

## FOURTH AMENDATORY AGREEMENT

**THIS FOURTH 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 Dickinson Place, Denver, Colorado 80222 (“MHCD” or “Contractor”), collectively “the Parties.”

The City and Contractor entered into an Agreement dated January 9, 2017. The Parties amended the Agreement on April 11, 2018, December 4, 2018, and again on April 17, 2019, to provide services (the “Agreement”). The Parties now make certain modifications to the Agreement as set forth below.

The Parties agree as follows:

1. All references to “Exhibit A, A-1, A-2, and A-3” in the Agreement shall be amended to read “Exhibit A, A-1, A-2, A-3, and A-4, as applicable.” Effective as of the date written below on the City’s signature page, the scope of work and budget set forth in Exhibit A-4, attached hereto and incorporated herein by this reference, will govern and control the work to be performed from January 1, 2020, until December 31, 2020.

2. Paragraph 3 of the Agreement, entitled “**TERM**,” is amended by deleting and replacing it with the following:

“**3. TERM**: The term of the Agreement (“Term”) shall commence on January 1, 2017, and will expire unless sooner terminated, on December 31, 2020. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the Executive Director.”

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

“(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed Two Million One Hundred Fifty Thousand Dollars and Zero Cents (\$2,150,000.00) (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 Contractor beyond that specifically described in Exhibits A, A-1, A-2, A-3, and A-4, as applicable. Any services performed beyond those in Exhibits A, A-1, A-2, A-3, and A-4, as applicable, are performed at Contractor's risk and without authorization under the Agreement.”

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

5. This Fourth Amendatory Agreement is not effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**End.**

**Signature pages and Exhibits follow this page.**

**Exhibit List**  
**Exhibit A-4**

**Contract Control Number:** SOCSV-201952588-04 SOCSV-201631657-04  
**Contractor Name:** MENTAL HEALTH CENTER OF DENVER

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:

\_\_\_\_\_

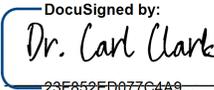
\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

SOCSV-201952588-04 SOCSV-201631657-04  
MENTAL HEALTH CENTER OF DENVER

By:   
23F852ED077C4A9...

Name: Dr. Carl Clark  
(please print)

Title: President and CEO  
(please print)

ATTEST: [if required]

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

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

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



**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 201631657-04; SOCSV 201952588-04**

**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 Mental Health Center of Denver (MHCD). HOST is working with community partners that provide services for Denver's homeless populations. This Contract establishes the Street to Home project that will provide vital services to Denver's homeless and help meet the goals of Denver's Road Home plan to end homelessness.

**II. Services**

MHCD and Colorado Coalition for the Homeless (CCH) (a Subcontractor) will provide the services as described below for a total of 85 chronic homeless individuals. Sixty-five individuals will be managed by MHCD and twenty individuals will be served by CCH.

**A. MHCD Services**

The MHCD Supportive Housing team will manage 65 housing slots for this project including Homeless Management Information System data entry. Services will be provided to 65 homeless individuals with co-occurring mental health and substance use disorders within a comprehensive program of Assertive Community Treatment (ACT) services that are funded by other funding sources such as Medicaid and Medicare. ACT case managers will coordinate participants' housing selection with the housing coordinator. The case manager will assist in moving and furnishing and will provide wrap-around services on-site in the participants' homes. The ACT program offers services to manage psychiatric symptoms, housing, finance, employment, medical care, substance use, family life and activities of daily living and include the following:

1. Mental health policy experts' call ACT the most well-defined, evaluated, and influential treatment in the field of community mental health care. ACT is the fundamental method of delivering high intensity case management services at MHCD. ACT is for those who experience the most severe symptoms of mental illness and have problems taking care of even their most basic needs, typically experience homelessness, substance abuse and legal system involvement. ACT offers services to manage psychiatric symptoms, housing, finances, employment, medical care, substance abuse, family life and activities of daily living.
2. Within the ACT services, Integrated Dual Disorders Treatment (IDDT) offers treatment to program participants by giving them access to substance abuse and mental health services in one setting at the same time.
3. Trauma Recovery and Empowerment Model (TREM) provides services that address issues of physical, sexual, and/or emotional abuse in a population of women with histories of trauma, and for whom trauma-informed treatment and recovery services have been unavailable or ineffective.
4. Motivational Interviewing (MI) provides a very client centered and goal driven interview style that helps change behaviors.

