

## THIRD AMENDATORY AGREEMENT

**THIS THIRD 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 corporation, whose address is 2100 Stout Street, Denver, CO 80205 (the “Contractor”), individually a “Party,” and collectively the “Parties”.

### RECITALS

**A.** The City and Contractor entered into an Agreement executed on January 13, 2020, an Amendatory Agreement executed on December 30, 2020, and a Second Amendatory Agreement executed on February 28, 2022 (the “Agreement”) for the performance of certain work set forth in that Agreement and **Exhibit A** thereto.

**B.** The Parties wish to amend the agreement to extend the term, increase the maximum contact amount, and add **Exhibit D-HIPAA BAA**.

**C. NOW, THEREFORE**, the Parties hereby agree as follows:

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

“**3. TERM:** The Term of this Agreement (“Term”) shall commence on January 1, 2020, and expire, unless sooner terminated, on December 31, 2024. Subject to the 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 Director.”

**2.** Section **4.4.1** of the Agreement entitled “**COMPENSATION AND PAYMENT-Maximum Contract Amount**” is amended to read as follows:

“**4.4. Maximum Contract Amount:**

**4.4.1.** Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **ONE MILLION FORTY-THREE THOUSAND ONE HUNDRED FIFTY DOLLARS AND ZERO CENTS** (\$1,043,150.00) (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, A-1, A-2 and A-3. Any services performed beyond those in Exhibit A, A-1, A-2, and A-3 or performed outside the Term are performed at the Contractor’s risk and without authorization under the Agreement.”

3. Effective upon execution, all references to “Exhibit A, A-1, and A-2” in the existing Agreement shall be amended to read “Exhibit A, A-1, A-2 and A-3” as applicable. The Scope of Work marked as Exhibit A-3 is attached hereto and incorporated herein by this reference.

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

5. This Third Amendatory Agreement will not be 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.

**Exhibits**

**Exhibit A-3-** Scope of Work

**Exhibit D-** HIPAA BAA

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**[SIGNATURE PAGES TO FOLLOW]**

**Contract Control Number:** SOCSV-202265849-03, 201952843-03 Alfresco  
**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:**  
**Contractor Name:**

SOCSV-202265849-03, 201952843-03  
URBAN PEAK DENVER

DocuSigned by:  
*Christina Carlson*  
CA1F1E94D002464...  
By: \_\_\_\_\_

Christina Carlson  
Name: \_\_\_\_\_  
(please print)  
CHIEF EXECUTIVE OFFICER  
Title: \_\_\_\_\_  
(please print)

ATTEST: [if required]

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

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

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



Urban Peak Denver  
SCOPE OF WORK  
**SOCSV-202265849-03**

**I. Purpose of Agreement**

The purpose of the contract is to establish an agreement and Scope of Work between Denver Human Services (DHS) and Urban Peak Denver (UPD) to provide six (6) housing units and minimal case management services for eligible homeless youth in transition (ages 16 to 24) who have aged out of foster care or might otherwise find themselves on the street.

**II. Services**

**UPD will provide:**

**A. Apartments**

1. Six (6) apartments for DHS youth. There will be no time limits imposed on duration of lease for DHS youth as long as they are in good standing with their lease agreement (including the ability to pay monthly rent), Rox's Place expectations, and DHS expectations.
2. After apartment is vacated, UPD will have five (5) business days for an apartment in good condition and up to ten (10) business days for an apartment in poor condition due to tenant misconduct, to make the apartment ready and available for new DHS youth.
3. Respite care recommended for DHS youth enrolled in the Rox's Place should not last more than 48 hours unless otherwise agreed upon with the DHS Independent Living Program Manager (Program Manager).
4. Ensure six (6) units are allocated to DHS clients only whether vacant or occupied.
5. Two (2) additional apartments upon request if spaces are available.

**B. Case Management**

1. Perform weekly check in with tenants.
2. Complete monthly staffing with Rox's Place caseworker, DHS Chafee worker and tenant. One (1) meeting per youth, per month at an agreed upon, scheduled time, date, and location.
3. Monitor youth compliance with lease agreement and expectations.
4. Review case plan with each youth.
5. Provide Program Manager with monthly written case plan progress reports for each youth housed at Rox's Place.
6. Coordinate with DHS staff to review case management and progress towards independent living.

