

**REVIVAL AND SECOND AMENDATORY AGREEMENT
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (“TANF”)**

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”), for and on behalf of the **DENVER DEPARTMENT OF HUMAN SERVICES**, (“County” or “DHS”) and **BAYAUD ENTERPRISES, INC.**, a nonprofit corporation, with an address of 333 West Bayaud Street, Denver, CO 80223, (the “Contractor”), individually a “Party” and collectively the “Parties.”

The City and Contractor entered into an Agreement dated June 19, 2017, and an Amendatory Agreement dated April 24, 2018, to provide TANF support services (the “Agreement”). The Agreement expired by its terms on June 30, 2018, 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 to extend the term and make certain other modifications to the Agreement as set forth below.

The Parties agree as follows:

1. Effective July 1, 2018, 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 July 1, 2018.

2. Section 3 of the Agreement, entitled “**TERM**,” is amended by deleting and replacing it with the following:

“**3. TERM:** The term of the Agreement is from June 1, 2017, to June 30, 2019 (the “Term”). 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.”

3. Section 4.d (1) of the Agreement, entitled “**COMPENSATION AND PAYMENT**,” is amended by deleted and replacing it with the following:

“(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed the amount of One Million Thirty Thousand Two Hundred Fifty-Eight Dollars and Zero Cents (\$1,030,258.00) (the “Maximum Contract Amount”). The City is not

obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in Exhibit A. Any services performed beyond those in Exhibit A are performed at Contractor's risk and without authorization under the Agreement.”

4. Section 23.w of the Agreement, entitled “**No Discrimination in Program Participation (Federal)**” is amended by deleting and replacing it with the following:

“w. **No Discrimination in Program Participation (Federal)**: The Contractor will comply with any and all applicable federal, state, and local laws that prohibit discrimination in programs and activities funded by this Agreement on the basis of race, color, national origin, sex, disability, and age including but not limited to Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 (ADA), Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the antidiscrimination provision of the Immigration Reform and Control Act of 1986 (IRCA), and the Equal Pay Act (EPA). Violations may be subject to any penalties set forth in said applicable laws and the Contractor agrees to indemnify and hold the City harmless from any and all claims, losses, or demands that arise under this paragraph. The Contractor acknowledges that Title VI prohibits national origin discrimination affecting persons with limited English proficiency (LEP). The Contractor hereby warrants and assures that LEP persons will have meaningful access to all services provided under this Agreement. To the extent the Contractor provides assistance to LEP individuals through the use of an oral or written translator or interpretation services, in compliance with this requirement, LEP persons shall not be required to pay for such assistance. Further, the Contractor acknowledges the City's Office of Human Rights and Community Partnerships, Office of Sign Language Services (OSLS) oversees access for deaf and hard of hearing people to City programs and services. The Contractor will comply with any and all requirements and procedures of the OSLS, as amended from time to time, concerning the provision of sign language interpreter services for all services provided by the Contractor under this Agreement. Further, Contractor acknowledges the public policy requirement of the U.S. Dept. of Health and Human Services that that no person otherwise eligible to participate

in programs and services supplied under this Agreement will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation. The Contractor must comply with this national policy requirement with respect to the performance of work and administration of funds provided under this Agreement and for all programs and services supported by HHS awards. 45 C.F.R. Part 75.300(c).”

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

6. 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.

End.

Signature pages and Exhibits follow this page.

Exhibit List

Exhibit A-2

Contract Control Number:

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:

By _____

By _____

By _____



Contract Control Number: SOCSV-201734845-02


Contractor Name: BAYAUD ENTERPRISES, INC.

By: 

Name: Lauren Patti
(please print)

Title: Director of Navigation Services
(please print)

ATTEST: [if required]

By: 

Name: Dawn E. Henninger
(please print)

Title: Exec. Director
(please print)



I. Purpose of Agreement

The purpose of the contract is to establish an agreement and Scope of Services between Denver Human Services (DHS) and Bayaud Enterprises, Inc., (Bayaud) to provide intensive case management support to assist TANF participants that may be harder to serve or harder to place in employment, such as those presenting with a disability, substance abuse, mental health, domestic violence, and/or other significant barriers.