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

5. Enrolled participants will also receive assistance from MHCD's Benefits Acquisition and Management Team (BAMT). The team uses an approach that consists of a Benefits Management Specialist assisted by three Benefits Assistants who are also consumers of mental health services. Clients who are brought off the street and into the program will be assessed to determine what kind of treatment and medication plan will be necessary for them. During this time, clients will be assisted by BAMT to apply for all eligible benefit programs. Once a benefit program has been established for the client, DHS will no longer reimburse MHCD for expenses, I.E. Medications/Treatment Services covered through Medicaid.
  - a. This agreement is intended to fund:
    - i. services to persons not eligible for Medicaid or other third-party payment ("ineligible persons"); and,
    - ii. services not covered by Medicaid or other third-party payers ("non-covered services").
6. Dialectical Behavior Therapy (DBT) was developed at the University of Washington. DBT is an empirically based cognitive behavioral treatment for borderline personality disorder. It has efficacy in consumers with chronic suicidal or self-harming behaviors.
7. Access to Medical Care; Program participants will be linked to primary health care service in the community through existing resources that include Medicare, Medicaid and indigent providers including MHCD's Recovery Center and CCH's Stout Street Clinic.

**B. CCH Services**

The Subcontractor, Colorado Coalition for the Homeless (CCH) will serve approximately twenty homeless individuals with primary substance abuse disorders in their Substance Treatment Services (STS) Program. Homeless individuals referred to the STS program through the Street to Home Project will be assessed through a comprehensive bio/psycho/social history to help determine the best housing placement for stabilization and overall long-term housing stability. Eligible homeless individuals will have immediate access to a time unlimited IDDT and will be assigned a primary case manager. The services afforded each client include:

1. ACT services which includes 1:1 alcohol and drug counseling and education, psychotherapy, psychotropic medication management, benefits acquisition assistance, assertive outreach, linkage to comprehensive medical care including dental and vision, educational/ vocational support, assistance in activities of daily living, and payee services.
2. Access to The Clubhouse at Civic Center Apartment (CCA) which is open six days/week and is client run. The Clubhouse offers a clean and sober environment for socialization, computer access, group therapy, weekly community lunch, and resources sharing.

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

3. Daily Accudetox an acupuncture protocol to treat post-acute withdrawal symptoms.
4. Over 15 treatment groups per week including: DBT, Relapse Prevention, Come as You Are (sobriety not required), Women's Recovery, Alcohol and Drug Education, and Seeking Safety.
5. Program participants will be given basic furnishings and supplies at move in that include at a minimum, bedding, cooking supplies and paper products.
6. Clients will have access to the following housing options depending upon individual need and choice:
  - a. CCH owned Civic Center Apartment (CCA) which includes the clean and sober "Durkin Wing".
  - b. Other Single Room Occupancy (SRO) units at Civic Center Apartments, or independent apartments in the Denver Community.
  - c. Clients will have access to current properties utilized by CCH, as well as given assistance in identifying privately managed apartments suitable to the individual client need.

**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. Outcome and Process Measures**

**A. Process Measures**

1. Street to Home will provide transitional housing, including Master Leased units, motels, short-term residential facilities for 85 individuals over the course of 2020 for six months or longer, or for the balance of the calendar year if housing secured after July 1, 2020.
2. Street to Home will move 15 individuals into permanent housing, including U.S. Department of Housing and Urban Development (HUD) 202 units, apartments with Section 8, long-term residential facilities, and assisted living facilities during 2020.
3. Street to Home will help 85 individuals have an improvement in psychiatric symptoms within 12 months of enrollment and stabilized psychiatric symptoms proceeding the 12-month enrollment and stabilization.

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

4. Street to Home will help 35 individuals have no substance abuse/ dependence within 12 months of enrollment and ongoing after that.
5. Street to Home will help 72 individuals have access to a Primary Care Provider within six months of enrollment.
6. Street to Home will help up to 72 individuals have access to work income or benefits within six months of enrollment.

