

## SECOND AMENDATORY AGREEMENT

**THIS SECOND AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **MENTAL HEALTH CENTER OF DENVER**, a not-for-profit corporation whose address is 4141 East Dickenson Place, Denver, Colorado 80222 (“MHCD” or “Contractor”).

The City and the Contractor entered into an Agreement dated September 9, 2016, and an Amendatory Agreement dated March 30, 2017, for the Contractor to provide housing, wrap-around and outcome services; and

The City and the Contractor wish to amend the Agreement to increase the funding, extend the term, and modify the scope of work.

In consideration of the mutual covenants and obligations, the Parties agree as follows:

1. All references in the Agreement to Exhibit A are amended to read as Exhibits A, A-1, and A-2, respectively.

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

“**3. TERM:** The term of this Agreement shall commence on **January 1, 2016**, and expire, unless sooner terminated, on **December 31, 2018**. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.”

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

### “**4. COMPENSATION AND PAYMENT:**

#### **d. Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **One Million Three Hundred Seven Thousand Sixty Dollars and Zero Cents (\$1,307,060.00)** (“Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in Exhibit A-2. Any services performed beyond those in Exhibit A-2 are performed at Contractor’s risk and without authorization under the Agreement.

4. Except as herein amended, this Agreement is revived, affirmed and ratified in each and every particular.

**Exhibits: A-2**

**[SIGNATURE PAGES FOLLOW]**

**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-201629249-02

**Contractor Name:** MENTAL HEALTH CENTER OF DENVER

By: Carl Clark

Name: Carl Clark, MD  
(please print)

Title: President & Chief Executive Officer  
(please print)

**ATTEST: [if required]**

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

Name: \_\_\_\_\_  
(please print)

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



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**I. Purpose of Agreement**

The purpose of the contract is to establish an agreement and scope of work between Denver Human Services (DHS) Office of Behavioral Health Strategies (OBHS) and Mental Health Center of Denver (MHCD) to provide housing, complete assessments/re-assessments, make referrals, and provide treatment services including outreach. The agreement and scope of work will encompass the Wellness Court initiated by the City and County of Denver and the Crime Prevention and Control Commission (CPCC).

**II. Description of Program**

Denver Wellness Court funds will provide housing, non-medicaid covered wrap-around and data collection and reports for 40 court referred client's slots. It is the responsibility of OBHS to coordinate with the Wellness Court Program Manager to ensure all slots are utilized in order to preserve financial integrity of the program and optimal utilization of funding. Funds may only be used for clients participating in the Denver Wellness Court or programs established through the court and approved by OBHS to treat persons who are frequently arrested and have serious mental health or co-occurring issues.

The clientele requires high level co-occurring mental health, substance use, and trauma treatment. Services are to be delivered through dedicated MHCD clinical case management team including a prescribing physician, and individual and group therapists. Services include but are not limited to wrap-around type services such as Integrated Dual Disorder Treatment (IDDT) and other supports such as substance abuse treatment referral and coordination, and supportive housing. Staff costs are not part of this contract as they are billable Medicaid costs.

**III. Services to be Provided**

**A. Housing**

1. Housing is not guaranteed for clients. The lease process may include units in scattered site locations throughout Denver; master leasing is preferable. Coordination with Colorado Coalition for the Homeless (CCH), Denver Housing Authority (DHA) and other housing providers is strongly encouraged and expected.
2. MHCD will make all reasonable efforts to secure housing prioritizing this population for their available housing options. Based on client eligibility for housing assistance, as determined by the Wellness Court team, temporary or permanent housing will be secured by MHCD Wellness Court case managers. The housing provided will be based on what is appropriate for each client.

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Upon termination from Wellness Court, housing will not be paid from OBHS funds.

3. MHCD Wellness Court case managers will work diligently to ensure clients access all housing opportunities available to them including but not limited to five (5) Beacon Place beds and ten (10) Transitional Residential Treatment TRT beds.
4. As a part of their duties, case managers will explore and use other possible payment avenues including Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI), employment, family, etc. to pay for some or all of housing.
5. Case managers will directly teach and coach clients in independent living skills and household management skills, or coordinate with others to provide those resources.
6. MHCD and case managers will work to build and maintain positive relationships with landlords; mediating landlord/tenant issues as they arise when an authorization to release information has been signed.

