

AMENDATORY AGREEMENT

THIS 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 **VOLUNTEERS OF AMERICA COLORADO BRANCH**, a Colorado nonprofit with an address of 2660 Larimer Street, Denver, Colorado 80205 (“Contractor”, jointly “the parties”).

The City and Contractor entered into an Agreement dated **April 17, 2018**, and an Amendatory Agreement dated **December 10, 2018**, to provide services (the “Agreement”). The Parties now wish to extend the term of the Agreement for an additional one-year term and make certain other modifications to the Agreement as set forth below.

The Parties agree as follows:

1. Effective upon execution, all references to Exhibit A and A-1 in the existing Agreement shall be amended to read Exhibits A, A-1, and A-2, as applicable. Exhibit A-2 is attached.

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

“3. TERM: The Agreement will commence on **January 1, 2018** 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. Article 4d (1) of the Agreement entitled “Maximum Contract Amount” is amended to read as follows:

“d. Maximum Contract Amount:

(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **FIVE HUNDRED SEVENTEEN THOUSAND SEVEN HUNDRED AND TWELVE DOLLARS AND ZERO CENTS (\$517,712.00)** (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, and A-2. Any services performed beyond those in Exhibits A, A-1, and A-2 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 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-2

Contract Control Number: SOCSV-201952724-02, 2018-40143-02 Alfresco
Contractor Name: VOLUNTEERS OF AMERICA COLORADO BRANCH

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-201952724-02, 2018-40143-02 Alfresco
VOLUNTEERS OF AMERICA COLORADO BRANCH

DocuSigned by:
David Schunk
By: 2FE7F1ADC19341C...

Name: David Schunk
(please print)

Title: President and CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

**I. Purpose of Agreement**

The purpose of the contract is to establish an agreement and Scope of Work between Division of Housing Stability (HOST) and Volunteers of America Colorado Branch (VOA) to provide emergency housing for homeless adults who are unable to stay in conventional shelters due to medical conditions, many of which are homeless adults recently discharged from hospitals.

II. Services

- A.** VOA has operated the Family Motel located at 4855 W. Colfax Avenue, Denver Colorado 80204 since 2001. It consists of motel rooms for homeless families, of which 10 rooms are reserved for the Respite Care Program for individuals recuperating after a hospital stay. There will be no more than two people per room, except in a three bedroom. VOA will check the Sex Offender registry for all guests reserving a respite bed, if the referring medical provider was unable to.

The respite care rooms shall have basic and adequate furnishings, such as a bed, chair, table, lamp, clean pillows, sheets, and substantial blankets, towels and washcloths, toilet paper, facial tissue, soap, and privacy window coverings. Private shower or bathing facilities shall have hot and cold running water. Bathroom toilets shall flush. Facilities shall work towards having no infestations of vermin and shall provide pest prevention and/or treatments should the need arise. There will a concerted effort to maintain functional telephones available in each respite room within a reasonable timeframe. Adequate heating and cooling systems shall be operational. Room rate shall include electrical and water, including washers and dryers (or access to laundry services) for guests. Room doors and windows are intact and have functional locks. On-call maintenance shall be available within a reasonable timeframe.

- B.** Housekeeping services are on site six days a week. Occupied individual rooms will be cleaned twice per week at minimum. All common areas will be maintained and kept clean. This shall include trash removal, mopping the floors, and cleaning hard surfaces, bathroom cleaning and sanitization, and replacement of all sheets and towels with clean sets for each new guest. More frequent replacement of sheets and towels may be required, depending upon the guest's needs. Following a vacancy, 90% of vacant rooms will be cleaned and ready for utilization within 24 hours.
- C.** Three nutritionally balanced meals will be provided to the guest each day, potentially delivered to their rooms if mobility issues are severe. Meals will meet Federal Supplemental Nutritional Assistance Program (SNAP) guidelines for balanced content and caloric levels.



