

**THIRD AMENDATORY AGREEMENT
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (“TANF”)**

THIS THIRD 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, an Amendatory Agreement dated April 24, 2018, and a Second Amendatory Agreement dated July 24, 2018 to provide TANF support services (the “Agreement”). The Parties now wish to amend the Agreement a third time 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, 2019, all references to Exhibits “A, A-1, A-2” in the existing Agreement shall be amended to read Exhibits “A, A-1, A-2, and A-3” as applicable. Exhibit A-3 is attached and will control from and after July 1, 2019.

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, 2020 (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 Seven Hundred and Twenty-Two Thousand Four Hundred Two Dollars and Zero Cents (\$1,722,402)** (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. Except as amended here, the Agreement is affirmed and ratified in each and every particular.

5. This Third 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-3

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-201734845-03

Contractor Name: BAYAUD ENTERPRISES, INC.

By: 

Name: Janet K Rose
(please print)

Title: Director of Navigation Services
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(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 hurdles.

Further, Bayaud Enterprises, Inc. is identified as a subrecipient for the purposes of this agreement and is therefore subject to all terms, conditions and regulatory requirement required of federal funding subrecipients per 2 CFR Part 200, as well as specific rules and regulations for Colorado Works/Temporary Assistance to Needy Families (TANF) program.

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 services which are people with hurdles 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 provide the following:

- 1.** An eligibility screening assessment for the TANF populations will direct referrals for participants with disabling conditions 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 Ave.
- 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.
 - b.** Assist TANF participants to redirect to employment and/or to secure alternative sources of long-term income, such as: Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), based on 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 candidate to apply for an obtain SSI/SSDI as a source for long term income so children are 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 – Contractor will redirect participants to employment activities including “Structured Assessment” 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.
 - d. Participants with an existing SSI/SSDI application or appeal upon referral to Bayaud will be provided with support and intervention in accordance with SOAR best practices through the current level of application/appeal. In the event of a denial, continued appeals support, including referral to and coordination with appeals attorney, will be provided to participants screened as likely or referred to “Structured Assessment”. Participants screened as “unlikely” will be redirected to employment activities including “Structured Assessment” options, DHS or other contractors, as appropriate.
2. The Bayaud Navigator program will maintain responsibility for determination of appropriate SSI and SSDI application assistance service 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 Bridge is a mental health service that provide life skills classes along with annually limited 1:1 counseling sessions while alternative long-term counseling services are secured. 1:1 counseling sessions are held at 1325 S.

Colorado Blvd., Suite B101 and 333 W. Bayaud Ave. 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 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 or an individual intake.
 - b. Individual intakes include a health and wellness evaluation, 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 function limitations for persons with disabilities.
 3. SAP work 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 the application/appeal or will be redirected to appropriate DHS contractor for additional training/employment activities and support with a goal of re-entering employment.

III. Process and Outcome Measures

A. Process Measures

1. Bayaud agrees to meet all state metrics required for the Colorado Works/TANF program. Bayaud will be responsible for their proportionate share of cases assigned to their organization.
 - a. Quality Accuracy Rate – Five percent (5%) state sample: Bayaud will maintain an average monthly quality score of ninety percent (90%) or above on the randomized five percent (5%) case review sample as determined by CDHS.
 - i. This metric will be verified by the Quality report available in WMS on a monthly basis.
 - b. Case data entry: All cases assigned to Bayaud as the case manager of record will have corresponding data entry on all cases in all activities by the 5th of each month. Should the 5th of the month fall on a weekend, the

due date will roll forward to the next business day but not to exceed close of business on the 8th of the month.

1. AS: Assessment
 2. CM: Case Management
 3. CN: Conciliation
 4. CU: Cure
 5. SA: Sanction Requested
 6. SS: Serving Sanction
 - ii. The metric will be verified by the Case Activities report or the All Families case report provided by CDHS monthly.
 2. Reporting metrics
 - a. Bayaud agrees to track and report out monthly on:
 - i. # of TANF participants screened for SSI/SSDI application or appeal assistance
 1. Number of Denver TANF participants receiving SSI/SSDI application or appeal assistance
 2. Number of approvals at each level of application:
 - a. Initial application
 - b. Reconsideration
 - c. Appeal
 - ii. Number of Denver TANF participants who have successfully completed SAP services
 - iii. Number of Denver TANF participants enrolled in Bayaud Bridge services
3. Outcome Measure:
 - a. Bayaud staff will enroll three hundred and eighty (380) 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, 2019 and ending June 30, 2020. Enrollments will include carryover from 2018-19 contract year.
 - b. Bayaud will provide application and appeal services and supports to TANF participants who present with significant hurdles to employment and are likely to succeed in acquiring such benefits.
 - c. One-hundred percent (100%) of participants screened as likely candidates for SSI/SSDI will receive complete application assistance, including coordinated support through reconsideration and appeal if needed.
 - d. The total Bayaud caseload will not exceed two-hundred and twenty-five (225) total at any given time during the contract year.

- e. Forty-five percent (45%) of SSI/SSDI applications will be approved at any level of application or appeal within the contract year.
- f. Bayaud will enroll up to sixty (60) TANF participants for four to six (4-6) sessions annually for individual adult therapy in Bayaud Bridge. Concurrent resource navigation for long term mental health services will be provided.
- g. Sixty percent (60%) of Bayaud participants referred for Structured Assessments will complete the recommended services.