**MHCD Responsibilities:**

- Ensure housing and wrap-around funds are only used to treat persons referred from Denver Wellness Court.
- Ensure appropriate documentation, tracking, and billing of program expenses related to treatment, housing and outcomes.
- Complete assessments list them and the frequency of the follow-up
- Conduct outreach by meeting with participants in jail, TRT bed, etc. Actively search for clients who abscond in the community (homeless outreach workers, shelters, etc.).
- Refer clients as appropriate for specialized substance treatment services; coordinate with service providers including Denver County Jail, such as a referral to the RISE program.
- Provide program evaluation on client and program outcomes as described in the Outcomes section.
- Ensure appropriate documentation of services provided and case history according to the State of Colorado, Office of Behavioral Health licensing standards.
- Obtain appropriate release of information signatures with consumer's consent, including hospitals if available and accessible, used by the client in the past and current year. Include OBHS and Denver Wellness Court on the release.
- Make referrals to and follow-up with benefit acquisition resources as

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appropriate for every client and ensure paperwork and documentation is completed and submitted for clients who are eligible for federal, state and local benefits.

**MHCD Outcomes:**

Data collection and reporting services from MHCD database include:

- Utilization of the MHCD proprietary Reaching Recovery tools.
- MHCD Evaluation Team will provide bi-annual program data for each participant who was active during that period to OBHS. The will include the following:
  - Assessment data
  - Treatment data
  - Housing
  - Employment
  - Education
  - Benefits
  - Outreach
  - Volunteer Work

MHCD Program Evaluation Team will collaborate with OBHS evaluation team on client and program outcomes reporting.

**IV. Process and Outcome Measures**

**A. Process Measures**

1. Assessments and re-assessments performed by MHCD for needs and progress are tracked throughout the program.
2. Referrals by MHCD to appropriate treatment resources by type of treatment and number of clients accepted for that treatment are tracked.
3. Number of consumers who provided a release of information engaged in treatment resources 6 months post initial referral for such services are tracked.
4. Number of consumers with active enrollment in Medicaid or other insurance, including Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) as appropriate; and number enrolled.
5. Contractor shall submit accurate and timely invoices in accordance with the requirements of this Agreement.

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**B. Outcome Measures**

1. Caseloads are maintained at a 10-person ratio per case manager.
2. 100% of eligible consumers referred for services within 72 hours pleading into Wellness Court Team.
3. 60% of persons obtaining treatment achieve no new emergency or detox visits within six months of completion.
4. Invoices and reports shall be completed and submitted on or before the 22nd day following the month in which services were rendered. Contractor shall use DHS' preferred invoice template, if requested.

**V. Performance Management and Reporting**

- **Performance Management**

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

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract & Financial Monitoring:** Review and analysis of (a) current program information to determine the extent to which contractors are achieving established contractual services (b) financial systems & billings to ensure that contract funds are allocated & expended in accordance with the terms of the agreement. Contracting Services will provide regular 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 that will resolve concerns.
3. **Compliance Monitoring:** Monitoring to 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.

- **Reporting**



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

Report # and Name	Description	Frequency	Reports to be sent to:
1. Semi-annual Client Status Report	<p>Provide the following data for clients with active case status during the reporting timeframe on an individual basis including name and DOB.</p> <p><b>Housing:</b></p> <p>1. Vulnerability Index - Service Prioritization Decision Assistance Tool (VI- SPDAT) status - report will include # completed and submitted, not completed, and score Housing status - status at intake, number of weeks to obtain housing.</p> <p>2. Housing situation - What housing the client is eligible for; housing type - hotel, apartment, treatment facility, Beacon Beds and TRT Beds including dates</p> <p>3. Housing payment source - OBHS/CPCC, - by type, SSI/SSD, family, client, etc.            Beacon Bed usage (include dates)</p> <p><b>Treatment:</b></p> <p>1. Referrals - include type and how long it took to receive services</p> <p>2. Outreach (location, date</p>	Semi-annually	OBHS@denvergov.org

