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SECOND AMENDATORY AGREEMENT

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THIS SECOND AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **VOLUNTEERS OF AMERICA COLORADO BRANCH**, a non-profit corporation, with an address of 2660 Larimer Street, Denver, Colorado 80205 (the "Contractor"), jointly "the parties"

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RECITALS:

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A.   The Parties entered into an Agreement dated March 20, 2018, as amended on December 4, 2018 (collectively, the "Agreement"), to provide emergency short-term shelter facilities through the motel voucher program administered by the Denver Department of Human Services.

B.   The Parties wish to amend the Agreement to extend its term, amend the scope of work and budget, increase the Maximum Contract Amount, and modify other terms of the Agreement as set forth below.

NOW THEREFORE, the parties agree as follows:

1.   All references to "Exhibits A and A-1, as applicable" in the existing Agreement shall be amended to read: "Exhibits A, A-1 and A-2, as applicable". The scope of work and budget marked as Exhibit A-2 is attached and incorporated by reference. Effective as of January 1, 2020, Exhibit A-2 will govern and control the services to be provided from January 1, 2020, until December 31, 2020.

2.   Article 1 of the Agreement, entitled "**COORDINATION AND LIAISON**", is hereby amended to read as follows:

> "**3. COORDINATION AND LIAISON:** The Contractor shall fully coordinate all services under the Agreement with the Executive Director ("Executive Director") of the Department of Housing Stability ("Agency") or, the Executive Director's Designee.

3.   Article 3 of the Agreement, entitled "**TERM**", is hereby amended to read as follows:

> "**3.   TERM:** The Agreement will commence on January 1, 2018, 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."

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4. Article 4.d.(1) of the Agreement, entitled "**Maximum Contract Amount**", is hereby 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 One Million Five Hundred Fifty Three Thousand, Seven Hundred Dollars and Zero Cents ($1,553,700.00) (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."

5. Except as amended herein, the Agreement is affirmed and ratified in each and every particular.

6. 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 Exhibit A-2 follow this page.

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Contract Control Number: SOCSV-201952821-02, 2018-39578-02 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: SOCSV-201952821-02, 2018-39578-02 Alfresco
Contractor Name: VOLUNTEERS OF AMERICA COLORADO BRANCH

DocuSigned by:

David Schunk

By: 2FE7F1ADC19341C... _____

David Schunk

Name: _____
(please print)

President and CEO

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

DENVER
HUMAN SERVICES

Volunteers of America Colorado Branch
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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 thirty (30) motel rooms for short term shelter for individuals and families with children when the City's emergency shelter beds are full through the HOST motel voucher program.

II.   **Services**

- Individuals and families with children will be provided with safe accommodations at the Family Motel location at 4855 and 4905 W. Colfax Ave., Denver, Colorado. Families are defined as minors with at least one adult.

- Facility will be clean, and staff will work to maintain the area free of drugs, violence, and illegal activities.

- Guest rooms will have basic and adequate furnishings, such as a bed, chair, table, lamp, clean pillows, blankets, sheets, towels, washcloths, toilet paper, facial tissue, soap, and private window coverings upon arrival.

- A continental breakfast will be available.

- Each room will have a private shower or bathing facilities complete with hot and cold running water. Bathroom toilets will flush.

- Facilities will be clean and will be maintained to eliminate infestations of vermin. The facility will provide regular pest prevention.

- The contractor will make every attempt for each guest room to have a functional telephone. If needed, telephones will be replaced within five business days.

- Heating and cooling systems will be fully operational.

- The contracted room rate will include electrical and water.

- Washers and dryers will be available at no charge for guests.

- Room doors and windows will be intact and have functional locks. Upper floor stairways, windows and doors will have appropriate safety features for the protection of young children.

- Guest rooms will be cleaned when vacated and common areas will be cleaned daily. This includes; trash removal, vacuuming of carpets, cleaning hard surfaces, sanitizing, and cleaning bathrooms and replacement of all used sheets and towels with clean sets.

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- Motel will be staffed 24 hours/day, 7 days/week.

- The contractor will make every attempt possible to provide a space conducive to assisting guests staying at the Family Motel to meet with the City of Denver Homeless Outreach staff. If the provided space is not conducive to assisting guest, the contractor will work with the City of Denver to plan for new space when necessary.

- Any damages to the facility and/or surrounding property will be addressed in a timely manner.

- VOA will notify HOST of any legal citations and/or building closures and changes that would affect room availability within 72 hours.

