REVIVAL AND FOURTH AMENDATORY AGREEMENT

THIS REVIVAL AND FOURTH 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 SALVATION ARMY**, a California nonprofit, with an address of 30840 Hawthorne Blvd., Rancho Palos Verdes, CA 90275 ("Contractor"), who may individually be called a "Party" and collectively the "Parties."

The City and Contractor entered into an Agreement dated January 20, 2017, an Amendatory Agreement dated March 13, 2018, a Second Amendatory Agreement dated July 13, 2018, and a Third Amendatory Agreement dated February 05, 2019, to provide emergency shelter facilities and services for the homeless (the "Agreement"). The Agreement expired by its terms on December 31, 2019, and rather than enter into a new agreement, the Parties wish to revive and reinstate all terms and conditions of the Agreement as they existed prior to the expiration of the term and to amend the Agreement as set forth below

The Parties agree as follows:

1. Effective upon execution, all references to Exhibits A, A-1, A-2, and A-3 in the existing Agreement shall be amended to read Exhibits A, A-1, A-2, A-3, and A-4 as applicable. Exhibit A-4 is attached and will control from and after the date of execution.

2. Section 3 of the Agreement, entitled "**TERM**," is amended is amended as follows:

"**3.   TERM:** The Agreement will commence on January 1, 2017, and will expire on December 31, 2020 (the "Term"). 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. Section 4.d.(1) of the Agreement entitled "**Maximum Contract Amount**" is amended as follows:

"**(1)**   Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed Three Million Nine Hundred Sixty-Six Thousand One Hundred Twenty-Four Dollars and Zero Cents ($3,966,124.00) (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

The Salvation Army
City Alfresco No. 201631673-04
City Jag No. 201952678-04

Contractor beyond that specifically described in Exhibits A, A-1, A-2, A-3, and A-4. Any services performed beyond those in Exhibits A, A-1, A-2, A-3, and A-4 are performed at the 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 Revival and 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-201952678-04
Contractor Name: ALFRESCO-201631673-04
    THE SALVATION ARMY

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:**

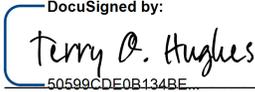Attorney for the City and County of Denver

By: By:

_____   _____

                       By:

_____

Contract Control Number: SOCSV-201952678-04
Contractor Name: ALFRESCO-201631673-04
                                THE SALVATION ARMY

DocuSigned by:

By: Terry O. Hughes
    50599CDE0B134BE...

Name: Terry O. Hughes
      (please print)

Title: Secretary
       (please print)

ATTEST: [if required]

By: _____

Name: _____
      (please print)

Title: _____
       (please print)

SCOPE OF WORK
The Salvation Army
SOCSV 201631673-04 Alfresco
SOCSV 201952678-04 Jaggaer

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 Salvation Army to oversee Overnight Shelter operations for homeless men.

II.   Services
   A. Crossroads Shelter
   1.   This funding will assist guests and provide support services at the Crossroads Overnight Shelter located at 1901 29th St. Denver, CO 80216.
   2.   The staff shall provide services to overnight shelter guests and operations for the general functions of the facility throughout the duration of this contract. General functions and services are further spelled out in this Scope of Work between the City of Denver and The Salvation Army for the property located at 1901 29th St., Denver CO 80219.
   3.   Service Delivery will include providing shelter to men depending on space availability. Space availability shall be determined through bed count and shall not exceed determined and declared safe occupancy, minus the number of staff and other facility occupants, by Community Planning and Development, and/or Denver Fire. Nor shall space availability exceed a bed count approved and declared by City of Denver's Zoning Administrator and/or Department of Housing Stability.
   4.   The contractor shall provide Homeless Management Information System (HMIS) intake services for all guests not enrolled in the system. The contractor will provide nightly HMIS entry of services for all guests with scan cards. As backup, until HMIS intake/entry is provided for 100% of shelter guests, the contractor will keep a log detailing the following for guests without scancards.
        a.   Full name of the guest receiving the mat or bed
        b.   Date that the mat or bed was provided
   5.   Contractor shall retain records up to seven (7) years
   6.   Crossroads will take additional guests during severe weather, once overflow provided through City of Denver and The Denver Rescue Mission has been filled. This is contingent upon available space.
   7.   The contractor will work in partnership with the Denver Police Department (DPD) to facilitate compliance checks on transient offenders registered to the block of Crossroads located at 1901 29th St., Denver, CO 80216.
   8.   Meals may be provided by the Contractor and must meet all Public Health requirements for food safety.

