

### THIRD AMENDATORY AGREEMENT

**THIS THIRD AMENDATORY AGREEMENT** is made and entered between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **BAYAUD ENTERPRISES, INC.**, a not-for-profit corporation whose address is 333 West Bayaud Ave., Denver, CO 80223 ("Contractor") (collectively “the Parties”).

The Parties entered into an Agreement dated September 28, 2016, an Amendatory Agreement dated December 19, 2016, and a Second Amendatory Agreement dated March 6, 2017, for the Contractor to work with the Denver Department of Human Services to further the Denver Day Works pilot project (the “Agreement”). The Parties now wish to amend the Agreement to extend the term, add funds, and revise the scope of work.

In consideration of the mutual covenants and obligations, the Parties agree as follows:

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

**3. TERM:** The term of this Agreement shall commence on **October 15, 2016, and expire, unless sooner terminated, on June 30, 2018.** Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.

2. Section 4d of the Agreement, entitled “**COMPENSATION AND PAYMENT.... d. Maximum Contract Amount**”, is amended by deleting and replacing it with the following:

#### **4. COMPENSATION AND PAYMENT....**

##### **d. Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **Eight Hundred Fifteen Thousand, Sixty-Three Dollars and Zero Cents (\$815,063.00)** (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.

3. All references in the Agreement to Exhibit A, A-1, and A-2 are amended to read as “Exhibits A, A-1, A-2, and A-3”, respectively.
4. Except as here amended, this Agreement is revived, affirmed and ratified.

**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-201630537-03

**Contractor Name:** Bayaud Enterprises, Inc.

By: SK

Name: Scott Kerr  
(please print)

Title: Director Employment and Opportunity Center  
(please print)

**ATTEST: [if required]**

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

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

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





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**I. Purpose of Agreement**

The purpose of the contract is to establish scope of services and other terms between Denver Human Services (DHS) and Bayaud Enterprises for the Denver Day Works program ("DDW"). Under this agreement, Bayaud Enterprises will perform outreach, recruitment, transport, support, and other job readiness services detailed below that may lead to employment for homeless individuals that are not currently engaged in other community programs.

**II. Services Provided by Bayaud Enterprises**

**A. Volunteer Activities**

- Provide outreach and recruitment to homeless individuals to participate in the program daily.
- Coordinate volunteer slots at approved private, City, or other public sites for participants who are not job ready.
- Ensure participants sign the approved Release and Waiver of Liability for Volunteers form. Signed waivers should be kept on file at Bayaud Enterprises and be available for DHS inspection.
- Provide assistance to volunteer participants. Assistance is defined in the budget narrative, line item #11. Distribution and documentation process is noted in paragraph IID.
- Volunteer activities will occur up to (3) days per week at designated private, City or other public sites beginning 10/15/2016 to 12/31/2017.
- Volunteer activities will occur up to (5) days per week at designated private, City or other public sites beginning 1/1/2018 to 6/30/2018.

**B. Subsidized Employment**

- Provide a wage subsidy to participants through Bayaud Enterprises payroll to continue in the program after volunteering as deemed appropriate through individual participant assessment.
- Participants may start the program in subsidized employment. The determination will be made by Bayaud Enterprises based on the initial participant needs assessment. Participants will be paid at the prevailing wage rate of \$12.59 per hour plus fringes while working at any City facilities.



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- Subsidized employment activities will occur up to (3) days per week at designated private, City or other public sites beginning 10/15/2016 to 12/31/2017.
- Subsidized employment activities will occur up to (5) days per week at designated private, City or other public sites beginning 1/1/2018 to 6/30/2018.

**C. Employment**

- Assist participants with the application process at City, private, and other public sites to secure permanent employment.
- Provide on-going follow-up and support to employers and participants once participants are placed in competitive employment.

**D. Other Activities**

- Hire staff to coach participants at volunteer sites and subsidized employment sites.
- Provide meals to participants during volunteer and subsidized employment activities.
- Provide a job readiness and needs assessment to program participants.
- Develop a plan for each participant that outlines needs, goals and responsibilities.
- Provide transportation to DDW participants, including by donated bus, or by bus pass, bus tickets, etc. to volunteer sites and subsidized employment, as well as to appointments for employment, job readiness training, and benefits/public assistance.
- Provide t-shirts (both long and short sleeve) in various sizes that include the name of the program, the City logo and Bayaud logo. Design must comply with the City and County of Denver Logo Guidelines and the final design approved by DHS.
- Provide additional support services such as, housing assistance, clothing, and other benefits for program participants as identified in the needs assessment.
- Input and maintain participant progress notes, assessments, service activities and related outcomes into the Bayaud data collection system, eLogic Model Manager (ELMO). This information shall be provided to the DHS upon request.