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- D. The average length of stay in respite will range between one (1) night and five (5) nights. Any extended length of stay will be pre-authorized by the HOST Respite Program Manager and referring physician. No stay will last more than thirty (30) days unless extreme circumstances exist and have been communicated to and authorized by HOST.
- E. Guests absent from the Family Motel for 24 hours without permission/notification, on-going failure to comply with rules, assaultive or violent behavior, use of illegal drugs or bringing alcohol on property or destruction of property may be discharged immediately. Documentation shall be placed in guest's file. If a guest is hospitalized during an authorized respite stay, VOA and HOST will communicate with the hospital to ascertain the guest's need to return to the respite facility. VOA will hold the bed for 24 hours. Social work staff at the hospital may request an extension at the Family Motel for the hospitalized patient.
- F. VOA will store belongings for former guests for a minimum of three (3) days.
- G. The Family Motel shall maintain a minimum of one (1) paid employee at all times. All paid staff will be 18 years or older and staffed 24 hours a day.

III. Anti-Discrimination

In addition to the anti-discrimination provision set forth in the body of the agreement, no individual shall be excluded from participation in, denied the benefit of, or subject to discrimination in connection with this program because of race, color, creed, marital status, familial status, religion, sex, sexual orientation, national origin, Vietnam era or disabled veteran's status, age, or disability, nor shall receipt of services be contingent upon participation in religious services. Service animals shall be allowed to accompany their disabled owner.

IV. Policies, Rules and Procedures

VOA will establish rules and policies regarding respite guest behavior, and staff must be responsible for enforcing those rules and policies consistently.

Respite guests must sign an agreement stating they understand and agree to follow all rules. VOA shall describe the handling of emergency circumstances after hours, including policy violations. Written policies and procedures shall address the following topics and ensure that all staff are trained in the following areas:

- First Aid
- Fire and emergency procedures, including use of fire extinguishers
- Guest confidentiality requirements
- Program documentation requirements
- Guest complaint and grievance procedures



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- Lines of authority within the motel
- Special needs of clientele, including cultural awareness, mental health issues, chemical abuse issues, and intimate partner/domestic violence issues.
- Guests are subject to all respite facility rules and physician's orders, whether given in writing or verbally.

V. Accessibility

There shall be controlled and limited access to the property, 24-hour monitoring and regular walk-throughs by staff. The utilization of security cameras, gates, and/or a single point of entry into the property are recommended. The operator of the facilities shall ensure that entrances, exits, steps and walkways are free of obstruction by litter, refuse, and/or laundry, ice, snow, and other hazards. They must ensure the building has adequate exits for the occupant load. VOA shall provide ADA compliant respite services.

VI. Confidentiality

Intake information is completed for each guest and kept in locked files. To protect guest confidentiality, data will be released from files only with a release of information signed by the resident or by subpoena. All logs and files are subject to periodic review by the Contractor program supervisor and/or authorized HOST staff. Records will be available for review by City program monitors and auditors.

VII. Process and Outcome Measures

A. Process Measures

1. VOA will provide ten (10) respite rooms containing 21 beds for guests in a safe and healthy environment.
2. VOA will provide three meals a day to all respite guests (breakfast, lunch and dinner) following Federal Supplemental Nutritional Assistance Program (SNAP) guidelines.
3. VOA will provide each guest written Family Motel rules upon intake that the guest will sign and kept in their file.

B. Outcome Measures

It is the intention of HOST to help the VOA Respite program transition to HMIS as a data source for this contract by 6/30/20. Until such time as this transition is complete, HOST will accept data and reporting from VOA's comparable data system, Service point.