IV. Performance Management and Reporting

A. Performance Management

Monitoring will be performed as necessary by the program area and other designated DHS staff throughout the term of the agreement. As a subrecipient, monitoring is required per 2 CFR Part 200 Subpart D 200.331 and DHS policy 1809-506. Subrecipient monitoring includes but is not limited to the following:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the programs daily operations.
2. **Contract Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual goals. Financial Services, in conjunction with the DHS program area and other designated DHS staff, will provide performance monitoring and reporting reviews. DHS staff will manage any performance issues and will develop interventions to resolve concerns.
3. **Compliance Monitoring:** Will ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards and policies to include sub recipient requirements.
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	Due	

	that details the activity and monthly hours spent in each activity. CBMS data entered and reporting on monthly services goals.	Monthly, on or before the 15 th of each month	TANF Program Administrator
2. 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 forty-five (45) days after Term End.	FAAD Division Director AND TANF Program Administrator

V. DHS Funding Information:

Per Uniform Guidance CFR 200.331 we are clearly identifying to the subrecipient the following information:

- A. Program Name: Colorado Works/Temporary Assistance to Needy Families (TANF)
- B. Subrecipient DUNS#: 08-635-0394
- C. Name of Federal Awarding Agency: United States Department of Health and Human Services, Administration for Children and Families
- D. Period of Performance: July 1, 2019 to June 30, 2020
- E. Additional sub awards by subrecipients: Yes NO
- F. Names of subcontractors or sub awardees: N/A

VI. 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** or by US Mail to:

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

Budget

Contractor Name:	Bayaud Enterprises, Inc.	
Contract Term:	July 1, 2019 – June 30, 2020	
Contract Number:	SOCSV-201734845-03	
Budget Categories	Budgeted Amount	Narrative
Salaries		
Benefit Navigators	\$296,225	Salaries and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
Vocational Evaluator	\$31,600	Salaries and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. Will work a portion of their time to provide vocational evaluations to TANF participants.
CBT Specialist	\$7,536	Salaries and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. Will work a portion of their time to place and follow up with TANF participants enrolled in CBTs.
Administrative Assistant	\$30,056	Salaries and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. Will work a portion of their time on TANF administrative tasks.

Mental Health Professional	\$32,448	Salaries and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. Will work a portion of their time to provide Bayaud Bridge mental health services.
Program Supervisor	\$49,000	Salaries and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. 1 FTE to oversee daily operations of program.
Employment Director	\$7,964	Salaries and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. Will work a portion of their time to directly supervise CBT Specialist and Vocational Evaluator.
Navigation Director	\$18,600	Salaries and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. Will work a portion of time on program to oversee entire program and ensure Bayaud is in full compliance.
Total Salaries	\$473,429	
Fringe Benefits	\$71,014	Fringe benefits and payroll taxes (Fringe) will be reimbursed at cost

		or at the Federally Approved Fringe Rate. Fringe includes employer portion of the following items: payroll taxes (Social Security, Medicare, Federal unemployment, and state unemployment), cost of leave (PTO, vacation, sick, holidays), insurance (medical, dental, vision, disability, and workers comp) and pension or retirement plans. This list is not all inclusive and any Fringe not included on this list would require written preapproval from the Program Manager and Financial Services Division (FSD).
Staff Transportation	\$800	Reimbursement for Staff Transportation (not to exceed the standard IRS rate at the time of travel), public transportation and ride share services. This includes parking and toll costs associated with program-related travel. Tips are capped at 20% and expenses should follow IRS guidelines regarding travel.
Client Support Cost	\$500	Items provided to support the engagement of Denver TANF program clients which may include, but not limited to, training expenses, tools, work-related items, and adaptive/accessibility equipment needed for participation.
Record Request Fees	\$600	General administration costs including but not limited to medical, education, psychiatric, and other records request fees.

Direct Facilities	\$79,179	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. Total of 4,342 square feet located at 1325 S. Colorado Blvd., Ste B101 with 88.1% of space dedicated to TANF interaction and service. Line item may include but not limited to: rent, ongoing maintenance, utilities, repairs etc. for direct client interaction at location. Excluding capital construction.
Staff Training & Development	\$700	Denver TANF program-related training materials and registration fees.
Program Supplies	\$3,000	Program supplies related directly to Denver TANF clients served for this program and include items such as: paper, use of printer/scanner, pens, binder clips, files, highlighters, toner, outreach material. At the end of the contract unused supplies inventory will be given to DHS. DHS or the funding agency may request the return of items on this list. Business cards will be reimbursed for staff that spend 100% on the program. Actual costs must be documented.
Total Direct Costs	\$629,222	
Indirect Costs	\$62,922	To be calculated at 10% of Total Direct Costs
Totals		\$ 692,144

Contract Summary of Amounts:

Contract Version	Term	Previous Amount	Additional Amount	New Contract Total
Base	6/1/2017 to 6/30/2018	N/A	N/A	\$250,000
1st Amendment	6/1/2017 to 6/30/2018	\$250,000	\$58,114	\$308,114
2nd Amendment	7/1/2018 to 6/30/2019	\$308,114	\$722,144	\$1,030,258
3rd Amendment	7/1/2019 to 6/30/2020	\$1,030,258	\$692,144	\$1,722,402

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 the CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.
- 1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information ("PHI") as defined below, to be used or disclosed in the course of providing services and activities.
- 1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.

- 1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.
- 1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

2. DEFINITIONS.

- 2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.
- 2.02 "Agreement" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.
- 2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
- 2.03.1 Breach excludes:
1. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
 2. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.
 3. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

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

- 3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.
- 3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.

- 3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.
- 3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.
- 3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.
- 3.06 CONTRACTOR agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other arrangement.
- 3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.
- 3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.
- 3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.
- 3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

- 3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).
- 3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

4. SECURITY RULE.

- 4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, §164.314 and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.
- 4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.
- 4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

5. BREACH DISCOVERY AND NOTIFICATION.

- 5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.
- 5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.
- 5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have been known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.
- 5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY 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.

- 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.