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- Collect and maintain documentation of volunteer assistance (i.e. a receipt signed and dated by the participant and the staff person who administered the assistance). Receipts must also be signed by the Program Manager. Reimbursement from DHS for volunteer assistance in Budget line item #11, will only occur when documentation of the distribution of volunteer assistance is submitted.
- Staff attendance and participation at public events such as expos, conferences, etc. that promote services for the homeless or other events at DHS discretion.

**E. Miscellaneous**

- The donated vehicle (“bus”) shall be used for the City-funded, City-contracted DDW program as its first and primary purpose. This will consist of, but not be limited to, transporting clients, staff, equipment, supplies, and food on days on which program participants are engaged in day work. As a secondary priority, the bus can be used in support of outreach, recruitment, or publicity for the DDW program. As a third priority, for non-DDW needs related to DDW program participants or other DDW program operations. Finally, as a last priority and alternate purpose, the bus can be used in support of other Bayaud purposes, so long as it does not interrupt, hinder, or interfere with full functionality for the DDW program.

If, due to changed circumstances, it is impracticable to carry out the above primary purpose, including the severing of this contract or its natural ending without an analogous replacement, the contractor will submit a written notice to the City within 15 calendar days. This notice will include: a description of the nature and detail of the changed circumstances; an updated description of the vehicle’s condition; and proposed alternative uses. The City may then either approve a proposed alternative use for the vehicle or apply to the Denver District Court for reversion of ownership to the City and County of Denver (for the Department of Human Services) due to failure to comply with the intended purpose of the donation. The City will have 30 days to respond to Bayaud’s written notice.

**III. Process and Outcome Measures**



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**Process Measures**

1. Implement a volunteer and subsidized employment service model at designated private, City or other public sites that may lead to competitive employment for program participants.
2. Contractor will serve up to 300 participants, using the models referenced in paragraph IIA-C (Services Provided by Bayaud Enterprises) throughout the term of the contract.
3. Invoices shall be completed monthly and submitted on or before the 15<sup>th</sup> day following the month in which services were rendered 100% of the time. Contractor shall use DHS' preferred invoice template, or otherwise meets DHS invoicing supporting documentation requirements.

**Outcome Measures**

1. Engage up to 300 participants in the program, using the models referenced in paragraph II A & B (*Services Provided by Bayaud Enterprises*). Measurement will be daily attendance, volunteer waivers and timesheets entered into the ELMO data system.
2. Retain up to 131 participants in the program for up to 5,139 program hours in subsidized employment, as referenced in paragraph II B (*Services Provided by Bayaud Enterprises*). Subsidized employment will be documented through Bayaud Enterprises payroll records.
3. Retain up to 24 participants in the program for up to 508 program hours in volunteer activities, as referenced in paragraph IIA (*Services Provided by Bayaud Enterprises*). Measurement will be daily attendance and distribution of assistance based on the hours of volunteering completed and documented.
4. Up to 106 participants, as referenced in paragraph II D (*Services Provided by Bayaud Enterprises*), will receive additional support service assistance such as Emergency Housing, Medicaid, SNAP, Old Age Pension, Aid to Needy Disabled and Veterans Assistance through on-site enrollment. This will be documented in a needs assessment and case files entered into the ELMO data system.
5. Up to 66 participants will obtain permanent job placement, as referenced in paragraph II C (*Services Provided by Bayaud Enterprises*). Measurement will be individual progress notes,

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service activities and related outcomes entered into the ELMO data system.

6. Up to 21 participants placed in a permanent job will retain employment for 90 days as referenced in paragraph II C (*Services Provided by Bayaud Enterprises*). Measurement will be individual progress notes, service activities and related outcomes entered into the ELMO data system.

#### **IV. Performance Management and Reporting**

##### **A. Performance Management**

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

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract & Financial Monitoring:** Review and analysis of (a) current program information to determine the extent to which contractors are achieving established contractual goals; (b) financial systems & billings to ensure that contract funds are allocated & expended in accordance with the terms of the agreement. Contracting Services will provide regular 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 that will resolve concerns.
3. **Compliance Monitoring:** Monitoring to ensure that the requirements of the contract meet, Federal, State and local regulations and ordinances, and DHS policies are being met.