   B. Responsibilities of the Contractor:
   1.   Ensure that the number of guests sleeping overnight at the Crossroads facility do not exceed the limits set by the City.
   2.   Ensure all actions and interventions are carried out in a trauma informed and person-centered way.

EXHIBIT A-4

3. Ensure the rules of the shelter are followed by communicating the shelter rules to men as they enter the shelter and by providing signage that displays the shelter rules. Signage must be displayed inside and outside the shelter in locations that are easily seen by shelter guests. The Contractor will ensure that guests with vision impairments receive appropriate accommodations to understand shelter rules.

4. Strategically intervene with any person from the shelter that does not follow the shelter rules. This may include discharge from the shelter for acts of physical or verbal abuse.

5. Provide full-time and part-time staff at the shelter location for shelter operations. Staffing levels shall be maintained at or above five staff onsite during high-activity hours of operation (i.e. intake, waking hours, etc.). Staffing levels shall be maintained at or above four staff onsite during low-activity hours of operation (i.e. from "lights out" until waking hour). Maintain appropriate staffing levels 24 hours a day at 1901 29th St. for security purposes. This shall include video surveillance and a building perimeter walk through no less than four (4) times a day.

6. Provide physical storage space on first floor at Crossroads to be used by the overnight guests that are part of the overnight shelter system.

7. Provide laundry facilities (machines where blankets will be laundered by staff or volunteers).

8. Provide a process for outreach teams, members of the DPD and resource providers including agencies and hospitals in the community to contact the contractor on occasions when a man is found outdoors and has need for shelter for the night.

9. The Salvation Army shall establish a working relationship with The Denver Anti-Discrimination Office and commit to post signage about anti-discrimination within the shelter facility. The City will provide signage materials to assist with compliance.

10. Oversee all interior cleaning, pest control and maintenance.

11. Conduct basic exterior and common area cleaning.

12. Report critical incidents to the outreach coordinator specified by the City and County of Denver. Examples of critical incidents include: violence/assaults, permanent restrictions of services, death on site, vandalism of provider or neighborhood property, significant facility issue that impedes provision of service, etc.

13. Comply with the leasing terms outlined in Agreement FINAN-201951840.

14. The contractor, in partnership with City of Denver, will establish and execute severe weather protocols to inform city agencies and partners of temporary program alterations at the shelter invoked by weather patterns or other emergent conditions.

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SCOPE OF WORK
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SOCSV 201952678-04 Jaggaer

C. **Responsibilities of the City and County of Denver**
1. Provide the name of an outreach coordinator from the city who will serve as a liaison for concerns or questions that the contractor may have.
2. The liaison will serve as the connection between the City and County of Denver, shelters/resource providers and the contractor.
3. Inform the contractor, outreach teams, the DPD and partners and providers about when shelters will be operational.
4. Organize periodic community meetings to obtain feedback concerning shelter activity.
5. Coordinate a communication meeting that allows guests and business owners in the shelter area to provide immediate feedback and concerns about Crossroads shelter.

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 sensitivity 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. Signage will be displayed onsite in areas easily and routinely accessed by shelter guests.

IV. **Process and Outcomes Measures**
A. **Shelter utilization & length of stay**
1. Nightly occupancy (benchmark equals program capacity)
   a. Data source: HMIS
   b. Measure: number of households in each shelter program nightly compared to total shelter capacity (in households).
2. Unique households served
   a. Data source: HMIS
   b. Measure: number of unique households served in each shelter program over the reporting period
3. Average length of stay (benchmark is 60 days or less for rapid entry programs and programs serving under 60 people per night))
   a. Data source: HMIS
   b. Measure: average and median number of nights of shelter used per household over the reporting period

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B. Housing Attainment

1. For single adults – 25% of households exit shelter to permanent housing or more stable housing outcomes.
    a. Data source: HMIS
    b. Measure: 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).

C. Household Characteristics

1. Households served:
    a. Data source: HMIS
    b. Measures:
        i. Number of households served each reporting period and duplicated 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)

D. Data quality

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

E. Program narrative reports

   a. 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. HOST will provide performance monitoring and reporting reviews. City staff will manage any performance issues and will develop interventions to resolve concerns.