**B. Outcome Measures**

1. 81 of enrolled clients will be placed in transitional housing.
2. 15 individuals will be housed in permanent settings.
3. 54 enrolled clients will have an improvement in psychiatric symptoms within 12 months of enrollment and show at least stabilization after that.
4. 35 enrolled clients will have no substance abuse/ dependence within 12 months of enrollment and continued stabilization.
5. 72 enrolled clients will have an identified Primary Care Provider.
6. 72 enrolled clients will have a work income or benefits within six months of enrollment.

**C. Income Acquisition and Benefits Benchmarks:**

1. **For Current Participants** (those participants actively enrolled in your program on the last day of the quarter/reporting period).
  - a. 50% of **current** program participants will have obtained mainstream financial benefits (i.e. SSI, SSDI, TANF, AND), or a steady source of income. This will be measured as the percentage of households who increase total income from program entry to most recent assessment.
    - i. Data source: HMIS
    - ii. Measures:
      1. Number and percentage of currently participating households who increased total income from program entry to most recent assessment
      2. Average and median income at program entry and at most recent assessment for currently participating households
      3. Number and percentage of currently participating households who had each benefit type at program entry compared to at the most recent assessment.
  - b. 60% of current program participants will be enrolled in healthcare benefits (e.g., Medicaid, Medicare, VA)
    - i. Data source: HMIS
    - ii. Measure: Percentage of program participants enrolled in health insurance at program entry compared to most recent assessment overall and by insurance type.

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

2. **For Exiting Participants** (anyone who exited the program during the quarter/reporting period – broken down into Successful & Unsuccessful groups of exiting participants).
  - a. 80% of participants with successful exits and 50% of participants with unsuccessful exits will have obtained mainstream financial benefits (i.e. SSI, SSDI, TANF, AND), or a steady source of income. This will be measured as the percentage of exited households who increase total income from program entry to program exit.
    - i. Data source: HMIS
    - ii. Measures:
      1. Number and percentage of exited households who increased total income from program entry to program exit
      2. Number and percentage of exited households who maintained total income from program entry to program exit
      3. Number and percentage of exited households who reduced total income from program entry to program exit
      4. Average and median income for exiting households at program entry and program exit.
      5. Number and percentage of exited households who had each benefit at program entry compared to program exit
  - b. 90% of participants with successful exits and 60% of participants with unsuccessful exits will be enrolled in healthcare benefits (e.g., Medicaid, Medicare, VA)
    - i. Data source: HMIS
    - ii. Measure: Percentage of program participants enrolled in health insurance at program entry compared to most recent assessment overall and by insurance type.

**D. Housing Retention and Attainment Benchmarks:**

1. **Data For Current Participants** (those participants actively enrolled in your program on the last day of the quarter/reporting period).
  - a. Data source: HMIS
  - b. Measures:
    - i. Average and median length of program enrollment
    - ii. Number at percentage of currently participating households enrolled in the program for: less than 3 months, 3 to 12 months, and longer than 12 months
    - iii. Note: program enrollment period is defined as the time between the household's program enrollment date and the last day of the reporting period.
2. **For Exiting Participants** (anyone who exited the program during the quarter/reporting period).
  - a. 70% of program participants will exit the program into a permanent housing outcome or to more stable housing.

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

- 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).
- b. Length of stay for exiting households
  - i. Data source: HMIS
  - ii. Measures:
    - 1. Average and median length of program enrollment
    - 2. Number at percentage of currently participating households enrolled in the program for: less than 3 months, 3 to 12 months, and longer than 12 months

**E. 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)

**F. Data quality**

- 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

**G. Program narrative reports**

- 1. For each reporting period, the contractor will provide a narrative update on program successes and challenges. This narrative will include information on the extent to which participating households are connected to health and treatment services.

**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:

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

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.

<b>Report Name</b>	<b>Description</b>	<b>Frequency</b>	<b>Reports to be sent to:</b>
Monthly Reports	Activity Report that lists individuals served, breakdown of housing status and successes and challenges of the month.	Due 15 <sup>th</sup> of each Month	Program Manager
Quarterly Reports	This report shall include cumulative data for the contract year and a narrative that addresses program outcomes. Report will detail client's activities in groups and the progress they are making in the program.	Quarterly due 15 <sup>th</sup> after each quarter	Program Manager
Case Study Narratives of a successful program	Narratives of guest(s) participating and/or completing program. Must include guest's completed Release of Information	Quarterly on 15th following quarter.	Program Manager