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	<p>and reason)          3. Treatment (dosage and type)  <b>Benefit enrollment:</b>          1. State benefit status (Medicaid, food stamps, etc.).</p> <p>2.Federal benefit status. SSI and SSDI status per client including was an application made, when, status of federal benefits.</p> <p><b>Screening and Assessment Scores:</b>          1. Pre-and re-assessed scores and dates on any assessments</p> <p>2.Recovery Maintenance Plan and handoff plan status for those preparing to complete</p>		
2. Contract Summary Report	Summary report of housing, wrap-around, incentive and outcome services provided pursuant to this agreement. Data will include total budget per line item, amount spent, and an explanation as to unspent funds, etc.	Contract End, within 60 days after Term End.	OBHS@denvergov.org
3. Other reports as reasonably requested by the City	To be determined (TBD)	TBD	TBD
This list of reporting items may be modified as agreed upon by authorized OBHS/CPCC and MHCD staff.			

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**VI. Budget**

- 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.
- DDHS will only pay for non-Medicaid billable services. Number of clients served may be modified depending on costs and availability of funds. Payment will be based on monthly invoice and appropriate documentation.
- MHCD will explore and utilize all available housing options available to them prior to utilizing these funds.
- MHCD will invoice for budgeted items on a cost reimbursement basis. Invoices will include documentation to support costs expensed.
- MHCD evaluation team to provide biannual client outcome/status reports as part of the Indirect Costs.

**B. Budget**

<b>Contractor Name:</b>	<b>Mental Health Center of Denver</b>	
<b>Program Name:</b>	<b>Denver Behavioral Health Court</b>	
<b>Contract Term:</b>	<b>January 1, 2018 to December 31, 2018</b>	
<b>Contract Number:</b>	<b>SOCSV-2016-29249-02</b>	
<b>Item</b>	<b>Amount</b>	<b>Narrative</b>
Housing	\$365,167.00	Costs of housing support and services for eligible clients, may include rent deposit, utilities, move in costs, etc. In some cases, a client may be able to pay for part of the costs of housing and the program will assist with the balance of costs. Housing can only be paid while the client is under court supervision.
Supportive and Wrap-around Funds	\$25,000.00	Provides supportive wrap-around costs for clients. Fees for the procurement of birth certificates and personal identifications to meet Colorado's "lawful presence" requirements; non-Medicaid billable medical, medication and dental expense such as eye exams, clinical/dental co-pays; bedding; personal care expenses such as shoes, underwear, socks. Transportation expenses such as bus vouchers, cab fees to court and treatment; housing expenses such as application fees, fees for moving, renter's insurance, telephone and utilities fees, minor damage repair to apartments/hotels as appropriate.
<b>Sub Total</b>	\$390,167.00	
<b>Indirect Costs</b>	\$39,017.00	
<b>Total Amount</b>	<b>\$429,184.00</b>	<b>Total budget not to exceed \$429,184.00 for contract term.</b>



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Invoices and reports shall be completed and submitted on or before the 22nd 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

**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.

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- 1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.
- 1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

**2. DEFINITIONS.**

- 2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.
- 2.02 "Agreement" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.
- 2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:

1. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
2. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care 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

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Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

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

- 2.04 "CONTRACTOR" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.05 "CITY" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.
- 2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.10 "Immediately" where used here shall mean within 24 hours of discovery.
- 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.

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- 2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.
- 2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.
- 2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
- 2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
- 2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.
- 2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

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

- 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.

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- 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 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.



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- 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.

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- 5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DHS Executive Director or other designee.
- 5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.
- 5.03 CONTRACTOR'S notification shall include, to the extent possible:
- 5.03.1 The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
- 5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:
- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - 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

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notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

- 5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.
- 5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.
- 5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.
- 5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

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

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

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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.
- 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.

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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.

**VIII. OTHER**