II. Services

- A. Bayaud Enterprises, Inc. has a mission that emphasizes the importance of employment for all people, including the core population who the agency serves which are people with barriers to employment including disabilities. Bayaud staff will provide responsive services using several strengths-based techniques including Trauma Informed Care, Harm Reduction, and Motivational Interviewing to best meet the needs of each unique TANF family. To support and engage Denver eligible participants to develop strategies that address individual and family needs, DHS will work jointly with Bayaud to provide the following:
1. An eligibility screening assessment for the TANF population will direct referrals for participants with disabling condition(s) that pose a significant impact to his/her ability to identify and pursue an effective career pathway to Bayaud at 1325 S. Colorado Blvd., Suite B101 and/or 333 W Bayaud.
 2. Bayaud Navigators will be assigned as the case manager of record. As the case manager of record, Bayaud Navigators will provide ongoing case management supports including ongoing assessment, development of Individualized Plans (IP) with the participant and assist with engagement into workforce development activities that lead to alternative employment and self-sufficiency solutions.
 - a. The primary approach towards 'work readiness' will emphasize "screening-in" potential participants despite current health symptoms or behavioral health issues. This approach actively accommodates mental illness and other clinical issues as well as addictive disorders. Services will be delivered in a non-threatening manner and emphasize the potential and ability of each person's positive skills, qualities, and experiences.
 3. Assist TANF participants to redirect to employment and/or to secure alternate sources of long term income, such as; Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), based on

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eligibility screening results. The Contractor shall provide the following services based on Bayaud Individualized Health and Wellness assessment:

B. Benefits Navigator Services (SSI/SSDI)

The purpose of the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) Navigator services is to assist potential SSI/SSDI candidates to apply for and obtain SSI/SSDI as a source of long term income so children can be cared for in their own homes. Referred participants will be provided the following:

1. SSI/SSDI assessment and screening using SOAR (SSI/SSDI Outreach Access and Recovery) evidence-based model adapted for Bayaud TANF program to determine whether or not a TANF participant:
 - a. Is a likely candidate for SSI/SSDI approval – Contractor will assist candidates to apply for SSI/SSDI using SOAR best practices and may refer participant to ‘Structured Assessment’ to secure additional vocational limitations documentation.
 - b. Is an unlikely candidate for SSI/SSDI approval – Contractor will redirect TANF participants to employment activities including ‘Limited CBT’ options, DHS, or other contractors, as appropriate.
 - c. Needs more information to determine whether participant is a likely or unlikely candidate for SSI/SSDI approval – Contractor will gather additional necessary medical/mental health background information along with ‘Structured Assessment’ results for an individually determined amount of time. SSI/SSDI application likelihood is reassessed at least quarterly.

2. The Bayaud Navigator program will maintain responsibility for determination of appropriate SSI and SSDI application assistance services for TANF participants. Bayaud Navigators will assist Denver TANF participants with the SSI/SSDI application process, which may include referral to and follow-up with ‘Bayaud Bridge’ mental health, medical and/or other community-based professionals and community resources. Bayaud Navigator will maintain case management duties during the appeals process with collaboration with participant’s attorney for applications denied at the initial application stage.

Bayaud Bridge is a mental health service that provides weekly group mental health, addiction, and life skills classes along with annually limited 1:1 counseling sessions while alternative long-term counseling services are secured. Group classes are held at 1325 S. Colorado Blvd., Suite B101 and 333 W Bayaud. 1:1 sessions are held at 1325 S. Colorado Blvd., Suite B101 or offsite, as appropriate. All Bayaud

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TANF participants are eligible for Bayaud Bridge services when referred by their Bayaud Navigator.

3. Structured Assessment Placement (SAP) is intended for participants in need of documentation and assessment to determine if appropriate for SSI/SSDI and/or can be rehabilitated and redirected towards employment. Participants are notified of their choice to apply for SSI/SSDI on their own at any point during the process. All Denver TANF participants referred to the Bayaud SAP will be provided the following:
 - a. A group orientation for monthly cohorts of up to 10 participants and/or an individual intake.
 - b. Individual intakes include participation level evaluation given reported disability and restrictions, in order to determine appropriate SAP vocational evaluation plan.
 1. Participants will be enrolled for their daily work assessment site within Bayaud or with a partner community employer depending on individual needs.
 2. Limitations in work due to disability symptoms are the primary focus of a Social Security Disability application. A SAP assessment provides an opportunity to observe and document functional limitations for persons with disabilities by conducting experiential assessment(s).
 3. SAP experiences may be up to 90 days and reviewed for program continuation in 60 day increments thereafter
 - c. Participants who successfully complete SAP for SSI/SSDI services will obtain additional supportive documentation to support their SSI application or will be redirected to training/employment activities to re-enter employment.

