

REVIVAL AND SECOND AMENDATORY AGREEMENT

THIS REVIVAL AND SECOND AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (hereinafter referred to as the “City”), and **THE COLORADO COALITION FOR THE HOMELESS**, a Colorado nonprofit, whose address is 2111 Champa Street, Denver, CO 80205 (the “Contractor”), jointly “the Parties” and individually a “Party.”

WHEREAS, the Parties entered into an Agreement dated May 1, 2020, and a Revival and Amendatory Agreement dated August 25, 2020, to lease hotel and/or motel rooms and to provide staffing support for people experiencing homelessness in response to the COVID-19 public health crisis (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 Exhibits A and A-1 in the existing Agreement shall be amended to read Exhibits A, A-1, and A-2, as applicable. Exhibit A-2 is attached and will control from and after January 1, 2021.

2. Section 2 of the Agreement, titled “**SERVICES TO BE PERFORMED**,” is amended to read as follows:

“2. **SERVICES TO BE PERFORMED**: As the Director directs, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth in the attached **Exhibit A, Scope of Work**, to the City’s satisfaction. The City may reduce services by terminating specific budget line items in accordance with the terms of the Agreement and its **Exhibit A**. The Contractor is ready, willing, and able to provide the services required by this Agreement. The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.”

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

“3. The Agreement will commence on March 1, 2020, and will expire, unless sooner terminated, on June 30, 2021 (the “Term”).”

4. Section 4.4.1 of the Agreement, under the title “**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 Twenty-Seven Million One Hundred Sixty-Three Thousand Three Hundred Forty-Six Dollars (\$27,163,346.00) (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 **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at the Contractor’s risk and without authorization under the Agreement.”

5. Section 4 of the Agreement, titled “**COMPENSATION AND PAYMENT**,” is amended to add a new subsection 4.5 as follows:

“4.5. **Budget Modifications**: Budget line items may only be terminated or modified in accordance with City procedures and policies, and the Maximum Contract Amount shall be reduced proportionately with any authorized termination or modification of a budget line item. Any modification to **Exhibit A** that requires an increase in the Maximum Contract Amount shall be evidenced by a written Amendatory Agreement prepared and executed by both Parties in the same manner as this Agreement.”

6. Section 6 of the Agreement, titled “**TERMINATION**,” is amended to add a new subsection 6.6 as follows:

“6.6. The City reserves the unilateral right, effective upon thirty (30) days prior written notice to the Contractor, to suspend or terminate, in whole or in part, specific, enumerated budget line items contained within the attached **Exhibit A**. Any order to terminate or suspend budget line items in **Exhibit A** shall not alter or affect the terms or performance of the Agreement with respect to services or deliverables not terminated or suspended, and all remaining obligations shall remain in full force and effect. Notwithstanding anything to the contrary contained herein, the Contractor shall not be entitled to compensation for any deliverables or services performed during any period in which the City has directed that the line item and its respective services or deliverables be suspended or terminated.”

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

8. This Revival and Second 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-2

REST OF PAGE INTENTIONALLY LEFT BLANK

Contract Control Number: GENRL-202057215-02 [HOST-202054331-02]
Contractor Name: THE COLORADO COALITION FOR THE HOMELESS

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:

GENRL-202057215-02 [HOST-202054331-02]
THE COLORADO COALITION FOR THE HOMELESS

By:  _____
DocuSigned by:
John Parvensky
CB0DB8BE0E684A5...

Name: John Parvensky
(please print)

Title: President and CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



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I. Purpose of Agreement

The purpose of this contract agreement is to provide an award for \$27,163,346.00 through the Department of Housing Stability (“HOST”). These funds will be provided to Colorado Coalition for the Homeless (“CCH”) to lease hotel and/or motel rooms and staffing support for people experiencing homelessness in response to the COVID-19 public health crisis. Such hotel and/or motel rooms will be used for activated respite and as protective action defined by this scope of work to place high risk individuals in safe conditions out of congregate shelter or unsheltered conditions.

II. Services

The City, the State of Colorado (“State”), CCH and other partners are working together to identify hotel/motel facilities that can be used to serve people experiencing homelessness.

The purpose of this scope of work is to:

A. Provide Activated Respite Rooms: Provide a safe hotel/motel facility for people experiencing homelessness who are medically referred for isolation or quarantine related to COVID-19 (“Activated Respite Rooms”). To ensure that the City, State and CCH partners are aligning the pipeline of Activated Respite Rooms, written approval such as email for the use of a specific facility for master lease or similar agreement will be required from the Executive Director of HOST or a designee.

