

THIRD AMENDATORY AGREEMENT

THIS THIRD AMENDATORY AGREEMENT is by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (hereinafter, the "**City**"), and **BAYAUD ENTERPRISES, INC.**, a Colorado nonprofit corporation with a principal place of business address of 333 Bayaud Ave, Denver, CO 80233 (hereinafter, the "**Contractor**"). The City and Contractor are collectively referred to henceforth as the "Parties."

WITNESSETH:

WHEREAS, the Parties entered into that certain Agreement dated **July 1, 2020**, and Amendatory Agreement dated **December 18, 2020**, and another Amendatory Agreement dated **July 27, 2021** regarding, among others, the provision of intensive case management services to assist participants in the Colorado Works/Temporary Assistance For Needy Families program ("Agreement");

WHEREAS, rather than enter into a new contract, the Parties desire to revise and amend the term of the Agreement, as well as add and/or revise certain other provisions in the Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

1. Article 3 of the Agreement entitled "**TERM**" is hereby amended in its entirety by deleting it and replacing it with the following:

"**3. TERM:** The Term of this Agreement ("Term") shall commence on **July 1, 2020**, and expire, unless sooner terminated, on **June 30, 2023**. Subject to the Director's prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the Director."

2. Article 4.5.1 of the Agreement under the heading titled "**Maximum Contract Amount**" is hereby amended by deleting it and replacing it with the following:

"4.5. Maximum Contract Amount

4.5.1 Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **ONE MILLION ONE FIFTY-FOUR THOUSAND, NINE HUNDRED FIFTY-FIVE DOLLARS AND ZERO CENTS (\$1,154,955.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in **Exhibit A-3**. Any services performed beyond those in **Exhibit A-3** or performed outside the Term are performed at the Contractor's risk and without authorization under the Agreement."

3. Article 23 of the Agreement entitled "**NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT**" is hereby amended in its entirety by deleting and replacing it with the following:

"23. NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT

1. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").
2. The Contractor certifies that:
 - (A) At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this

Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

- (B) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- (C) It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.
- (D) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (E) If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.
- (F) It will comply with a reasonable request made in the

course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

3. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.”

4. Article 26 of the Agreement entitled “**NO DISCRIMINATION IN EMPLOYMENT**” is hereby amended in its entirety by deleting it and replacing it with the following:

“**26. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.”

5. Effective upon execution, all references to Exhibit A-2 in the Agreement shall be amended henceforth to read as **Exhibit A-3** as applicable.

6. **Exhibit A-3** is attached and incorporated herein by reference.

7. Effective upon execution, all references to the Amendatory Agreement dated **July 27, 2021** shall be amended henceforth to read and be proclaimed as the "**Second Amendatory Agreement.**"

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

9. 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 City Council.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: SOCSV-202262903-03 / SOCSV-202054939-03
Contractor Name: BAYAUD ENTERPRISES, INC.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

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BAYAUD ENTERPRISES, INC.

By:  _____
0D2911986EF34C0...

Name: TAMMY BELLOFATTO
(please print)

Title: Executive Director, Executive Director
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Bayaud Enterprises, Inc.
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I. Purpose of Agreement

The purpose of the contract is to establish an agreement and Scope of Services between Denver Department of Human Services (DHS) and Bayaud Enterprises, Inc. (Contractor) to provide intensive case management services to assist Colorado Works (CW)/Temporary Assistance to Needy Families (TANF) participants that need ongoing support to gain employment, educational opportunities or connection to services for long term barriers.

Further, Contractor is identified as a subrecipient for the purposes of this agreement and is therefore subject to all terms, conditions and regulatory requirements of federal funding subrecipients per 2 CFR Part 200, as well as specific rules and regulations for the Colorado Works Temporary Assistance for Needy Families program.

II. Background

In 1996, Congress explicitly envisioned the Temporary Assistance for Needy Families (TANF) program as a critical support for families to gain the needed skills and knowledge to care for children in their own home and to promote job preparation and access to work. TANF is also often the only source of financial support for families and can be a portal to other critical safety net programs, including Supplemental Security Income (SSI), the Supplemental Nutrition Assistance Program (SNAP)/food stamps, child care assistance (CCAP), and Medicaid. States can use TANF creatively and provide supports and services directly responsive to the needs of needy families.

The goal of the CW/TANF Program in Denver County is to promote the long-term economic well-being of our community, through preparation for and attachment to employment for those who are able to work. DHS' CW program is designed to engage individual participants with the services, opportunities, resources and tools needed to successfully move toward stability and self-sufficiency. Denver's Department of Human Services (DHS) facilitates robust community gains by partnering with local businesses, educational institutions, and other service providers in the area, and advocating for participants as a vital part of the DHS support network. For those who are not readily able to work, Denver's CW program offers supports and services intended to increase employability and promote family safety and stability.

