

## THIRD AMENDATORY AGREEMENT

**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.**, with an address of 333 West Bayaud Ave., Denver, CO 80223 (the “Contractor”), who may collectively be called the “Parties” and individually a “Party.”

The City and Contractor entered into an Agreement dated June 25, 2018, an Amendatory Agreement dated November 9, 2018, and a Second Amendatory Agreement dated January 8, 2019, to perform outreach, recruitment, transport, support, and other job readiness services that may lead to employment for homeless individuals that are not currently engaged in other community programs (the “Agreement”). The Parties now wish to amend the Agreement to increase the contract maximum by Two Hundred Eighty-Six Thousand and Two Dollars (\$286,002.00), and make certain other changes, as set forth below.

The Parties agree as follows:

1. All references to Exhibit A, A-01, and A-02 in the existing Agreement shall be amended to read Exhibits A, A-01, A-02, and A-03, as applicable.

2. Paragraph 4.D. (1) of the Agreement, entitled “**Maximum Contract Amount**,” is amended by deleting and replacing it with the following:

“(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed One Million Four Hundred Thirteen Thousand Seven Hundred Thirty-One Dollars and Zero Cents (\$1,413,731.00) (the “Maximum Contract Amount.”) The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at the Contractor’s risk and without authorization under the Agreement.”

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

4. 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.

BAYAUD ENTERPRISES, INC  
Jaggaer No. SOCSV-201950423  
City Alfresco No. SOCSV-201842632-03

**End.**

**Signature pages and Exhibits follow this page.**

**Exhibit List**  
**Exhibit A-03**

**Contract Control Number:** SOCSV-201950423-00  
**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:**

SOCSV-201950423-00  
BAYAUD ENTERPRISES INC

DocuSigned by:  
By: Scott Kerr  
AC976B695F7B4FA...

Name: Scott Kerr  
(please print)

Title: Director Business Development  
(please print)

ATTEST: [if required]

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

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

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



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SCOPE OF WORK  
SOCSV-2018-42632-03

## **I. Purpose of Agreement**

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

## **II. Services**

### **A. Outreach and Recruitment**

- Provide outreach and recruitment to homeless individuals to participate in the program.

### **B. Work Experience Coordination (“Level 1”)**

- Coordinate and supervise work experiences at approved private, city, or other public sites for participants.
- Participants operating as the contractor’s employees and performing work activities on city or federal land, facilities, or projects, must be paid at the prevailing wage rate pertaining to the nature of the work being performed, pursuant to Denver Revised Municipal Code (DRMC) Section 20-76.
- Provide transportation to DDW participants, including by donated bus, or by bus pass, bus tickets, etc. to work experience sites.
- Provide meals and non-alcoholic beverages to participants during work experience activities.
- Maintain records related to work attendance and performance to support reporting requirements.
- Ensure participants classified as volunteers sign the approved Release and Waiver of Liability for Volunteers form. Signed waivers should be kept on file at Bayaud Enterprises and be available for DHS inspection.

### **C. Supported Employment Work Experience Coordination (“Level 2”)**

- Coordinate work experiences at approved private, city, or other public sites for participants.
- Participants operating as the contractor’s employees and performing work activities on city or federal land, facilities, or projects, must be paid at the prevailing wage rate pertaining to the nature of the work being performed, pursuant to Denver Revised Municipal Code (DRMC) Section 20-76.
- Maintain records related to work attendance and performance to support reporting requirements.



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
**SOCSV-2018-42632-03**

- Ensure participants classified as volunteers sign the approved Release and Waiver of Liability for Volunteers form. Signed waivers are kept on file at Bayaud Enterprises and are available for DHS inspection.

**D. Employment Support**

- Conduct job readiness assessments with program participants.
- Maintain records related to assessments, services provided, and related outcomes to support reporting requirements.
- Develop an employment plan for each participant that outlines needs, goals, and responsibilities.
- Assist participants with the application process at city, private, and other public sites to secure permanent employment outside all levels of the program.
- Provide on-going follow-up and support to employers and participants once participants are placed in competitive employment.

**E. Assistance Navigation Support**

- Conduct needs assessments with program participants
- Maintain records related to assessments, services provided, and related outcomes to support reporting requirements.
- Develop a resource assistance plan for each participant that outlines needs, goals, and responsibilities.
- Provide additional support services such as housing assistance, clothing, and other benefits for program participants as appropriate, as identified in the needs assessment.

**F. Other Activities**

- Conduct mental health group therapy sessions on a regular basis.
- Solicit program participant feedback regarding program operations and design on a regular basis.
- Actively engage with potential non-funded worksites as a means to expand program capacity.
- Staff attendance and participation at public events such as expos, conferences, etc. that promote services for the homeless or other events at DHS discretion.
- Accommodate reasonable, non-disruptive requests from city staff to directly observe program operations and to directly interact with program participants.
- Use city-defined program branding as appropriate. Designs must comply with the City and County of Denver Logo Guidelines and the final design must be approved by DHS Communications.

