

REVIVAL AND AMENDATORY AGREEMENT

THIS REVIVAL AND AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **URBAN PEAK DENVER**, a Colorado nonprofit, whose address is 2100 Stout Street, Denver, CO 80205 (the “Contractor”), jointly “the Parties” and individually a “Party.”

WHEREAS, the City and the Contractor entered into an Agreement dated January 13, 2020, to provide essential supportive services to families and individuals experiencing unsheltered homelessness or not currently accessing daytime shelter services (the “Agreement”); and

WHEREAS, the Agreement expired by its terms on December 31, 2020, 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.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and amend the Agreement as follows:

1. Effective January 1, 2021, all references to Exhibit A in the existing Agreement shall be amended to read Exhibits A and A-1, as applicable. Exhibit A-1 is attached and will control from and after January 1, 2021.

2. Section 1 of the Agreement, titled “**COORDINATION AND LIAISON**,” is amended to read as follows:

“1. **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 “HOST”), or the Director’s Designee.”

3. Section 3 of the Agreement, titled “**TERM**,” is amended to read as follows:

“3. **TERM**: The term of the Agreement (“Term”) shall commence on November 1, 2019, and expire, unless sooner terminated, on December 31, 2021. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the then current expiration date and the Term will extend until the work is completed or earlier terminated.”

4. Section 4.4.1 of the Agreement, titled “**Maximum Contract Amount**,” is amended to read as follows:

“**4.4.1.** Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed One Million Ninety Thousand Six Hundred Eighty-Two Dollars (\$1,090,682.00) (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 Contractor beyond that specifically described in **Exhibits A** and **A-1**. Any services performed beyond those in **Exhibits A** and **A-1** or performed outside the Term are performed at the Contractor’s risk and without authorization under the Agreement.”

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

6. This Revival and 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.

Exhibit List
Exhibit A-1

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Contract Control Number: HOST-202157812-01
SOCSV 201952416-01
Contractor Name: URBAN PEAK DENVER

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:


Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number: HOST-202157812-01
SOCSV 201952416-01
Contractor Name: URBAN PEAK DENVER

By:  _____
CA1F1E94D002464...

Name: Christina Carlson
(please print)

Title: CHIEF EXECUTIVE OFFICER
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



**URBAN PEAK DENVER
SCOPE OF WORK
SOCSV 201952416-01 Alfresco
HOST 202157812-01 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 Urban Peak Denver (UP) to provide Essential and Supportive Services to families and individuals who are experiencing unsheltered homelessness and/or not currently accessing daytime shelter services;

II. Services

A. Targeted Populations

1. UP will provide additional services to encourage those resistant to engaging in services youth ages 15-24 years of age, who are experiencing or are at high risk of experiencing homelessness.
2. UP will engage with youth with high and complex service needs, youth currently unable to access UP services due to scheduling conflicts and youth who access adult overnight shelters.

B. UP will increase daytime services at the Drop-In Center (DIC) location and additional services at the shelter including groups and easier access to basic needs.

1. The DIC location will extend number of hours during day hours.
2. UP will provide additional meals, showers, laundry, restrooms, mail services and storage space for personal items.
3. UP will provide case management, housing, resource navigation, dental care and clinical mental health services.
4. UP will provide classes and groups to youth which will include but not limited to life skills, healthy relationships, coping and art.
5. Shelter Case Managers will continue to provide outreach and be available during all hours of operation.

C. UP will provide housing navigation for youth to transition and obtain stable housing.

III. Roles and Responsibilities

A. Contractor will:

1. Work with City to host any city-designated sensitivity training on an annual basis.
2. Provide any online modular sensitivity training developed and provided by the City to all new direct-service staff within 15 days of hire date.
3. Assure direct-service staff complete training refresher on a biennial basis.
4. Provide signage that includes information about the City and County of Denver's Anti-Discrimination Office.