1. Eligible program participants for Activated Respite Rooms include people experiencing homelessness who:
 - a. are COVID-19 symptomatic, have been determined to need testing by a health care professional, and are awaiting that testing
 - b. are awaiting the results of a COVID-19 screening test
 - c. have been in close, direct contact with someone who is COVID-19 positive, and are deemed to be “presumptive positive” by a health care professional and in need of quarantine
 - d. or have tested positive for COVID-19 and need quarantine until they receive clearance from a health care professional.

B. Provide Protective Action Rooms: Provide a safe hotel/motel facility for people experiencing homelessness who are at higher risk of issues related to COVID-19 and are currently in congregate shelter or unsheltered conditions (“Protective Action Rooms”). To ensure that the City, State and CCH partners are aligning the pipeline of Activated Respite Rooms, written approval such as email for the use of a specific facility for master lease or similar agreement will be required from the Executive Director of HOST or a designee.

1. Eligible program participants for Protective Action Rooms include people experiencing homelessness who:
 - a. are at higher risk of contracting or having more severe complications associated with COVID-19, such as those who are older than 60 or with existing health conditions. Contractor and HOST will work collaboratively



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to develop a policy for screening for Protective Action Respite Rooms with written approval such as email from the Executive Director of HOST or designee.

C. Provide Staffing Support for Activated Respite and Protective Action Rooms:

CCH may provide medical, behavioral health and other staffing support for people experiencing homelessness who have low acuity level of care needs in Activated Respite Rooms and Protective Action Rooms. These staffing levels of primary and behavioral health are subject to review and change as needed.

1. Medical Care – (24 hours/7 days a week) service via onsite staffing and telemedicine to include – Vitals and symptom monitoring and care for chronic medical conditions to limit complications and need for hospital care.
2. Behavioral Health - (24 hours/7 days a week) behavioral health and psychiatry via onsite staffing and telemedicine.
3. Case Management – staff will provide onsite support and assist in coordination of basic care and support needs for residents at each facility.
4. Intake – staff will oversee census of hotel, liaison with the city dispatch for transportation needs, and coordinate with nursing and medical staff on identifying clients who may need more intensive services.

D. Budget and scope of work anticipate the use of at least 6 hotel/motels for Protective Action Rooms and Activated Respite Rooms for a total of at least 810 individual rooms.

1. At least 107 of the rooms will be used for Activated Respite Rooms.
2. At least 603 of the rooms will be used for Protective Action Rooms.
3. HOST support through this scope of work includes facility costs including, but not limited to, master lease of motel rooms and related CCH program staffing and services.

E. For Protective Action Rooms where the City holds the master lease or licensing agreement, the Contractor will provide the personnel to staff the facility in accordance with this scope of work.

F. Site Closures

1. This Agreement is part of the City and County of Denver’s COVID-19 emergency response and is operationally dependent on the continued declaration of an emergency. If the COVID-19 emergency declaration ends before the term of this Agreement, the City may terminate this Agreement in accordance with its terms and conditions.
2. If the City determines that a service outlined in this Agreement is no longer necessary, the City may, in whole or in part, terminate or suspend the services and deliverables stated within this Exhibit A-1 by terminating specific budget line items.
3. All decisions concerning the use of and services to any specific property shall be communicated in writing. A decision to 1) convert a property from one use



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to another, 2) to decommission a property temporarily, or 3) remove a property from our portfolio as either Activated Respite, Protective Action, or Enhanced Shelter will be approved in writing such as an email by the Executive Director of HOST or their designees.

4. Staffing levels of primary and behavioral health staff and services are subject to review and change as needed, in consultation with CCH. Decisions to decrease staffing support will be made in coordination with decisions to decrease motel site operations. The City will provide CCH 30-day written notice for any changes.

III. Roles and Responsibilities for both parties

A. Contractor Roles:

1. Contractor will negotiate and execute master lease or license agreements for the use of hotel and/or motel facilities for Activated Respite Rooms and Protective Action Rooms for the duration of the federal emergency.
2. Contractor will provide staffing in accordance with this scope of work for Activated Respite Rooms and Protective Action Rooms for the duration of the federal emergency.
3. Contractor will partner with the City, EOC branches and other appropriate organizations such as the Metro Denver Homelessness Initiative to develop and implement protocols for referrals to Activated Respite Rooms and Protective Action Rooms.
4. Contractor will utilize the Homeless Management Information System (HMIS) for reporting on the use of Activated Respite Rooms and Protective Action Rooms in accordance with the requirements of this scope of work.
5. Contractor will provide HOST staff and EOC branches with accessibility information for hotel/motel facilities for individuals with a disabling condition, identifying facilities that meet current Americans with Disabilities Act (“ADA”) and City Building Code requirements.
6. Contractor will provide operating personnel for Protective Action Rooms or Activated Respite Rooms that the city holds the master lease or license agreement for facility use where approved by the Executive Director of HOST or designee. Contractor and City will document the specific personnel expectations for such rooms to be approved by the Executive Director of HOST or designee.
7. Contractor will work with City to host any city-designated sensitivity training on an annual basis.
8. Contractor will provide any online modular sensitivity training developed and provided by the City to all new direct-service staff within 15 days of hire date.
9. Contractor will assure direct-service staff complete training refresher on a biennial basis.
10. The City will provide signage that includes information about the City and County of Denver’s Anti-Discrimination Office.