EXHIBIT A-4

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 the Financial Management Unit (FMU). FMU will review the quality of the submitted invoice monthly.

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

Report Name	Description	Frequency	Report sent to:
Nightly report	Report shall consist of nightly shelter guests being reported into the HMIS system. Within 24 hours, all guest must be reported each day.	Nightly	HMIS
Quarterly Report	Report shall demonstrate achievement of Outcome measures in Section III above. Reports must include utilization of beds/mats available each night and the number of recorded incidents of physical harm, if any, involving a guest. Contractor must also attach the most current version of the shelter rules referenced in Section C.	Quarterly	Program Manager
Contract Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement. Other data will include total budget per line item, amount spent, and an explanation as to unspent funds, etc.	Contract End, within 30 days after Term End	Program Manager

VII. **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.

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DENVER
HOUSING STABILITY

SCOPE OF WORK
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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

Contractor: The Salvation Army		
Term: 1/1/20 - 12/31/20		
Contract Number: SOCSV 201631673-04		
Program: Crossroads Shelter		
Budget Categories	**Budgeted Amount**	**Narrative**
DIRECT COSTS		
Shelter Aide	$297,024.00	Multiple positions that are full time and part time that are billed at actual cost. Bonuses, severances or payouts of leave when an employee separates from their job will not be reimbursed.
Shelter Shift Supervisor	$141,440.00	Multiple positions that are full time and part time that are billed at actual costs Bonuses, severances or payouts of leave when an employee separates from their job will not be reimbursed.
Taxes & Fringe Benefits	$180,286.00	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, and workers comp) and pension or retirement plans.
Total Salaries and Fringe	$618,750.00	
OTHER DIRECT COSTS		
Client Support	$185,435.00	Items provided to clients reimbursed at costs. Includes food for meals which include breakfast & dinner from Central Kitchen the meal provider and all food service related dining supplies such as plates, utensils, cups, etc. Costs must be identifiable to a high degree. Additional

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		items allowed with written preapproval from the Program Manager.
Total Other Direct Costs	$185,435.00	
SUM OF DIRECT COSTS:	**$804,185.00**	
INDIRECT COST AMOUNT	$186,571.00	Indirect Cost Rate 23.2% of Direct Costs
TOTAL CONTRACT AMOUNT	**$990,756.00**	

VIII.   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[1].

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[2], and the COHMIS Security, Privacy and Data Quality Plan[3].

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

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[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

EXHIBIT A-4

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.

In order to ensure that reporting on shelter utilization patterns is accurate, the Contractor will ensure that HMIS cards are swiped for all shelter guests nightly. This includes completing intake assessments necessary to create cards for new shelter guests and activities required to replace cards. Intakes for new shelter guests should be completed during nightly check-in whenever possible. If it is not possible to complete intakes during nightly check-in, the Contractor will support new guests in securing a card within 24-hours, either through connections to existing day services or by providing staffing to complete intakes during check-in the following night. Contractor is required to maintain a nightly count of any guests sheltered without recording a shelter service in HMIS and submit this information to HOST weekly.

IX.   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 e x i s t 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. <u>DEFINITIONS.</u>

2.01   "<u>Administrative Safeguards</u>" 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   "<u>Agreement</u>" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.

2.03   "<u>Breach</u>" 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

EXHIBIT A-4

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.l03 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.

EXHIBIT A-4

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.

EXHIBIT A-4

3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).

3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

4. **SECURITY RULE.**

4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, §164.314 and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.

4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

5. **BREACH DISCOVERY AND NOTIFICATION.**

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

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

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

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

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5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

5.03 CONTRACTOR'S notification shall include, to the extent possible:

5.03.1 The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:

a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

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

5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of

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demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

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

5.07   CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.

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

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

6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

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

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

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.

8.02.1 This provision shall apply to all PHI that is in the possession of subcontractors

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or agents of CONTRACTOR.

8.02.2   CONTRACTOR shall retain no copies of the PHI.

8.02.3   In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to CITY notification of the conditions that make return or destruction infeasible. Upon determination by CITY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Agreement to the PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains the PHI.

8.03   The obligations of this Agreement shall survive the termination of the Agreement.

9   SUBSTANCE ABUSE (42 C.F.R., Part 2)

Provider will also comply with all provisions of 42 C.F.R., Part 2 relating to substance abuse treatment and records.

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