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IV. EQUITABLE ACCESS AND OUTCOMES

The Department of Housing Stability, in alignment with the Mayor's Office of Social Equity and Innovation, values racial equity and inclusiveness and seeks to reflect this value in our funding practices. Our commitment to producing racially equitable housing outcomes is paramount to HOST's overall mission of Denver residents being healthy, housed and connected. HOST requires all programs it funds to report on the demographic characteristics of households served by the program throughout the duration of the contract in coordination with other required reporting. The contractor will also report on the demographics of staff working on this program throughout the duration of this contract. Specific information outlining the required data systems to be used and data to be collected are contained within the scope of work of this contract. This information will help HOST monitor demographic trends in who is served. The underlying objective of collecting and disaggregating data and outcomes by race is to understand who is currently served by HOST funded programs. This information will help inform future evaluation on any potential disparate impacts across HOST programs, as well as strategies to help address equity in access to and outcomes from programs where appropriate. Additionally, HOST program and contract staff will be reviewing data, and will discuss your program's progress or challenges towards racially equitable services and outcomes at site visits and monitoring.

V. Process and Outcome Measures

A. Process Measures

1. UP will increase physical safety for sheltered and unsheltered youth.
2. UP will increase obtainment of benefits, healthcare, and legal services in order to reduce barriers to housing and employment.
3. UP will increase participation in coping and life skills programming; youth council; and case management. 500 unduplicated youth will obtain case management services annually.
4. UP will increase engagement in education and employment services.
5. UP will decrease average housing match wait time for both sheltered and unsheltered youth.

B. Outcome Measures

1. 15% of youth accessing UP emergency shelter and 45% of unsheltered youth accessing the DIC will discuss and obtain necessary benefits, healthcare, and legal services.
2. 65% of youth accessing UP emergency shelter and at least 80% of unsheltered youth contacted by outreach will utilize daytime services.
3. 85% of youth accessing UP emergency shelter and 60% of unsheltered youth accessing the DIC will attend coping and life skills programming, youth council, or engage in case management.



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4. By the end of the first grant year, the average wait time for youth who are pre-matched to a housing resource will decrease by 10%.

C. Day shelter utilization & length of stay

1. Number of households served each day
 - a. Data source: Homeless Management Information System (HMIS)
 - b. Measure: number of households in each shelter program daily
2. Unique households served
 - a. Data source: HMIS
 - b. Measure: number of unique households who used the day shelter program at least once over the reporting period and year to date
3. Unique households served who exited the program
 - a. Data source: HMIS
 - b. Measure: number of unique households who used the day shelter program at least once and exited services during the reporting period and year to date.
4. Average length of stay (benchmark is 60 days or less for rapid entry programs and programs serving under 60 people per day)
 - a. Data source: HMIS
 - b. Measure: average and median number of days of day shelter service used per household over the reporting period

D. Services provided

1. Number of households provided case management
 - a. Data source: HMIS
 - b. Measure: Number of households with at least one case management service over the reporting period; Total number of case management services provided during the reporting period
2. Number of households provided storage opportunities
 - a. Data source: HMIS
 - b. Measure: Number of households with at least one storage service; Total number of storage services provided during the reporting period
3. Provision of shower services
 - a. Data source: Provider report (to be submitted with narrative)
 - b. Measure: Total number of shower services used each reporting period
4. Provision of meals
 - a. Data source: Provider report (to be submitted with narrative)
 - b. Measure: Total number of meals provided during the reporting period

E. Behavioral and Physical Health Care Connections

1. Referrals to behavioral health services
 - a. Data source: HMIS



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- b. Measure: Number of households with at least one HMIS service for a mental health treatment referral; Total number of referrals to mental health services made during the reporting period
 2. Referrals to substance use services
 - a. Data source: HMIS
 - b. Measure: Number of households with at least one HMIS service for a substance use treatment referral; Total number of referrals to substance use services made during the reporting period
 3. Referrals to primary medical services
 - a. Data source: HMIS
 - b. Measure: Number of households with at least one HMIS service for a primary medical treatment referral; Total number of referrals to primary medical services made during the reporting period
 4. Households obtaining behavioral health treatment
 - a. Data source: HMIS
 - b. Measure: Number of unique households who obtained mental health treatment after being referred by day shelter program during the reporting period; Total number of mental health treatment services obtained after being referred by day shelter program during the reporting period
 5. Households obtaining substance use treatment
 - a. Data source: HMIS
 - b. Measure: Number of unique households who obtained substance use treatment after being referred by day shelter program during the reporting period; Total number of substance use treatment services obtained after being referred by day shelter program during the reporting period
 6. Households obtaining primary medical treatment
 - a. Data source: HMIS
 - b. Measure: Number of unique households who obtained primary medical treatment after being referred by day shelter program during the reporting period; Total number of primary medical treatment services obtained after being referred by day shelter program during the reporting period