- VOA will ensure contact information is up-to-date and provide HOST with any updates necessary. This includes managerial staff names and contacts, including the staff person responsible for invoicing.

III. Process and Outcome Measures

A. Process Measures

- Contractor will provide a safe and clean facility for clientele that is free of drugs, violence, and illegal activities. HOST will receive fewer than 2 complaints per month.
- Contractor will comply with all health and safety measures to include repairs, sanitation, and inspections to include any and all applicable laws. Facilities will be up to code on all health and safety issues.
- Contractor facility will meet all Americans with Disabilities Act (ADA) guidelines and State and City rules and regulations. Certified service animals shall be allowed to accompany their disabled owner. Certificate of occupancy and compliance with ADA requirements must be valid 100% of the time.
- Random checks of any unoccupied rooms and public areas by HOST staff will be permitted with or without notice. Contractor will ensure timely correction of any issues HOST finds in the random room checks of vacant rooms and public areas.

B. Outcome Measures
It is the intention of HOST to help the VOA Family Motel 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.

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1. **Shelter utilization & length of stay**
   a) Nightly occupancy (benchmark equals program capacity)
      i. Data source: HMIS
      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. **Services Provided**
   a) Provision of Continental Breakfast
      iii. Data source: Provider report (to be submitted with narrative)
      iv. Measure: total number of breakfast meals provided during the reporting period
3. **Household Characteristics**
   a) Households served:
      i. Data source: HMIS
      ii. Measures: Number of households served each reporting period and deduplicated count of households served to date; Number of households that exited the program within the reporting period and year to date
   b) Household characteristics:
      i. Data source: HMIS
      ii. Measures: 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 outcome 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.
   b) Narrative will also provide reporting detail on number of meals provided each reporting period

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IV.   **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.

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 Name	Description	Frequency	Reports to be sent to:
1. Reporting of all customer concerns and problems within 24 hours.	Ability to work with HOST staff and clientele on a face-to-face basis and contact HOST staff as appropriate on any concerns or problems within 24 hours.	As needed	HOST Designated Staff

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2. Contact HOST if operations are impacted due to fires, major damage, etc.	Notify HOST staff contact person in the event of issues regarding the operation of the facility.	As needed	HOST Staff
3. Quarterly Reports	Report shall demonstrate Outcome Measures in Section III.B	Once a month – Due with monthly invoice	HOST Financial Services with monthly invoice and to HOST Designated Staff

V. Budget

A.   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: Division of Housing Stability
201 Colfax Ave.
Denver, Colorado 80202

B.   Contractor shall provide the identified services for the City under the support of the HOST using best practices and other methods for fostering a sense of collaboration and communication.

C.   HOST will pay for 30 rooms per night at a flat rate of $42,950.00 per month regardless if the rooms are occupied or not.

Contract Number: 2018-39578-02		
Program: Motel Vouchers		
Contractor Name: Volunteers of America Colorado Branch		
Term: 1/1/2020-12/31/2020		
2020 MONTHLY RATE		
Contractor will charge a monthly flat rate of $45,625 per month for 30 rooms designated for individuals and families for a total of $547,500 for Fiscal Year 2020.		
TOTAL BUDGET	**$547,500**	

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Contract Summary of Amounts:

Contract Version	Term	Previous Amount	Additional Amount	New Contract Total
Base	1/1/18-12/31/18	$0	$490,800	$490,800
1st Amendment	1/1/19-12/31/19	$490,800	$515, 400	$1,006,200
2nd Amendment	1/1/20-12/31/20	$1,006,200	$547,500	$1,553,700

VI. <u>Use of Homeless Management Information System (HMIS) and Reporting</u>

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.

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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

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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 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.

VII. **HIPAA/HITECH (Business Associate Terms)**

1. **GENERAL PROVISIONS AND RECITALS**

1.01   The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they 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. __DEFINITIONS.__

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.

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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.

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

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or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.

3.03   CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.

3.04   CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.

3.05   CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.

3.06   CONTRACTOR agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other arrangement.

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.

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3.11   CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

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

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

4.   SECURITY RULE.

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

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

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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.l   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.

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

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

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

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

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

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

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

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

7. OBLIGATIONS OF CITY.

7.01   CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.

7.02   CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.

7.03   CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.

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

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CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.

8.02.1 This provision shall apply to all PHI that is in the possession of subcontractors or agents of CONTRACTOR.

8.02.2 CONTRACTOR shall retain no copies of the PHI.

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

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

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

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

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