of execution.

2. Section 4.e.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 Five Hundred Twenty-Four Thousand Dollars (\$524,000.00) (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 **Exhibits A, A-1, A-2, and A-3**. Any services performed beyond those in **Exhibits A, A-1, A-2, and A-3** or performed outside the Term are performed at the Contractor’s risk and without authorization under the Agreement.”

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

4. 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 Exhibits follow this page.

Exhibit List
Exhibit A-3

Contract Control Number: HOST-202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco
Contractor Name: THE ST. FRANCIS CENTER

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: HOST-202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco
Contractor Name: THE ST. FRANCIS CENTER

By:  _____
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Name: Tom Luehrs
(please print)

Title: Executive director
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

I. Purpose of Agreement

The purpose of the contract is to establish an agreement and Scope of Work between Department of Housing Stability (HOST) and The St. Francis Center to provide supportive services to individuals and families who are at risk of homelessness or are transitioning out of homelessness.

II. Services

- A. The St. Francis Center will provide rapid resolution assistance for homeless persons who are imminently at risk of losing housing. Services will be designed to target people who are seeking to access, or are currently staying in, emergency shelters.
- B. Rapid Resolution attempts to prevent people from entering homelessness through timely financial assistance, mediation with family/friends/landlords, and other problem-solving assistance.

- C. The contractor will be able to provide a range of short-term, limited services through brief, solution-focused case management, to remove barriers to housing and to achieve successful diversion from the homeless system. Services may include, but are not limited to:

1. Landlord mediation, including eviction prevention;
2. Reunification, family mediation;
3. Minor medical expenses, including medications;
4. Childcare;
5. Transportation expenses, minor car repairs.

D. Preferred Eligibility and Referral Criteria:

1. The housing resources provided through this contract should be prioritized for those individuals and families who are:
 - a. Seeking emergency shelter services due to eviction or being forced to move from their place of residence.
 - b. Newly experiencing homelessness – ideally within two (4) weeks of entry into emergency shelter systems.

III. Roles and Responsibilities for both parties

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

IV. Process and Outcome Measures

- A. **Supportive Services Benchmarks – Rapid Resolution**



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

1. **For All Participants (both current & exited)** (those participants who were enrolled in your program at any point through the first day to the last day of the quarter/reporting period) – Please track the following data points:
 - a. Monitor and report on the number of people referred for Rapid Resolution assistance each month.
 - i. Data source: HMIS (if available)
 - ii. Measure: Number of referrals for Rapid Resolution assistance completed (if available)
 - b. Provide Rapid Resolution services for up to 274 households in the calendar year, successfully diverting from emergency shelter, and connecting with a stable housing solution within 7 days of enrollment.
 - i. Data source: HMIS
 - ii. Measure:
 1. Number of households enrolled in Diversion program
 2. Number and percentage of participating households exiting diversion to permanent or stable housing within 7 days of enrollment
 - c. At least 75% of participating households provided with shelter diversion resources will be assessed for needs related to mainstream benefits (i.e. TANF, SNAP, LEAP, CCAP, SSI, SSDI, AND, etc.), or necessary referrals to community homeless prevention or housing resource programs.
 - i. Data source: HMIS
 - ii. Measures:
 1. Number and percentage of currently participating households who were assessed for needs related to mainstream benefit enrollment.
 2. Number and percentage of currently participating households who are referred to homelessness prevention or housing resource programs.
 - d. Monitor and report on the type and amount of financial assistance received per household (i.e. services only, reunification, rental assistance, etc.).
 - i. Data source: HMIS
 - ii. Measures:
 1. Number and percentage of participating households receiving financial assistance and those who are not receiving financial assistance
 2. Minimum, Median, Maximum and Average amount of financial assistance received among those who receive financial assistance
 - iii. Note: This will require the Contractor to enter financial assistance as a service in HMIS.



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

B. Program Retention and Housing Attainment Benchmarks – RAPID RESOLUTION:

1. **For Exiting Participants** (anyone who exited the program during the quarter/reporting period).
 - a. Program will report on the number of participants who exit the program into a permanent housing and other outcomes.
 - i. Data source: HMIS
 - ii. Measures:
 1. Number and percent of exiting households by destination at exit. Destinations at exit will be grouped into permanent housing, other stable housing outcomes, and outcomes to other locations (e.g., nightly shelter, street, jail, or unknown destinations). Exits may also be broken down into more detailed categories (e.g., permanent supportive housing, rapid rehousing, reunification, etc.).
 - b. At least 75% of those program participants provided with shelter rapid resolution services & resources will remain stably housed after 60 days of program exit.
 - i. Data source: HMIS
 - ii. Measure:
 1. Number and percentage of households who exited the program who do not have another HMIS service or program enrollment that indicates homelessness within 60 days, 90 days, and 6 months, and 12 months of rapid resolution exit
 - c. Program will report on length of stay in the program
 - i. Data source: HMIS
 - ii. Measures:
 1. Average and median length of program enrollment