B. City Roles:

1. HOST will coordinate between CCH and City’s Emergency Operation Center (“EOC”)
2. HOST will partner with CCH and other appropriate organizations and EOC



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branches to develop protocols for referrals to and discharge from Activated Respite Rooms and Protective Action Rooms.

3. City and other organizational partners will serve as dispatch between medical providers, existing shelters and referrals to Activated Respite Rooms and Protective Action Rooms.
4. City and other organizational partners will provide transportation between medical provider, existing shelter and Activated Respite Rooms and Protective Actions Rooms.
5. City and other organizational partners will provide meals to guests in Activated Respite Rooms and Protective Action Rooms.

IV. Process and Outcome Measures

- A. At the point of execution of this contract, City of Denver is providing coordinating staff support to help facilitate data tracking and reporting for this program, in partnership with the MDHI HMIS team. HOST Program Officer will communicate the need to shift or adjust this reporting process due to changes in available staff assistance from DHS shelter manager and/or HMIS team to provide data entry and tracking.
- B. While HOST is currently tracking the following data items, the contractor is responsible for daily communication with HOST to ensure complete, timely and accurate information
- C. Daily census reporting
 1. Total number of rooms available across all program locations
 - a. Number occupied by location
 - b. Number vacant & open for referral by location
 - c. Number of ADA accessible rooms (number occupied and number vacant)
- D. Daily Program intake data
 1. Provide and maintain a spreadsheet including client name, clarity ID (if available), if clarity ID absent, DOB and last 4 of SSN
- E. Daily Program Stay/Duration Information
 1. Provide and maintain a spreadsheet including client name, clarity ID (if available), if clarity ID absent, DOB and last 4 of SSN
- F. Tracking of Services Provided during length of stay:
 1. Contractor will keep records within their Electronic Health Records reporting system to track medical services, behavioral health services, and case management services related to this program. Contractor will provide reporting from their EHR to provide back-up documentation of eligible activities under this contract as required by HOST and/or FEMA.

V. Performance Management and Reporting

A. Performance Management

Monitoring will be performed by the program area and other designated City staff throughout the term of the agreement. Contractor may be reviewed for:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual



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goals. HOST will provide performance monitoring and reporting reviews. City 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 the HOST Financial Services Team. HOST will review the quality of the submitted invoice monthly.



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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
Daily Report	Report shall demonstrate achievement of Outcome measures in Section IV.	Daily – Due by 7:30am each day	CCH will share daily reports with HOST Data Analyst John Mendez at John.mendez@denvergov.org , alternately with Jennifer Biess at Jennifer.biess@denvergov.org if John is unavailable
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	HOST Program Officer Bernard Brady at Bernard.brady@denvergov.org



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VI. 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.
- B. Invoices shall be submitted to HOST at hostap@denvergov.org or by US Mail to:
Attn: Department of Housing Stability
Financial Services Team
201 W. Colfax Ave.
Denver CO 80202
- C. The budget is reflective of the length of contract initially negotiated between CCH and each hotel partner. CCH should include termination clauses in their license agreements or master leases with each motel operator or owner to support timelines that align with the FEMA guidelines.
- D. In the event that the COVID crisis necessitates a greater length of time contracting a motel, CCH will need to receive written approval from the Director of HOST in order to extend each facility contract term beyond this initial scope. HOST will then work to amend and update the budget accordingly to meet the expanded length of time.
- E. In the base contract, security and insurance were covered in Contingency; in this amendment budget, these items have been pulled out of Contingency and have their own lines in the budget.
- F. Negotiations between CCH and the owners and operators of the properties for use of these rooms stipulates that rooms are returned "in the same condition" they were received in. The City asks that CCH make every effort to document status/quality of each unit upon possession/prior to moving a guest in - in order to help document the starting condition.
- G. Due to the unique nature of the contracted services, repairs and replacement funds are designated to help cover the costs associated with returning the room in "the same condition" and any unforeseen expenses such as additional staffing costs. Examples of costs associated with returning the rooms might include, but are not limited to, repairs or replacement due to damages of carpet, drywall, furniture, plumbing, mini fridges, microwaves, lamps, televisions, telephones; furniture including desks, chairs, mattresses, box springs, bed frames; supplies and fixtures such as pillows, towels, sheets, blankets, washcloths, curtains, and blinds. Movement of funds between budget lines can be approved by the Executive Director of HOST or designee as long as the total budget amount is not impacted.