III. Process and Outcome Measures

A. Process Measures:

1. Bayaud agrees to meet all state metrics as required for the Colorado Works/TANF program. Bayaud will be responsible for their proportionate share cases assigned to their organizations. Bayaud will be responsible for demonstrating their performance and compliance in the following areas:
 - a. Initial Engagement (80% of families are engaged in Individual Plans developed by the contractor and associated activities that support the assessment within 30 days of referral)
 - b. Hours of participation are entered timely and accurately into the Colorado Benefits Management System (CBMS) and cases included in Denver's share of Colorado's federal sample are given priority for

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review and revision, as per direction from the Colorado Department of Human Services (CDHS)

- c. Ongoing Engagement Rate (Work Participation) (40% of all-families are in a countable core and/or non-core work activity with verified hours of participation each month
2. Bayaud will report monthly or as requested by the Denver Welfare Reform Board on its progress in moving Denver TANF participants to SSI/SSDI. The report should be accompanied with a narrative that speaks to the progress made with meeting performance goals and strategies that identify specific measures that will be taken to assist in meeting the performance goal. Report shall include information on:
 - a. Number of Denver TANF participants enrolled in Bayaud Navigator
 1. Number of Denver TANF participants screened for SSI/SSDI acquisition
 2. Number of Denver TANF participants approved for SSI/SSDI on initial decision
 3. Number of Denver TANF participants denied SSI/SSDI and forwarded to disability lawyer for appeal
 4. Number of Denver TANF participants approved at the hearing level who were screened by Bayaud Navigator as “likely” or “likely at appeal”.
 5. Number of Denver TANF participants approved at the hearing level who did not receive a Bayaud Navigator screening but were referred to the contractor for case management.
 - b. Number of Denver TANF participants enrolled in Bayaud SAP
 1. Number of participants enrolled in SAP
 2. Number of participants actively pursuing part time or full-time employment
Number of participants who successfully gained employment

B. Outcome Measures:

1. Bayaud staff will enroll and support 395 TANF participants into SSI/SSDI or Structured Assessment Placements (SAP) based on assessment/screening criteria that will be determined by Bayaud and Denver DHS for the program year beginning July 1, 2018 and ending June 30, 2019. Enrollments will include carryover from 2017-2018 contract year.
2. Of the 395 TANF participants, 100 will be individuals who have 48 plus months of receipt of Basic Cash Assistance which will include carryover from 2017-2018 contract year.
3. Bayaud will provide SSI/SSDI application and appeal services and supports to TANF participants who present with significant barriers to employment and are likely to succeed in acquiring such benefits

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4. 100% of participants screened as likely candidates for SSI/SSDI will receive complete application assistance. 45% of SSI/SSDI applications will be approved on initial decision.
5. 100% of denials will be forwarded to a disability lawyer for appeal when appropriate. 25% of SSI/SSDI applications will be approved at the appeals level.
6. 50% of participants in SAP will participate up to their allowable participation hours. Allowable hours will be defined by a medical or mental health professional, criminal or child welfare system(s), or other agency as identified by DHS.
7. Bayaud will provide SAP to TANF participants that need employment supports or other continued vocational assessments to determine level of employability
8. All enrollments will be captured in the Colorado Benefits Management System as the primary enrollment and tracking system
9. Bayaud case manager caseloads will not exceed 50 active participants at any given time per Benefits Navigator, 75 participants per Appeals Navigator, and 40 participants per job developer
 - a. Appeal outcomes will also be tracked for the following cohort: TANF participants who have an active SSI/SSDI appeal but did not receive a screening decision from Bayaud Navigator.
10. Bayaud will enroll up to 60 TANF participants for a maximum of 4 sessions annually for individual adult therapy in Bayaud Bridge. Concurrent resource navigation for long term mental health services will be provided. Enrollment into Bayaud Bridge will be tracked to determine if the need and availability in this area is sufficient.
11. Bayaud will provide regular group mental health, substance misuse, and life skills classes with capacity for 10 participants per class. Bayaud Bridge group classes can accommodate up to 250 TANF participants in Program Year 2019. Enrollment in the group classes will be tracked to determine if the need and availability in this area is sufficient.
 - a. Entered Employment (10% of all cases are engaged in some type of employment activity with corresponding data entry in CBMS and documentation in the case file)