F. Income, Benefits, and Education

1. Unique households who increased earned income from program entry to exit/most recent assessment
 - a. Data source: HMIS
 - b. Measures:
 - i. For exited households: Number and percentage of exited households who increased earned income from program entry to program exit



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- ii. For current households: Number and percentage of currently participating households who increased earned income from program entry to most recent assessment
2. Number of unique households who increased total income from program entry to exit/most recent assessment
 - a. Data source: HMIS
 - b. Measure:
 - i. For exited households: Number and percentage of exited households who increased total income from program entry to program exit
 - ii. For current households: Number and percentage of currently participating households who increased total income from program entry to most recent assessment
3. Number of unique households who increased income from benefits from program entry to program exit/most recent assessment
 - a. Data source: HMIS
 - b. Measure:
 - i. For exited households: Number and percentage of exited households who increased income from benefits from program entry to program exit
 - ii. For current households: Number and percentage of currently participating households who increased income from benefits from program entry to most recent assessment
4. Number of unique households who accessed a new cash benefit from program entry to program exit/most recent assessment
 - a. Data source: HMIS
 - b. Measure:
 - i. For exited households: Number and percentage of exited households who had each benefit at program entry compared to program exit. Number and percentage of exited households who had income from at least one cash benefit go from \$0 per month to an amount greater than \$0 per month from program entry to program exit
 - ii. For current households: Number and percentage of currently participating households who had each benefit type at program entry compared to at the most recent assessment. Number and percentage of currently participating households who had income from at least one cash benefit go from \$0 per month to an amount greater than \$0 per month from program entry to most recent assessment



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5. Number of unique households who accessed at least one new noncash benefit from program entry to program exit/most recent assessment
 - a. Data source: HMIS
 - b. Measure:
 - i. For exited households: Number and percentage of exited households who reported a noncash benefit at program exit that they did not report at program entry
 - ii. For currently participating households: Number and percentage of currently participating households who reported a noncash benefit at program exit that they did not report at program entry
6. Enrollments in training or academic programs
 - a. Data source: HMIS
 - b. Measure: Number of households with at least one service for training or academic programming; Total number of training/academic program enrollments
7. Number of unique households who obtained a professional certification
 - a. Data source: HMIS
 - b. Measure: Number of households with at least one service for obtaining a professional certification; Total number of professional certifications obtained

G. Housing Attainment

1. Benchmarks: For single adults – 25% of households exit shelter to permanent housing or more stable housing outcomes. For families – 60% 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). Exits to permanent housing may also be broken down into more detailed categories (e.g., permanent supportive housing, rapid rehousing, reunification, etc.)
2. OneHome program enrollments
 - a. Data source: HMIS
 - b. Measure: Average number of OneHome program enrollments for the agency

H. Household Characteristics

1. Households served accessing shelter for the first time
 - a. Data source: HMIS
 - b. Measures:



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- i. Number of unique households served who had no prior program enrollment or service that indicated homelessness recorded in HMIS
 - ii. Number of unique households served who had no prior overnight shelter services recorded in HMIS who go on to use overnight shelter services within the reporting period
- 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)

I. Data quality

- 1. In order to determine the accuracy and comprehensiveness of the reporting on the above outcomes' measures, HOST will also collect an HMIS Data Quality Report on the program for each reporting period
 - a. Data source: HMIS

J. Program narrative reports

- 1. For each reporting period, the contractor will provide a narrative update on program successes and challenges. These reports will include data for showers and meals as noted above. Narrative reports will also identify any neighborhood or community concerns and report on the contractor's strategies to mitigate the concern(s). Lastly, narrative reports will include at least one case history of a client who successfully exited the program

VI. Performance Management and Reporting

A. Performance Management

Monitoring will be performed by the program area and other designated HOST 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. Financial Services, in conjunction with the HOST program area and other designated HOST staff, will provide performance monitoring and reporting reviews. HOST staff will manage any performance issues and will develop interventions to resolve concerns.
- 3. **Compliance Monitoring:** Will ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards and policies.