**C. Independent Living Skills**

1. Provide financial education and planning services in collaboration with the Chafee worker.
2. Monitor and provide education and support for youth regarding personal finance planning to include, but not limited to, savings and checking account, monthly bill payments, budgeting, and finance literacy education.



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3. Provide guidance and education in housekeeping, cooking and grocery shopping, and general home maintenance.

**D. Security**

1. Building security will be the sole responsibility of UPD.
2. Appropriate safety measures will be taken to minimize risk exposures to tenants (i.e., secure entrances, monitoring traffic and visitors, limits to visitor length of stays, etc.).
3. Provide critical incident and serious incident reports on DHS youth that may result in media coverage to Program Manager.
  - a. Any media interview requests regarding the specific program and/or topics directly related to this program or its tenants under the age of 18 shall be coordinated through the DHS Public Information Office via the DHS Independent Living Program Manager.

**E. Eligibility**

1. Please see Exhibit B for youth eligibility criteria.

**DHS responsibilities:**

- A. DHS will provide UPD with a signed copy of each youth's case plan.
- B. DHS will ensure payment for six (6) apartments per month including empty apartments after a DHS youth has been moved out for a period up to five (5) business days (or up to ten (10) business days if the previous DHS tenant has left the unit in poor condition).
- C. If UPD denies eligible DHS youth, DHS will not pay for unit while empty.
- D. DHS will respond within 24 hours to calls from UPD concerning youth.

**III. Process and Outcome Measures**

**A. Process Measures**

The contractor will collaborate with DHS and community-based organizations to provide for the wellbeing of youth in transition, identifying best practices and effective programs.

**B. Outcome Measures**

DHS youth will achieve stability and 75% will become self-sufficient at the time of discharge from the program as determined by their individual case plan.



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**IV. Background Checks**

Contractor shall provide background checks for all current and prospective employees of Contractor, and/or any subcontractor who has any direct contact with a child involved in any phase of an open child welfare case including, without limitation, those in the process of being placed and those who have been placed in out of home care. Each employee, prospective employee and/or subcontractor shall submit a complete set of fingerprints to the Colorado Bureau of Investigation (CBI) that were taken by a qualified law enforcement agency to obtain any criminal record held by the CBI.

**A. Contractor Employees and Subcontractors**

1. The person's employment is conditional upon a satisfactory criminal background check and subject to the same grounds for denial or dismissal as outlined in 26-6-104(7), C.R.S., including:
  - a. Checking records and reports; and
  - b. Individuals who have not resided in the state for two years shall be required to have Federal Bureau of Investigation (FBI) fingerprint-based criminal history.
2. Payment of the fee for the criminal record check is the responsibility of the Contractor or at Contractor's option individual being checked. In either case, DHS will not reimburse any of the costs associated with background checks.

**B. Volunteers and Students (if applicable)**

1. If volunteers or students are used by Contractor, Contractor shall define specifically the services to be given by that individual.
2. Volunteers and students who are assigned to work directly with the children/youth shall:
  - a. Be subject to reference checks similar to those performed for employment applicants.
  - b. Be supervised by Contractor's paid and qualified staff and report any concerns or issues to that staff.
  - c. Be oriented and trained in the confidential nature of their work and the specific job which they are to do prior to assignment.
3. Provisions for employment and volunteer/student related background check inquiries will be followed as outlined in Section 7.701.32 "Use of Reports and Records of Child Abuse or Neglect for Background and Employment Inquiries."

**V. Performance Management and Reporting**

**A. Performance Management**

Monitoring will be performed by the program area and other designated DHS 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.



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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. Financial Services, in conjunction with the DHS program area and other designated DHS staff, will provide performance monitoring and reporting reviews. DHS staff will manage any performance issues and will develop interventions to resolve concerns.
3. **Compliance Monitoring:** Will ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards, and policies.
4. **Financial Monitoring:** Will ensure that contracts are allocated and expended in accordance with the terms of the agreement. Contractor is required to provide all invoicing documents for the satisfaction of Financial Services. Financial Services will review the quality of the submitted invoice monthly. Financial Services will manage invoicing issues through site visits and review of invoicing procedures.