##### **B. Reporting**

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





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Report Name	Description	Frequency	Reports to be sent to:
1. Quarterly report	Report shall track the following: <ul style="list-style-type: none"> <li>• Number of individuals that were recruited for the program</li> <li>• Number of individuals that participated in volunteer activities</li> <li>• Number of documented volunteer hours</li> <li>• Number of individuals that participated in supported employment</li> <li>• Number of documented wage subsidy hours</li> <li>• Number of individuals that were placed in permanent employment</li> <li>• Number of individuals that succeeded the job retention benchmark.</li> <li>• Number of individuals that received additional</li> </ul>	Quarterly	Executive Director of Assistance Administration  <a href="mailto:dhs_contracting_services_documents@denvergov.org">dhs_contracting_services_documents@denvergov.org</a>



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	<p>support services through a needs assessment</p> <ul style="list-style-type: none"> <li>• Number of gift cards distributed</li> <li>• Number of bus passes distributed</li> <li>• Number of employers that were recruited to participate in the program</li> <li>• Number of employers who hired program participants</li> <li>• Identify best practices and associated barriers to meeting outcomes</li> <li>• Monetary donations and title of organization that provided funds to Bayaud Enterprises in support of the DDW program.</li> </ul>		
<p>3. Contract Summary Report</p>	<p>Report shall demonstrate all functions performed, and how services provided met the overall goals of this</p>	<p>Contract End, within 45 days after Term End.</p>	<p>Executive Director of Assistance Administration  <a href="mailto:dhs_contracting_services_documents@denvergov.org">dhs_contracting_services_documents@denvergov.org</a></p>



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	agreement, best practices and issues. Other data will include a total of all quarterly benchmarks noted in #1 and total budget per line item, amount spent, and an explanation as to unspent funds, etc.		
4. Other reports as reasonably requested by the City.	To be determined (TBD)	TBD	TBD

**V. Budget**

- A. Contractor shall provide the identified services for the City under the support of the Denver Department of Human Services using best practices and other methods for fostering a sense of collaboration and communication.
- B. If applicable, Denver Human Services will reimburse up to 11 holidays within a 12-month period for full-time DDW staff. The salary line items include holiday, vacation and sick leave.
- C. If applicable, FMLA for full-time DDW staff may be reimbursed up to 12 weeks per year.
- D. 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 Department of Human Services  
 1200 Federal Boulevard  
 Denver, Colorado 80204



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- E. Contractor will submit separate invoices relative to the Scopes of Work in contract amendments SOCSV2016-30537-02 and SOCSV2016-30537-03.
- F. Budget

<b>Contractor Name: Bayaud Enterprises</b>		
<b>Contract Term: 11/1/2017-6/30/2018</b>		
<b>Program Name: Denver Day Works (DDW) Program</b>		
<b>Contract Number: SOCSV-201630537-03</b>		
	<b>Total Budget</b>	<b>Budget Narrative Justification</b>
<b>DIRECT COSTS</b>		
<b>Staffing</b>		
1. Program Manager	\$33,699	Program Manager will work full time on this program. Duties will include facilitating continual communication with City of Denver personnel on the work sites, managing all Bayaud staff involved in day-to-day program operations, coordinating the on-site supervision of all participants, coordinating job retention activities, and managing a caseload of participants as an Employment Specialist (see ES duties next section). Time to reimbursed at cost and documented in a timesheet.
2. Employment Specialists	\$60,986	The Employment Specialists (ES) will be assisting participants to acquire necessary documentation for hiring, assisting in benefits needs assessments, participating in outreach activities and tracking participant activities. The ES will manage a caseload of participants facilitating the process of working toward securing more stable, long-term employment including job-readiness preparation and job retention services. The ES's will report directly to the Program Manager. Time to reimbursed at cost and documented in a timesheet.
3. Benefits Navigator	\$25,279	Benefits Navigator (BN) will work full-time on this program. The BN will conduct all participant intakes to program, conduct needs assessments, and facilitate the process with participants to access community resources such as food support,



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		Medicaid, SSI or SSDI benefits, etc. Time to reimbursed at cost and documented in a timesheet.
4. Assistant Field Supervisors	\$37,968	The Assistant Field Supervisor (AFS) will be responsible to supervise all program participants that are engaged in the day labor component of the program at the various job sites. The AFS will also support transportation of participants by driving the program bus as needed. Time to reimbursed at cost and documented in a timesheet.
5. Assistance Distribution Manager	\$7,700	Assistance Distribution Manager (ADM) will work a portion of their time on this program and as documented in a timesheet. The ADM duties will be primarily focused on coordinating all documentation necessary and to create a monthly program invoice and manage all follow up working closely with City of Denver personnel. Time to reimbursed at cost and documented in a timesheet.
6. Supervisor	\$24,054	Supervisor will work a portion of their time on this program as documented in a timesheet. The Supervisor will oversee the entire program and ensure that Bayaud is in full compliance with program contract. The Supervisor will coordinate all data collection, coordinate all outreach efforts, coordinate benefits assessment and navigation and project reporting protocols, attend all meetings with City of Denver personnel, and create all necessary reports as dictated by program contract.
7. Payroll Processor	\$4,532	Each participant of the program that receives a wage subsidy is brought onto the Bayaud Enterprises payroll. Payroll Processor to process participant payroll. This includes E-verify process, I-9 compliance, payroll processing, cash management to accommodate daily cash payouts to participants, removing all participants eventually from payroll system, etc. Time to reimbursed at cost and documented in a timesheet.
<b>Sub-Total Staff Wages</b>	<b>\$194,218</b>	