**III. Process and Outcome Measures**



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
SOCSV-2018-42632-03

**A. Process Measures**

1. Contractor will engage with at least 197 potential participants, using the model referenced in paragraph IIA (Services Provided by Bayaud Enterprises) throughout the term of the contract. Measurement will be based on orientation and event attendance records.
2. Contractor will coordinate work experiences totaling at least 21160 hours, using the model referenced in paragraphs IIB and IIC (Services Provided by Bayaud Enterprises) throughout the term of the contract. Measurement will be based on daily timesheets and/or payroll records.

**B. Outcome Measures**

1. At least 70 (duplicatable) program participants will receive assistance to establish, re-establish, modify, or manage at least 252 supportive services, public or otherwise, including but not limited to Emergency Housing, Medicaid, SNAP, Old Age Pension, Aid to Needy Disabled, and Veterans Assistance facilitated by DDW program staff, as referenced in paragraph IIE (*Services Provided by Bayaud Enterprises*).
2. At least 35 unduplicated program participants will enter a dedicated supported employment work experience, as referenced in paragraph IIC (*Services Provided by Bayaud Enterprises*).
3. At least 23 unduplicated program participants placed in a dedicated supported employment work experience will successfully achieve their stated objectives as documented, as referenced in paragraph IID (*Services Provided by Bayaud Enterprises*).
4. At least 131 unduplicated program participants will obtain permanent job placement outside all levels of the DDW program, as referenced in paragraph IID (*Services Provided by Bayaud Enterprises*). Employment verification shall be made through client and or employer reporting and logged by DDW staff.
5. At least 66 unduplicated program participants placed in a permanent job outside all levels of the DDW program will retain employment for 90 days, as referenced in paragraph IID (*Services Provided by Bayaud Enterprises*). Employment verification shall be made through client and or employer reporting and logged by DDW staff.

**IV. Performance Management and Reporting**

**A. Performance Management**

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



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
SOCSV-2018-42632-03

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual 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.
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 report	Report shall include the following from contract term start date: <ul style="list-style-type: none"> <li>• Number of persons recruited for program participation and having attended a formal program orientation or outreach event</li> <li>• Number of supportive assistance services established, re-established, or modified</li> <li>• Cumulative total housing placements for DDW participants since program inception</li> <li>• Number and place(s) of supported employment assignments made for program participants</li> </ul>	Monthly, due on the 15 <sup>th</sup> of the month following the month's end	Each of the following: <ul style="list-style-type: none"> <li>• City-side DDW Program Manager</li> </ul>





Bayaud Enterprises, Inc.  
**SCOPE OF WORK**  
**SOCSV-2018-42632-03**

	<ul style="list-style-type: none"> <li>• Number of program participants assigned to supported employment having achieved their full stated objectives</li> <li>• Number and place(s) of employment of program participants placed in permanent employment (total)</li> <li>• Number, names, and place of employment of placed program participants that met the 90-day job retention milestone</li> <li>• Number and list of newly recruited partners, including hiring employers, work experience sites, and supportive service providers, etc.</li> <li>• Actionable participant feedback collected in the prior month</li> </ul>		
<p>2. Quarterly report – In addition to the Monthly Report defined above</p>	<p>Report shall include the following from contract term start date:</p> <ul style="list-style-type: none"> <li>• Summarized data from initial needs assessments conducted within the quarter</li> <li>• Identify best practices and associated barriers to meeting outcomes</li> <li>• Frequency, attendance, and assessed effectiveness of any new program elements, to include mental health therapy sessions and transitional supported employment</li> <li>• Log of leveraged funds and in-kind contributions provided to Bayaud Enterprises in support of the DDW program, including title of organization(s).</li> </ul>	<p>Quarterly, due on the 15<sup>th</sup> of the month following the quarter’s end</p>	<p>Each of the following:</p> <ul style="list-style-type: none"> <li>• City-side DDW Program Manager</li> <li>• dhs_contracting_services_documents@denvergov.org</li> </ul>
<p>3. Contract Summary Report</p>	<p>Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement, best practices, and issues. Other data will include a total of all measures from #1 and #2 and total budget per line item, amount spent, and an explanation as to unspent funds, etc.</p>	<p>Contract End, within 45 days after Term End</p>	<p>Each of the following:</p> <ul style="list-style-type: none"> <li>• City-side DDW Program Manager</li> <li>• dhs_contracting_services_documents@denvergov.org</li> </ul>



Bayaud Enterprises, Inc.  
 SCOPE OF WORK  
 SOCSV-2018-42632-03

4. Other reports as reasonably requested by the City.	To be determined (TBD)	TBD	TBD
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**V. DHS funding information:**

- A. **Program Name: Denver Day Works**
- B. **Funding Source: Fund 13008, cost center 5511010**

**VI. Budget**

Invoices and reports shall be completed and submitted on or before the 15<sup>th</sup> 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