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

**VI. Budget**

- A. The parties understand that HOST is a payer of last resort. Its funds may only be used to pay for services and expenses not covered by another payer source. Other payer sources (Medicaid, Medicare, and other benefit plans and programs, etc.) should cover a portion of the costs. MHCD is responsible for collecting from those other sources.
- B. MHCD will invoice HOST for budgeted items on a cost reimbursement basis. Invoices will include all required documentation to support payment for services and expenses not covered by another payer source. MHCD will identify all persons served and the services provided to them. Charges for “non-covered services” and “ineligible persons” will be identified by MHCD and only those amounts will be paid.
- C. Invoices and reports shall be completed and submitted on or before the 22nd of each month following the month services were rendered.
- D. Invoices shall be submitted to HOST by US Mail to:
  - Attn: Department of Housing Stability
  - Fiscal Management Unit
  - 201 W. Colfax Ave.
  - Denver CO 80202

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

**E. BUDGET**

Contractor: Mental Health Center of Denver		
Fiscal Term: 1/1/20 - 12/31/20		
Contract Number: SOCSV 2016-31657-04		
Program: Street to Home		
Budget Categories	Budgeted Amount	Narrative
Direct Costs		
Client Support Costs	\$221,792.00	Items provided to clients including: prescriptions, labs, co-pays, transportation (shared ride services and public transportation); moving expenses, ID cards, group activities and recreation center passes, food for emergency or groups, clothing for emergencies or job interviews. Client Support includes client housing support for rental assistance, deposits, motels, utilities, and other housing assistance payments. Once the contract is completed, additional items should only be allowed with written preapproval from the Program Manager and FSD.
Sub-contracted Services	\$133,850.00	Colorado Coalition for the Homeless-Services include High Intensity Assertive Community Treatment and Housing. Sub-recipients and contractors are responsible for ensuring that their sub-contractors and sub-recipients follow all applicable rules and regulations.
Total Direct Costs	\$355,642.00	
Indirect Costs		
Indirect Costs	\$44,358.00	Indirect Rate of 20% of Client Support Costs.
Total Costs	\$400,000.00	

**Summary of contract amounts**

Contract Version	Term	Previous Amount	Additional Amount	New Contract Total
<b>Base</b>	1/1/2017-12/31/2017		\$850,000.00	\$850,000.00
<b>1<sup>st</sup> Amendment</b>	1/1/2018-12/31/2018	\$850,000.00	\$850,000.00	\$1,700,000.00
<b>2<sup>nd</sup> Amendment</b>	1/1/2018-12/31/2018	\$1,700,000.00	(\$400,000.00)	\$1,300,000.00
<b>3<sup>rd</sup> Amendment</b>	1/1/2019-12/31/2019	\$1,300,000.00	\$450,000.00	\$1,750,000.00
<b>4<sup>th</sup> Amendment</b>	1/1/2020-12/31/2020	\$1,750,000.00	\$400,000.00	\$2,150,000.00

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

**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 HMIS<sup>1</sup>.

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 Procedures<sup>2</sup>, and the COHMIS Security, Privacy and Data Quality Plan<sup>3</sup>.

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.<sup>4</sup>

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.

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

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

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

<sup>4</sup> <https://cohmis.zendesk.com>

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

**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.

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

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.

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

- 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.

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

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

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

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.
- 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

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

- 4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.
- 4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

**5. BREACH DISCOVERY AND NOTIFICATION.**

5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.

5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.

5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have been known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.

5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DHS Executive Director or other designee.

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

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:

- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
- b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
- d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
- e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.

5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.

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.

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.

5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

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

6.01 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, CITY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by CITY.

6.02 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.

6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:

6.03.1 The Disclosure is required by law; or

6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.

6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.

6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

**7. OBLIGATIONS OF CITY.**

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

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

**8. BUSINESS ASSOCIATE TERMINATION.**

- 8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:
  - 8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or
  - 8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.
- 8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.
  - 8.02.1 This provision shall apply to all PHI that is in the possession of subcontractors or agents of CONTRACTOR.
  - 8.02.2 CONTRACTOR shall retain no copies of the PHI.
  - 8.02.3 In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to CITY notification of the conditions that make return or destruction infeasible. Upon determination by CITY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Agreement to the PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains the PHI.

**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**SOCSV 2016-31657-04**

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.