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8. Fringe	\$29,133	Fringe benefits and payroll taxes for staff includes; FICA, Health Insurance, Workers Compensation, Unemployment and 403B Retirement Plan benefits. Calculated at approximately 15% of total wages.
<b>Total Wages and Fringe</b>	<b>\$223,351</b>	
<b>Training &amp; Supplies</b>		
9. Participant Wage Subsidy	\$90,006	Wages paid by Bayaud to participants in the form of cash compensation. The rate paid at City sites is \$12.59 per hour based on prevailing wage.
10. Participant Wage Subsidy Fringe	\$9,901	Fringe benefits and payroll taxes for Participant Wage Subsidy includes; FICA, Workers Compensation, Unemployment and other associated costs. Calculated at approximately 11% of total participant wages.
11. Volunteer Assistance	\$5,616	Volunteer assistance and client needs in the form of gift cards to King Soopers, Safeway, Walmart, Target, or Kmart, *See documentation requirements below.
12. Transportation	\$11,355	Provide RTD transportation assistance to participants to volunteer sites and work sites including appointments on non-working days for employment opportunities, job readiness training and benefits/public assistance. This includes, and is limited to bus passes and bus tickets. These services shall be documented by receipts including pass serial number and client signature with date dispersed
13. Clothing	\$2,069	This includes, but not limited to work related clothing for participants of the DDW program such as t-shirts, coats, hats, gloves, shoes.
14. Mileage	\$1,800	This line includes mileage reimbursement to staff. Not to exceed the rate approved by the IRS at the time the expense is incurred. This also may include transportation support to and from the work sites by staff with services such as <i>Uber</i> and <i>Lyft</i> . Also includes parking expenses for staff working in the field.



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15. Consumables/Meal Supplies	\$6,919	Consumables consist of providing meals/snacks, and non-alcoholic beverages. Meal supplies are non-consumable items associated with providing meals for all participants each work day. Including, but not limited to items such as paper towels, plates, hand sanitizer, plastic ware etc.
16. Housing Asst.	\$2,305	Support staff in efforts to assist program participants with housing needs. This may be emergency rental assistance, emergency funds for hotel/motel payments and housing application fees, and background checks fees.
17. Equipment/Program Materials	\$1,390	Includes tablets or laptops that Bayaud staff may utilize in the field to track program activities. May include wireless equipment to facilitate access to internet in the field. May also include materials such as, but not limited to paper, pens, notebooks and binders for program participants.
18. Cell Phones	\$2,900	Cell phone expenses which may include, but not limited to, phones, cell phone plan, cell phone accessories for program staff.
19. Vehicle Maintenance	\$19,934	Expenses incurred in the maintenance of a handicap-accessible transportation vehicle used for program purposes. This includes, but is not limited to: fuel, fluids, preventative maintenance, repairs, and auxiliary or support equipment, materials, and tools.
<b>Sub-Total Training &amp; Supplies</b>	<b>\$154,195</b>	
<b>TOTAL DIRECT COSTS</b>	<b>\$377,546</b>	
<b>Indirect Costs</b>	<b>\$37,754</b>	Not to exceed 10% of direct costs
<b>TOTAL BUDGET</b>	<b>\$415,300</b>	

\* Contractor shall provide the required documentation for the reimbursement of gift cards to include:

- Proof of purchase, payment and issuance
- Client Signature (showing receipt of gift card)



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- Copy of the gift card front and back
- Detailed description of what provider intends to purchase with gift card. (DHS will not reimburse for taxes)
- Proof of payment and invoice for every gift card given out (attach a copy and proof of bulk purchase).
- Gift Card log attached for each card given out. Gift Cards to be shown in sequential order
- Program Manager Signature

**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.

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 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.





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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 this these terms additional 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:

- a. 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.
- b. 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



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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.

- c. 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.



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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



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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 with 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



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45 CFR §164.410.

3.06 CONTRACTOR agrees to ensure that any subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply to CONTRACTOR with respect to such information.

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, or an Individual as directed by CITY, and in a timely and manner to be determined by CITY, that information collected in accordance with the Agreement, 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



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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, 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 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



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diligence would have known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

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



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investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

- e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

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

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

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

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

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

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





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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



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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.



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

**VII. 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.