Science tells us that it is never too late to help adults build up their core capabilities, and that we can have a life-long impact if adults support the development of these skills in childhood. When adults have opportunities to build the core skills that are needed to be productive participants in the workforce and to provide stable, responsive environments for the children in their care, our economy will be stronger, and the next generation of citizens, workers, and parents will thrive. We also know that programs that provide support and "bridging" by crossing barriers of race, gender and class and "bonding" by tying participants and staff into a supportive community has positive long-term impact. DHS realize the importance of these services and supports and is seeking them for those most in

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need in our community, including the link to social capital and its effectiveness in supporting low-income persons through the transition to employment.

DHS' Family and Adult Assistance Division (FAAD) is responsible to administer eligibility for Colorado Works pursuant to Colorado Revised Statutes (CRS) at section 24-4-103 (11) CRS, and Colorado Code of Regulations (CCR), 9-CCR-2503-6. DHS and contracted vendors may share responsibility for workforce case management, depending on participant job readiness, which includes workforce data entry into the Colorado Benefits Management System (CBMS).

In response to this need and the flexibility afforded under the legislation, DHS is seeking to improve adult and child outcomes for the most vulnerable families entrusted in our care. With that vision in mind, connection to these services and supports is done by conducting a thorough assessment of the family's needs and especially those needs that are directly connected to the adults in the household related to their employability.

TANF participants will require in-depth and ongoing assessment of barriers and job readiness levels. From the assessments, Individualized Plans will be developed with the participant that offer intensive supports and services that shall lead to improved economic well-being.

Households are determined at application to be either eligible or ineligible for TANF assistance. Adults who are considered work-eligible are provided with individualized services and supports to promote their family's economic well-being. All TANF eligibility for applicants is determined by DHS. DHS assesses initial work-eligibility to determine which work activities, services and supports available in the program are the best fit for the participant, as well as what agency/contractor might serve the participant best based on their scope of services.

Adult members of the assistance unit are limited to 60 months of TANF assistance during their lifetime. Services provided will need to be achievable within this 60-month limit with the understanding that many TANF participants have already used a portion of their lifetime limit.

III. Services

A. Bayaud Benefits Navigation Services

To support and engage eligible participants to develop strategies that address individual and family needs, DHS will work jointly with Contractor to provide the following:

1. In depth assessment, family counseling, and work support programs associated with the implementation and operation of the TANF Program for households classified as

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- needing Tier III services. These households may have limited marketable vocation skills, commitment and/or work experience.
2. Tier III services include but are not limited to: addressing long term disabilities including physical limitations and mental health.
 - a. It is anticipated that long term family income may be through another source such as Supplemental Security Income (SSI)/ Social Security Disability Insurance (SSDI).
 3. Tier III services provided by Contractor include but are not limited to: navigation services, support applying for SSI/SSDI, and appealing decisions from Social Security Administration (SSA).

The DHS tier system will be used as guidelines to help determine the most appropriate initial placement with an agency/contractor that can best meet the participant's needs. DHS' goal is to establish a continuum of services and understands a participant's circumstances will evolve over time. This may result in a participant changing tier levels based on milestones achieved.

- B.** Contractor may provide services virtually or in person.
 1. The content of the virtual programming can be cross-walked to the in-person services with minimal disruptions and the targeted outcomes may still be achieved.
- C.** In person services may be provided at the following locations:
 1. At 333 W. Bayaud Ave, Denver CO 80223.
- D.** Accept referrals for Tier III participants who report moderate to severe disabilities, mental health concerns, and/or co-occurring substance use that could impact their long-term stability.
- E.** Contractor will make appropriate determination for SSI/SSDI candidacy for both adults and children associated with the DHS Colorado Works/TANF program. There are three stages of the process in which Contractor may provide services:
 1. Stage One: Screening of applicants to determine if a participant is a likely or unlikely candidate.
 2. Stage Two: Submission of an application to SSA/Office of Hearings Operations (OHO). The application process may include referral to and follow up with mental health, medical, and/or other community-based professionals and community resources in support of developing a completed application for formal submission.
 - a. Contractor may maintain services during the reconsideration and appeals process in collaboration with participant attorneys (if applicable) for applications denied at the initial application stage.
 3. Stage Three: Official decision from SSA/OHO. Contractor will support participants through an official decision on their disability claim. This decision may come from an initial application, filed reconsideration, or filed appeal.
- F.** Contractor may refer individuals to the Structured Assessment Placement (SAP) service within the Bayaud milieu. Evaluation of vocational abilities and training needs, functional capacity, and job accommodation/ modification needs are identified within the service area.