### B. Reporting

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

Report # and Name	Description	Frequency	Reports to be sent to:
1. Case Manager Updates	Includes names of youth in program, status of employment, status of education, and percent of youth discharged successfully	Provided at monthly meeting	Independent Living Program Manager
2. Case Plan Progress Report	Brief summary of youth's progress on goals stated in case plan	Provided at monthly meeting	Independent Living Program Manager
3. Property Management Statistics	Includes apartment assignments and upcoming vacancies for DHS designated apartments	15 <sup>th</sup> of each month	Independent Living Program Manager
4. Rent Ledger	Includes rent collected, overdue rent, payment histories,	15 <sup>th</sup> of each month	Independent Living Program Manager



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	percentage of total rents collected and waivers of DHS youth		
5. Contract Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall outcomes of this agreement.	Contract End, within 45 days after Term End.	Independent Living Program Manager

**VI. DHS funding information:**

- A. **Program Name:** Rox's Place formally known as Rocky Mountain Youth Housing.
- B. **Funding Source:** 13005-5533310

**VII. Budget**

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

Invoices shall be submitted to: [DHS\\_Contractor\\_Invoices@denvergov.org](mailto:DHS_Contractor_Invoices@denvergov.org) or by US Mail to:

Attn: Financial Services  
Denver Human Services  
1200 Federal Boulevard  
Denver, Colorado 80204



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<b>Contractor Name:</b>	Urban Peak Denver	
<b>Program:</b>	Youth Housing	
<b>Fiscal Term:</b>	1/1/2023-12/31/2024	
<b>Contract Term</b>	1/1/2020-12/31/2024	
	<b>Total</b>	<b>Budget Narrative</b>
<b>Rent</b>	\$93,600	<ul style="list-style-type: none"> <li>• The total rent amount is \$650/unit/month for 6 units.</li> <li>• <b>Unoccupied unit rates:</b> DHS will pay \$650/unit/month for unoccupied units.</li> <li>• <b>Occupied unit rates:</b> DHS will pay \$200/unit/month for occupied units. The occupant of the unit will be responsible to pay the contractor \$450/month.</li> <li>• If spaces are available, contractor will provide up to 2 additional units at Occupied unit rates.</li> </ul> <p style="text-align: right;"><math>\\$650 \times 6 \text{ units} = \\$3,900 \times 24 \text{ months} = \\$93,600.</math></p>
<b>Case Managers</b>	\$270,400	<p>\$65/youth/day (5 days/week) \$65 x (8) youths x 5 days x 104 weeks=\$270,400</p> <p>Case Managers Services will include any of the following: availability during normal business hours, monitoring youth compliance with lease and expectations, teaching/providing Independent Living Skills, monitoring counseling needs, providing referrals (as needed), and collaboration with professionals assigned to the youth.</p>
<b>Direct Care Support Employees</b>	\$53,248	<p>\$32/youth/weekend day (2 days/week) \$32 x (8) youths x 2 days x 104 weeks=\$53,248</p> <p>Direct Care Support and 24-hour response (as needed)</p>
<b>Total</b>	<b>\$417,248</b>	



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**Contract Summary of Amounts:**

<b>Contract Version</b>	<b>Term</b>	<b>Previous Amount</b>	<b>Additional Amount</b>	<b>New Contract Total</b>
<b>Base</b>	1/1/2020- 12/31/2020	\$0	\$208,624	\$208,624
<b>1<sup>st</sup> Amendment</b>	1/1/2021- 12/31/2021	\$208,624	\$208,624	\$417,248
<b>2<sup>nd</sup> Amendment</b>	1/1/2022- 12/31/2022	\$417,248	\$208,624	\$625,872
<b>3<sup>rd</sup> Amendment</b>	1/1/2023- 12/31/2024	\$625,872	\$417,248	\$1,043,150

**EXHIBIT D**  
**BUSINESS ASSOCIATE AGREEMENT**  
**HIPAA/HITECH**

**1. GENERAL PROVISIONS AND RECITALS.**

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

**2. DEFINITIONS.**

- 2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.
- 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:

1. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
2. The unauthorized person who used the PHI or to whom the disclosure was made;
3. Whether the PHI was actually acquired or viewed; and
4. 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.
- 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. 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.

**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 DEH 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:

1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  2. 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);
  3. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
  4. 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
  5. 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.

**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.
- 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).**

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