<b>Contract Number: SOCSV-2018-42632-03</b>		
<b>Program Name: Denver Day Works (DDW) Program</b>		
<b>Contract Term: 1/1/2019 to 12/31/2019</b>		
<b>Budget Categories</b>	<b>Budget Amount</b>	<b>Narrative</b>
<b><u>DIRECT COSTS</u></b>		
<b><u>Direct Services</u></b>		
<b><u>Supported Work Experiences</u></b>		A unit rate shall be paid per documented calendar day of work experience provided to a client. Services outlined in Paragraphs IIB and IIC form the basis for a workday. Rates by worksite type (defined by Program Manager):



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
SOCSV-2018-42632-03

A1. "Hosted" City Agency worksites	\$169,238	\$130 per day workday <ul style="list-style-type: none"> <li>○ Denver Parks</li> <li>○ Public Works Wastewater HQ</li> <li>○ Denver Public Library (all branches)</li> <li>○ Denver Human Services facilities</li> <li>○ Others must be explicitly defined</li> </ul>
A2. Ballpark District "Hosted" City Agency worksite	\$33,000	\$130 per workday <ul style="list-style-type: none"> <li>○ Ballpark District</li> </ul> <p>Fund capacity in this budget line item shall not be transferred to any other line</p>
A3. Fleet Maintenance "Autonomous" City Agency worksite	\$100,500	\$130 per workday <ul style="list-style-type: none"> <li>○ Denver Public Works Fleet Maintenance</li> </ul> <p>Fund capacity in this budget line item shall not be transferred to any other line</p>
<b>TOTAL SUPPORTED WORK EXPERIENCES</b>	<b>\$302,738</b>	
<u>Employment Services and Supportive Service Navigation</u>		A unit rate shall be paid per documented calendar day of work experience provided to a client. Services outlined in Paragraphs II D-F may also be conducted during a work experience calendar day.



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
SOCSV-2018-42632-03

B1. "Level 1" navigation services	\$252,136	\$159 per workday ○ Once weekly on-site navigation services always paired work experience
B2. "Level 2" navigation services	\$186,481	\$99 per workday ○ Once weekly navigation services paired with daily or near-daily work experiences planned for a limited calendar engagement duration
B3. "Level 3" navigation services	\$12,577	\$87 per workday ○ Once weekly navigation services paired with daily or near-daily work experiences planned for an unlimited calendar engagement duration
SNAP 3 <sup>rd</sup> Party Partnership		A unit rate shall be paid per documented calendar day of work experience provided to a client.
C1. SNAP E&T services	\$88,992	\$151 per workday ○ Once weekly navigation services paired with daily or near-daily work experiences planned for an unlimited calendar engagement duration Fund capacity in this budget line item shall not be transferred to any other line
<b>TOTAL EMPLOYMENT SERVICES AND SUPPORTIVE SERVICE NAVIGATION</b>	<b>\$540,186</b>	
<b>TOTAL DIRECT COSTS</b>	<b>\$842,924</b>	
Indirect Costs	\$128,378	To be calculated at 15.23% of direct costs being reimbursed
<b>TOTAL Costs</b>	<b>\$971,302</b>	

**Contract Summary of Amounts:**

CONTRACT VERSION	TERM	AMOUNT
Base	7/1/2018-12/31/2018	\$394,426
1 <sup>st</sup> Amendment	7/1/2018-12/31/2018	\$48,003



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
**SOCSV-2018-42632-03**

2 <sup>nd</sup> Amendment	1/1/2019-12/31/2019	\$685,300
3 <sup>rd</sup> Amendment	1/1/2019-12/31/2019	\$286,002
	Total	\$1,413,731

**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 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



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
SOCSV-2018-42632-03

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 terms additional are incorporated by reference.

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

2.03.1 Breach excludes:

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

2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
SOCSV-2018-42632-03

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



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
SOCSV-2018-42632-03

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 with a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.

2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

### **3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.**

3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to





Bayaud Enterprises, Inc.  
SCOPE OF WORK  
SOCSV-2018-42632-03

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

3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.

3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.

3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
**SOCSV-2018-42632-03**

Secretary determining CITY'S compliance with the HIPAA Privacy Rule.

3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.11 CONTRACTOR agrees to provide CITY, or an Individual as directed by CITY, and in a timely and manner to be determined by CITY, that information collected in accordance with the Agreement, in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).

3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

**4. SECURITY RULE.**

4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.

4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as below and as required by 45 CFR §164.410.



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
SOCSV-2018-42632-03

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

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

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

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

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

5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:

- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
- b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
SOCSV-2018-42632-03

- 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



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
SOCSV-2018-42632-03

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



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
**SOCSV-2018-42632-03**

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,



Bayaud Enterprises, Inc.  
SCOPE OF WORK  
**SOCSV-2018-42632-03**

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.

**VII. SUBSTANCE ABUSE (42 C.F.R., Part 2)**

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