C. Household Characteristics

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



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

D. Data quality for Rapid Resolution

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

E. Program Narrative Reports for Rapid Resolution

1. For each reporting period, the contractor will provide a narrative update on program successes and challenges.

V. Performance Management and Reporting

A. Performance Management

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

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



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

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

VI. 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 HOST at hostap@denvergov.org or by US Mail to:

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



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

Contractor: The St. Francis Center		
Fiscal Term: 1/1/2020 – 12/31/2020		
Contract Number: HOST 202056376-03/SOCSV 201738708-03 Alfresco		
Program: St. Francis Center Diversion Program		
Budget Categories	Budgeted	Narrative
Direct Costs		
Salaries and Fringe		
Diversion Case Manager	\$75,650	Multiple Case Managers salaries and wages will be reimbursed at cost. Bonuses; severances; or payouts of leave are not reimbursable when an employee separates from job.
Program Director	\$23,000	Salaries and wages will be reimbursed at cost based on portion of time spent working on the program. Bonuses; severances; or payouts of leave are not reimbursable when an employee separates from job.
Fringe and Payroll Taxes	\$23,000	Fringe benefits and payroll taxes will be reimbursed at cost. Fringe includes employer portion of the following items: payroll taxes (Social Security, Medicare, Federal unemployment, and state unemployment); insurance (medical, dental, vision, disability, accident & life insurance, and workers' compensation); and pension or retirement plans.
Total Salaries and Fringe Benefits	\$121,650	
Other Direct Costs		
Program Supplies	\$550	Program-related supplies that are not given directly to a client. At the end of the contract unused supplies inventory will be given to funding agency. The funding agency may request the return of items on this list. Actual costs must be documented.



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

Minor Office Equipment	\$2,400	Minor office equipment should be less than \$500/item with a maximum expense to be determined by the program requirements. Any purchases over \$1,000/item and with a useful life greater than one year must be preapproved in writing by the Program Manager. Purchases that have a value \geq \$100, have a useful life \geq one year, are not given directly to a client and can be used for general business purposes (e.g. computers, laptops, cell phones, tablets, office printers, monitors, fax machines, etc.) will be considered a controlled asset and must be documented and tracked by the contractor. At the end of the contract, a listing of all controlled assets, assets, and unused equipment will be given to funding agency. The funding agency may request the return of items on this list.
Training	\$1,610	Program-related training materials and registration fees. Transportation costs will be reimbursable for approved off-site training. Must follow General Service Administration (GSA) and IRS travel guidelines.
Client Support Costs	\$174,700	Client Support Costs are for direct services to clients and will consist of assistance needed to divert clients from homelessness. These services will include: housing/rental assistance, employment support, short-term financial aid, mediation costs, utility assistance, transportation (shared ride services and public transportation) assistance to accomplish the goals and objectives of the Diversion Program. Additional items to be allowed with written preapproval from Program Manager and FSD.
Total Other Direct Costs	\$179,260	
Total Direct Costs	\$300,910	
Indirect Rate Costs	\$27,090.0	Indirect Rate 9% of Direct Costs
TOTALCOSTS	\$328,000	



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

VII. Other Requirements

A. Use of Homeless Management Information System (HMIS) and Reporting

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

The Contractor agrees to fully comply with the rules and regulations required by the U.S. Department of Housing and Urban Development (HUD) which govern the HMIS¹.

The contractor, in addition to the HUD requirements, shall conform to the HMIS policies and procedures established and adopted by the Metro Denver Homeless Initiative (MDHI) Continuum of Care (CoC). These are outlined in the COHMIS Policies and Procedures², and the COHMIS Security, Privacy and Data Quality Plan³.

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

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

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

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

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

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

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

⁴ <https://cohmis.zendesk.com>



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

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.



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

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.



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

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



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

- 2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
- 2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
- 2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.
- 2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

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



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

- 3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.
- 3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.
- 3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.
- 3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will 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.



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

- 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.
 - 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;



DENVER
HOUSING STABILITY

SCOPE OF WORK
The St. Francis Center
HOST 202056376-03 Jaggaer
SOCSV 201738708-03 Alfresco

- 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.
- 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,



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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.

- 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.



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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.