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1. Contractor may offer 3-day vocational evaluations to participants that may present with disabilities that may not clearly indicate SSI/SSDI eligibility through medical records alone.
 - a. The determination to complete a Structured Assessment will be based off of a recommendation from Contractor and the information gathered during the screening process. It is understood that not all participants will undergo the Structured Assessment process.
 - b. Structured Assessments are conducted in-person by Contractor staff.
2. This service is being provided as an in-kind addition to the contract.
- G.** Contractor will offer up to 6 individual sessions per TANF participant for mental health treatment through Bayaud Bridge.
 1. Warm handoffs for long term mental health counseling services will be provided.
 2. Should Bayaud Bridge offer an additional group classes, TANF participants may be referred for services and participation.
- H.** Contractor will not be assigned as the case manager of record. DHS or other contracted partners will maintain the TANF program requirements and associated data entry for cases assigned to Contractor. Contractor will complete the individual monthly summary sheet on each individual/household they are providing support to. Contractor will utilize the designated data systems, including but not limited to, the Colorado Benefits Management System (CBMS) for TANF participants. CBMS must be used in accordance with the DHS and Colorado Department of Human Services (CDHS) written policies, procedures and trainings. Each staff person will be given the minimum access required to perform their specific role under the Contract. Contractor agrees to abide by and require all staff users to abide by the City and County of Denver data confidentiality and security agreements.
 1. DHS and the State will coordinate CBMS security access setup and controls. All requests should be routed through the DHS CBMS Help Desk to ensure that State and internal processes are followed.
- I. Contractor Responsibilities**
 1. Hire and manage qualified and trained staff to provide quality services to populations that present with barriers and other needs that are typically beyond the scope of staff at DHS.
 2. Work closely with DHS on collaboration efforts related to TANF goals, outcomes, policies, and procedures.
 - a. Provide regular reporting (financial, and programmatic or outcome based).
 - b. Participate in training and policy development activities.
 3. Upon the completion of services, Contractor will report out the length of time to a decision by their agency, Disability Determination Services (DDS) or SSA as outlined in Section IV.B Reporting.
 4. Contractor agrees to ensure all electronic communication referencing TANF participants will follow all privacy requirements, including, but not limited to, encrypting emails to recipients outside of the City network.

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J. Audits

Contractor and DHS will work collaboratively to collect and retain all Colorado Works/TANF program information necessary to ensure compliance with the requirements of any applicable State or Federal law and program regulations. This includes all case management records (paper and automated), which includes, but is not limited to, all assessments, Individual Plans (IPs), workforce development activities, participation tracking sheets, contracted services, and workforce counseling administered by Contractor. Contractor and DHS will cooperate with each other in responding to inquiries that either agency may receive from State or Federal authorities regarding any programs that Contractor is responsible for administering pursuant to this agreement. DHS will notify Contractor in advance of every TANF related audit and Contractor will have a representative present at such audit as applicable. Contractor will participate in all audit coordination as appropriate, including meeting all DHS timeline requirements.

K. Management Site Visits and other Audits

Denver County and/or the State of Colorado may conduct regular on-site reviews of Colorado Works contracts and related services. These on-site reviews are meant to provide service providers with direct feedback on the implementation of their program and include a summary of the findings from the ongoing case file reviews. Denver County and/or State staff will analyze and review Contractor's policies, plans, procedures, contracts/sub-contracts, and other relevant documents and administrative data that describe and inform program implementation, strengths and opportunities for improvement. The focus of the site visit is primarily one of information sharing, technical assistance, and training with county and/or State staff representing various areas of program operations (finance, budget, policy, program, training and technical assistance).

For other formal Federal, State, and County audits, Contractor will provide accurate and complete case files within the DHS timeline requirements. Contractor will be responsible for repayment to DHS of any disallowed costs resulting from a final audit action imposed by CDHS or other regulatory authority pertinent to the work at Bayaud Enterprises, Inc. Contractor will be responsible for following up on auditor findings, providing for refunds and implementing approved final corrective action plans, if any. DHS will monitor Contractor response to audit related matters to ensure ongoing compliance. DHS and Contractor will work with State and Federal auditors as requested. Contractor will provide a designee as a point of contact for monthly quality meetings and for audits.

L. Records

Contractor will comply with written State and City/DHS policies and processes provided to Contractor by DHS related to case file maintenance, case retention and storage. No client case information will be maintained outside of the client's automated case files established by DHS. Contractor will not maintain a separate case file that contains TANF

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documentation that should be housed with DHS. Documentation obtained to support the SSI/SSDI application or appeal process shall be retained by Contractor as this information does not pertain to the Colorado Works/TANF Workforce program. At a minimum, Contractor will maintain all client documentation in client case files according to stated case order policy provided by DHS. Contractor agrees to work with DHS to provide information from these files should a documented request, audit or need arise for the information. Contractor and DHS agree to work together on these requests and staff on an individual basis. Client documentation will be sent to the scanning department for electronic filing no more than five (5) days after the document was created. Contractor will provide a copy of their current record retention and destruction policy as required by House Bill 18-1128 within 30 days after the execution of this contract. Upon termination of this contract, all relevant case files will be provided to DHS in a DHS approved format.