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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	Description	Frequency	Reports to be sent to
Case Study Narratives of a successful program	Narratives of guest(s) participating and/or completing program. Must include guest's completed Release of Information	Monthly	Through Salesforce
Quarterly Report	Report shall demonstrate achievement of Outcome measures	Quarterly	Through Salesforce
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.	Within 30 days after Term End Date of this contract agreement	Program Officer

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.

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



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Contractor:	Urban Peak Denver	
Term:	January 1, 2021-December 31, 2021	
Contract Number:	HOST 202157812-01/SOCSV 201952416-01	
Program:	Day Shelter Operations	
Budget Categories	Budgeted Amount	Narrative
SALARIES		
Shelter Case and/or Life Skills Managers	\$125,351	3 Full-time salaries and wages reimbursed at cost. Bonuses, severances or payouts of leave when an employee separates from their job will not be reimbursed
Shelter Program Oversight-Shelter Supervisor	\$17,545	1 Part-time salary and wages reimbursed at cost. Bonuses, severances or payouts of leave when an employee separates from their job will not be reimbursed
Fringe Benefits	\$34,295	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.
SUBTOTAL SALARIES & FRINGE	\$177,191	
OTHER DIRECT SERVICES		
Day Shelter Food Costs	\$50,500	Items provided to clients including food and meal expenses. Reimbursed at actual costs.
Facilities	\$7,500	Specific office space dedicated for use for the program. Associated expenses can be allocated proportionately based on actual size or percentage of the building space. Associated expenses can include rent, lease, utilities and maintenance costs.
Tech Support Services	\$14,809	Program-related expenses for services that require specialized IT knowledge.
SUBTOTAL OTHER DIRECT COSTS	\$72,809	
TOTAL COSTS	\$250,000	



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VII. Homeless Management Information System (HMIS)

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 Homeless Management Information System (HMIS)¹. HUD requires recipients and sub-recipients of McKinney-Vento Act funds to collect electronic data on their homeless clients through HMIS. Programs that receive funding through McKinney-Vento that produce an Annual Progress Report (APR) must also collect program level data elements. These programs include funding from HUD Continuum of Care (CoC), SHP (a.k.a. S+C), Section 8 Mod Rehab, Emergency Solutions Grant (ESG), and Housing Opportunities for Persons With AIDS (HOPWA), Projects for Assistance in Transition from Homelessness (PATH), Runaway Homeless Youth (RHY) and Veteran's Administration (VA).

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 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

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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VIII. HIPAA/HITECH (Business Associate Terms)

1. GENERAL PROVISIONS AND RECITALS

- 1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.
- 1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and the CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.
- 1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information ("PHI") as defined below, to be used or disclosed in the course of providing services and activities.
- 1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.
- 1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.
- 1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

2. DEFINITIONS.



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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;



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- b. The unauthorized person who used the PHI or to whom the disclosure was made;
- c. Whether the PHI was actually acquired or viewed; and
- d. The extent to which the risk to the PHI has been mitigated.

2.04 "CONTRACTOR" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.

2.05 "CITY" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.

2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.

2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.10 "Immediately" where used here shall mean within 24 hours of discovery.

2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.

2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

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.



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- 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



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behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

- 3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).
- 3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

4. SECURITY RULE.

- 4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, §164.314 and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that 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.



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- 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, 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;



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- d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
- e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

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

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

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

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

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.



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6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

- 6.01 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, CITY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by CITY.
- 6.02 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.
- 6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:
 - 6.03.1 The Disclosure is required by law; or
 - 6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.
- 6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.
- 6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

7. OBLIGATIONS OF CITY.

- 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.



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7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:

8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or

8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.

8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.

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

8.02.2 CONTRACTOR shall retain no copies of the PHI.

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

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.