Maximum Bayaud TANF program capacity: 395

IV. Performance Management and Reporting

A. Performance Management

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

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

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

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

Report Name	Description	Frequency	Reports to be sent to:
1. Monthly Reports	Total number of clients served and activity report that details the activity and monthly hours spent in each activity. CBMS data entered and reporting on monthly services goals.	Due Monthly	FAAD Division Director DHS Contracting Services Documents@Denvergov.org AND TANF Program Administrator
2. Quarterly Report	Report shall demonstrate cumulative data for the Program Year and achievement of the Process and Outcome Measures of the SOW	Due Quarterly	FAAD Division Director DHS Contracting Services Documents@Denvergov.org AND TANF Program Administrator
3. 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.	Contract End, within 45 days after Term End.	FAAD Division Director DHS Contracting Services Documents@Denvergov.org AND TANF Program Administrator



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V. 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 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

Contractor Name: Bayaud Enterprises, Inc.		
Contract Term: July 1, 2018 – June 30, 2019		
Program: COLORADO WORKS – Temporary Assistance to Needy Families		
Contract Number: 2017-34845-02		
Item	Budget	Budget Narrative Justification
DIRECT COSTS		
<i>Staffing</i>		
5 FTE Benefit Navigators	\$217,018	5 FTEs To be reimbursed at cost. Not to exceed \$217,018 for the term of the contract.
2 FTE Employment Specialists	\$82,000	2 FTEs To be reimbursed at cost. Not to exceed \$82,000 for the term of the contract.
Vocational Evaluator	\$15,315	Will work a portion of their time to oversee vocational assessment and training services. To be reimbursed at cost. Not to exceed \$15,315 for the term of the contract.

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Administrative Assistant	\$34,100	1 FTE. Not to exceed \$34,100 for the term of the contract.
Mental Health Professional	\$28,000	Will work a portion of their time to implement Bayaud Bridge mental health services. Not to exceed \$28,000 for the term of the contract.
Program Manager	\$55,000	1 FTE to oversee daily operations of program. Not to exceed \$55,000 for term of the contract.
Navigation Director	\$33,600	Will work a portion of time on program to oversee entire program and ensure Bayaud is in full compliance. To be reimbursed at cost. Not to exceed \$33,600 for the term of the contract.
Fringe Benefits	\$74,405	Based on 16% of \$465,033 total salaries.
<i>Staffing</i>	\$539,438	
<i>Other Direct Costs</i>		
Staff Transportation	\$605	Options may include but are not limited to: mileage (not to exceed the rate approved by the IRS at the time the expense is incurred), parking, or rideshares. Not to exceed \$605 for term of contract.
Client Support Costs	\$18,000	Items given to Denver TANF program clients which may include, but not limited to, training expenses, tools, work-related items, and subsidized wages up to 15 hours @ minimum wage per individual. Not to exceed \$18,000 for term of contract.

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Records Request Fees	\$800	General administration costs including but not limited to medical, education, psychiatric, and other records request fees. Not to exceed \$800 for term of contract.
Direct Facilities	\$88,650	Exclusive, direct interaction with clients of the Denver TANF program will be provided in following areas: case management offices, computer lab, classroom, participant conference room, and the client navigation area. Areas of direct client interaction encompass a total of 4,342 square feet located at 1325 S. Colorado Blvd., Ste B101. Line item may include but not limited to: rent, ongoing maintenance, utilities, repairs etc. for direct client interaction at location. Excluding capital construction. Not to exceed \$88,650 for the term of this contract.
Staff Training and Development	\$1002	Denver TANF program-related training materials and fees. Not to exceed \$1002 for the term of this contract.

Program Supplies	\$8,000	Denver TANF program-related office startup costs and equipment including, but not limited to: computers, software, business cards, office supplies, IT/phone system install, and file storage. Excluding move-in expenses and office furniture. DHS will only pay the annual depreciated value of capital expenditures. Capital expenditures must not equal or exceed \$5,000 for the term of this contract. All capital expenditures must be tagged and designated for Denver TANF use only for term of contract. Total Program Supplies line not to exceed \$8,000 for the term of this contract.
<i>Other Direct Cost Sub-total</i>	<i>\$117,057</i>	

TOTAL DIRECT COSTS	\$656,495	
Indirect Costs	\$65,649	10% indirect cost rate
TOTAL INDIRECT COSTS	\$65,649	
TOTAL BUDGET	\$722,144	

VI. 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.

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- 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.

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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.
- 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.

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- 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.

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- 5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DHS 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;
 - 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.

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- 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)

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