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H. Additionally, CCH will adhere to all Federal, State, and local regulations regarding appropriate costs, nonduplication of benefit, and reimbursement. In order to ensure adherence to applicable guidelines for reimbursement – CCH will adjust their invoicing against this contract to subtract any amounts otherwise billed to other sources and provide documentation of such.

Denver Department of Housing Stability	
Contractor Name: Colorado Coalition for the Homeless	
Project: COVID-19 Response - Activated Respite and Protective Action	
Contract Term: 03/01/2020 - 06/30/2021	
Budget Category	
Personnel - Original Titles	
Intake/Discharge Manager (1 FTE)	\$107,920.00
Shelter Support Supervisor (2 FTE)	\$99,840.00
Nurse Manager (2 FTE)	\$145,920.00
Program Director (Apx .25 FTE- multiple staff)	\$107,400.00
Referral Coordinator / Admin Support (2 FTE)	\$107,802.00
Logistics Support & Delivery Driver (1 FTE)	\$28,800.00
Logistics / Supply Management Coordinator (1 FTE)	\$63,920.00
Intake/Discharge Coordinator (6 FTE)	\$387,448.00
Shelter Support Staff (Apx 8 FTE)	\$920,230.00
Front Desk Clerk	\$49,766.00
Medical Assistant (Apx 4.8 FTE working a portion of their time)	\$479,208.00
Registered Nurse, (Apx 3.5 FTE working a portion of their time)	\$608,922.00
Behavioral Health Provider (PsyD/LCSW/LPC), (Apx 2.0 FTE working a portion of their time) - Showing 54% of actual salary due to future billing reconciliation	\$337,570.00
Psychiatry (Physician or Psych Nurse Practitioner), (Apx .25 FTE working a portion of their time - Showing 54% of actual salary due to future billing reconciliation	\$51,079.00
Primary Care Medical Provider (Physician/ Physician Assistant/ Nurse Practitioner), (Apx 1.5 FTE working a portion of their time) - Showing 54% of actual salary due to future billing reconciliation	\$546,470.00
Total Salary	\$3,993,997.00



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Fringe @ 28%	\$1,109,723.00
Personnel Total	\$5,103,719.00
Non-Personnel	
Western Motor Inn - Master Lease	\$2,028,500.00
La Quinta - Master Lease	\$2,723,749.00
Zuni Hotels - Master Lease	\$5,456,720.00
Comfort Inn - Master Lease	\$4,279,440.00
Total Security Expenses	\$913,468.00
Supplies (Cleaning supplies, disinfectant, toilet paper, soap, etc.)	\$285,000.00
Client Support Services (Clothing, toiletries, personal hygiene, medications)	\$205,002.00
Mileage Expense	\$9,830.00
Program Supplies and Expenses (Cell Phones)	\$6,240.00
Liability Insurance	\$180,300.00
Professional Fees (biohazard cleaning and decontamination, additional laundry and housekeeping)	\$3,375,000.00
Repairs and Replacement	\$341,250.00
Indirect Costs (16.8%)	\$809,378.00
Non-Personnel Total	\$20,613,877.00
Contingency (expenses for additional hotels, program duration, staffing, repairs, etc. by approval of HOST Executive Director or designee)	\$1,445,750.00
Total Project Cost	\$27,163,346.00

VII. Other

For the purposes of this contract, responsibility for data entry into HMIS currently sits with Metro Denver Homeless Initiative. Contractor will work with MDHI as needed to ensure HMIS is able to be updated with relevant information. Use of Homeless Management Information System (HMIS) and Reporting

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

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

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

Metro Denver Homeless Initiative (MDHI) is the implementing organization for the



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(HMIS). The HMIS software is called Clarity.

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

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

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

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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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 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.



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2.02 "Agreement" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.

2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:

1. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
2. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.
3. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

- a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
- b. The unauthorized person who used the PHI or to whom the disclosure was made;
- 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.



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- 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.



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- 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.



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- 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.



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- 4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.
- 4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

5. BREACH DISCOVERY AND NOTIFICATION.

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

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

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

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

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

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

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



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- b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
 - e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.
- 5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
- 5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.
- 5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon 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,



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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.



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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, and to the extent permitted by law, 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.