III. Process and Outcome Measures

A. Process Measures

1. Contractor may continuously serve and support 250 participants each month. This caseload shall be made up of existing TANF referrals as well as new TANF referrals for services sent over monthly for applicants without a pending initial application.

B. Outcome Measure

1. At least 45% of SSI/SSDI applications will be approved on initial decision.
2. At least 25% of SSI/SSDI applications will be approved at the Reconsideration or Appeals level if denied at the initial application stage with a Contractor assisted application.

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 program's 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.

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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 DHS as stated in this section.

Report # and Name	Description	Frequency	Reports to be sent to:
1. Monthly Reports	Monthly individual participant summary for TANF eligibility and compliance	Due Monthly, no later than the 5 th of each month	DHS TANF Contractors Inbox
2. Monthly Report	Monthly outcome tracking report to include the number of TANF participants engaging in services, the stage in the process, and outcomes of filings	Due Monthly	Colorado Works/TANF Program Administrator
3. Annual TANF Client Services Reports	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement. Other data will include total budget spent, and an explanation as to unspent funds, etc.	To be submitted with the final contract invoice	DHS Contractor Invoices@denvergov.org and Colorado Works/TANF Program Administrator

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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 for Needy Families
- B. Subrecipient Unique Entity Identifier number (formerly DUNS #): 010633766
- C. Name of Federal Awarding Agency: Colorado Department of Human Services
- D. Federal Award Date: TBD
- E. Federal Funding Amount: TBD
- F. Period of Performance: 7/1/2022 – 6/30/2023
- G. Assistance Listing# (a.k.a. CFDA#): 93.558
- H. Federal Award Identification Number (FAIN): TBD
- I. Additional sub awards by subrecipient: Yes No
- J. Names of subcontractors or sub awardees:

VI. Budget

- A. Invoices and reports shall be completed and submitted on or before the 15th of each month following the month services were rendered 100% of the time. Contractor shall use DHS' preferred invoice template, if requested. Invoicing supporting documents must meet DHS requirements.
- B. The funds allocated under this Agreement are from the federal TANF block grant and shall be used solely for TANF purposes and eligible participants. These funds shall not be used to supplant existing funding for a non-TANF program.
- C. 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: Bayaud Enterprises, Inc.		
Fiscal Term: 7/1/2022 - 6/30/2023		
Contract Number: SOCSV-202054939-03 & SOCSV-202262903-03		
Fee for Service	Fee	Narrative
Client Services	Stage 1: \$300 per client Stage 2: \$725 per Client	Stage 1: Application/Appeal Development, to be reimbursed at \$300 per client. Stage 2: Claim Development, to be reimbursed at \$725 per client.

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	Stage 3: \$125 per client	Stage 3: Tracking Claim Decision/Milestone at \$125 per client, billable upon decision receipt.
Annual TANF client services report	\$286	Payable upon submission of report as outlined in section IV.B.3 of the Scope of Work. One-time annual fee
Total Costs for Fee for Services 7/1/2022 - 6/30/2023: Not to Exceed	\$92,609	
Direct Reimbursable Costs	Budget	Narrative
Navigation Services Salaries	\$229,200	Multiple case managers (includes supervisors all providing case management and mental health services) Working up to a portion of their time, 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. Includes cost of leave (PTO, vacation, sick holidays).
Navigation Services Fringe	\$63,176	Fringe benefits and payroll taxes at cost. This includes employer portion of payroll taxes (Social Security, Medicare, Federal and State unemployment), insurance (medical and health savings account, dental, long-term disability and life, and workers comp), and 401(k) (retirement plan).
Subtotal Direct Reimbursable Costs	\$292,376	
Contract Total Amount	\$384,985	

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Contract Summary of Amounts:

Contract Version	Term	Previous Amount	Additional Amount	New Contract Total
Base	7/1/2020 – 6/30/2021	\$0	\$384,985	\$384,985
1st Amendment	7/1/2020 – 6/30/2021	\$384,985	\$0	\$384,985
2nd Amendment	7/1/2021 – 6/30/2022	\$384,985	\$384,985	\$769,970
3rd Amendment	7/1/2022 – 6/30/2023	\$769,970	\$384,985	\$1,154,955

VII. HIPAA/HITECH (Business Associate Terms)

1. GENERAL PROVISIONS AND RECITALS

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

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- 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.

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- 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.

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- 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.

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- 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.

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- 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.

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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.

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- 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.

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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

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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.