1. **Shelter utilization & length of stay**
 - a. Nightly occupancy (benchmark equals program capacity)
 - i. Data source: HMIS



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- ii. Measure: number of households in each shelter program nightly compared to total shelter capacity (in households).
 - b. Unique households served
 - i. Data source: HMIS
 - ii. Measure: number of unique households served in each shelter program over the reporting period
 - c. Average length of stay (benchmark is 60 days or less for rapid entry programs and programs serving under 60 people per night)
 - i. Data source: HMIS
 - ii. Measure: average and median number of nights of shelter used per household over the reporting period
- 2. **Household Characteristics**
 - a. Households served:
 - i. Data source: HMIS
 - ii. Measures:
 - 1. Number of households served each reporting period and deduplicated count of households served to date
 - 2. Number of households that exited the program within the reporting period and year to date
- 3. **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)
- 4. **Data quality**
 - a. 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.
 - i. Data source: HMIS
- 5. **Program narrative reports**
 - a. For each reporting period, the contractor will provide a narrative update on program successes and challenges.

VIII. Performance Management and Reporting

A. Performance Management

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

- 1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.



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2. **Contract Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual goals. Contracting Services will provide performance monitoring and reporting to program area management. Contracting Services, in conjunction with the HOST program area, will manage any performance issues and will develop interventions to resolve concerns.
3. **Compliance Monitoring:** Will ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards and policies.
4. **Financial Monitoring:** Will ensure that contracts are allocated and expended in accordance with the terms of the agreement. Contractor is required to provide all invoicing documents for the satisfaction of Financial Services. Financial Services will review the quality of the submitted invoice monthly. Financial Services will manage invoicing issues through site visits and review of invoicing procedures.

B. Reporting

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

Report # and Name	Description	Frequency	Report to be sent to:
1. Monthly Reports	Monthly report will detail daily census report occupancy chart, weekly census data and demographic information on all residents.	Once a month – Due with monthly invoice	HOST Financial Services with monthly invoice and to Respite Program Manager
2. Quarterly Reports	This report will include a cumulative report of the monthly data and outcomes.	Upon Request	

IX. Budget

Invoices and reports shall be completed and submitted on or before the 15th of each month following the month services were rendered 100% of the time. Contractor shall use HOST's preferred invoice template, if requested. Invoicing supporting documents must meet HOST requirements.

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

Attn: Department of Housing Stability
201 W. Colfax Ave.



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Denver, Colorado 80202

Contract Number: 2018-40143-02; Jaggaer 2019-52724-02		
Program Name: Respite Program		
Direct Costs	Budget Amount	Budget Narrative Justification
Client Services		
Rooms per Night	\$15,208 per month	HOST will pay for 10 rooms per night at a flat rate of \$15,208 per month regardless if the rooms are occupied or not. If a unit is out of service for more than three days because of maintenance issues or if a unit is being rehabbed, HOST will be notified immediately.
TOTAL BUDGET	\$182,496	

Contract Summary of Amounts:

Contract Version	Term	Previous Amount	Additional Amount	New Contract Amount
Base Contract	1/1/2018-12/31/2018	\$0	\$163,520	\$163,520
1 st Amendment	1/1/2019-12/31/2019	\$163,520	\$171,696	\$335,216
2 nd Amendment	1/1/2020-12/31/2020	\$335,216	\$182,496	\$517,712

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

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**EXHIBIT A-2
2019-52724-02**



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

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

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

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

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

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

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

HOST may request aggregate data from MDHI for City related reporting needs.

In order to ensure that reporting on shelter utilization patterns is accurate, the Contractor will ensure that all shelter guests are recorded in HMIS for each shelter night they receive, on a nightly basis. This includes completing intake assessments necessary to create cards for new shelter guests and data entry activities required to ongoing/returning guests. Intakes for new shelter guests should be completed during nightly check-in whenever possible. If it is not

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>



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possible to complete intakes during nightly check-in, the Contractor will support new guests in completing an intake 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.

XI. 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.



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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 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;



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- 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.
- 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.



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- 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.
- 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.



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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.
- 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.



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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 HOST Executive Director or other designee.
 - 5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.
- 5.03 CONTRACTOR'S notification shall include, to the extent possible:
 - 5.03.1 The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired,



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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 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



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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 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.



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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 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



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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.