

## REVIVAL AND AMENDATORY AGREEMENT

**THIS REVIVAL AND AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **BAYAUD ENTERPRISES, INC.**, a Colorado nonprofit, whose address is 333 W Bayaud Ave., Denver, CO 80223 (the “Contractor”), individually a “Party” and collectively the “Parties.”

**WHEREAS**, the City and the Contractor entered into an Agreement dated September 16, 2020, to provide necessary services and supports related to emergency shelter operations in response to the COVID-19 public health crisis (the “Agreement”); and

**WHEREAS**, The Agreement expired by its terms on December 31, 2020, and rather than enter into a new agreement, the Parties wish to revive and reinstate all terms and conditions of the Agreement as they existed prior to the expiration of the term and to amend the Agreement as set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and amend the Agreement as follows:

1. Effective January 1, 2021, all references to Exhibit A in the existing Agreement shall be amended to read Exhibits A and A-1, as applicable. Exhibit A-1 is attached and will control from and after January 1, 2021.

2. Section 3 of the Agreement, titled “**TERM**,” is amended to read as follows:

“3. **TERM**: The Agreement will commence on April 1, 2020, and will expire, unless sooner terminated, on June 30, 2021 (the “Term”).”

3. Section 4.4.1 of the Agreement, titled “**Maximum Contract Amount**,” is amended to read as follows:

“4.4.1. Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed Three Million Four Hundred Fifty-One Thousand One Hundred Sixty-Five Dollars (\$3,451,165.00) (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 **Exhibits A and A-1**. Any services performed beyond those in **Exhibits A and A-1** are performed at the 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 Revival and 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.

**Exhibit List**

**Exhibit A-1**

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**Contract Control Number:** GENRL-202057217-01 [HOST-202055551-01]  
**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:**

GENRL-202057217-01 [HOST-202055551-01]  
BAYAUD ENTERPRISES, INC.

By:  DocuSigned by:  
Tammy Bellofatto  
0D2911986EF34C0...

Name: Tammy Bellofatto  
(please print)

Title: Executive Director  
(please print)

ATTEST: [if required]

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

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

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



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**I. Purpose of Agreement**

The purpose of the contract is to establish an agreement and Scope of Work between the Denver Department of Housing Stability (“HOST”) and Bayaud Enterprises for services related to COVID-19 emergency shelter operations and support. Services may be delivered as associated with the emergency shelters at the National Western Complex, Denver Coliseum, or other City designated auxiliary shelter locations.

**II. Services**

**Crisis Response Support**

- Deliver bulk meals to crisis response locations per City scheduling and dispatch.
- Participate in emergency shelter operations support per City scheduling.
- Provide staff supervision to shelter attendant staff that provide support to primary shelter providers at The National Western Complex, The Denver Coliseum and other auxiliary shelters as identified by the City of Denver. The Contractor’s shelter attendant staff cover shifts seven days per week, twenty-four hours per day. Duties include tasks such as securing doors, serving food, bed checks, assisting with shower assignments, bag and tag of personal items left by guests, distribution of personal laundry, cleaning of common areas, guest check in, transport of ADA guests and any other tasks requested by the providers. Shelter attendants work side by side with the other primary shelter providers to ensure the safety and wellbeing of the guests. Only registered drivers with Denver City and County may provide transport to and from other shelters and hotels on an as needed basis.
- Provide direct client transportation for respite, protective action or as directed by city employees.
- Provide a dispatch that is on call and is in support of scheduling transports to Protective Action and Activated Respite.
- Other assigned crisis response support duties may be assigned

**Site Closures**

1. This Agreement is part of the City and County of Denver’s COVID-19 emergency response and is operationally dependent on the continued declaration of an emergency. If the COVID-19 emergency declaration ends before the term of this Agreement, the City may terminate this Agreement in accordance with its terms and conditions.
2. If the City determines that a service outlined in this Agreement is no longer necessary, the City may, in whole or in part, terminate or



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suspend the services and deliverables stated within this Exhibit A-1 by terminating specific budget line items.

3. All decisions concerning the use of and services to any specific property shall be communicated in writing. A decision to 1) convert a property from one use to another, 2) to decommission a property temporarily, or 3) remove a property from our portfolio as either Activated Respite, Protective Action, or Enhanced Shelter will be approved in writing such as an email by the Executive Director of HOST or their designees.
4. Staffing levels, supportive service, motel expenses, and other needs may be variable over the life of this contract. Any decision to decrease staffing support levels, motel site operations, or other services will be made in coordination with HOST. HOST will provide 30 days written notice of any such decisions.

### III. Process and Outcome Measures

#### A. Process Measures

1. Contractor will document frequency and date of crisis response support services referenced in paragraph IIA throughout the term of the contract.

#### B. Outcome Measures

1. N/A

### IV. Performance Management and Reporting

#### A. Performance Management

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

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract 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 HOST program area and other designated HOST staff, will provide performance monitoring and reporting reviews. HOST 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.



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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.

**V. Reporting**

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

<b>Report Name</b>	<b>Description</b>	<b>Frequency</b>	<b>Reports to be sent to:</b>
1. Contract Summary Report	Report shall total counts of all services delivered and comment on any insights learned, best practices identified, and issues experienced.	Contract End, within 45 days after Term End	Each of the following: <input type="checkbox"/> City-side DDW Program Manager
2. Other reports as reasonably requested by the City.	To be determined (TBD)	TBD	TBD

**VI. HOST funding information:**

- A. **Program Name: Emergency Shelter Supports**  
 B. **Funding Source: FEMA – COVID-19 response**

**VII. 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 HOST's preferred invoice template, if requested. Invoicing supporting documents must meet HOST requirements.

Invoices shall be submitted to: [HOSTAP@denvergov.org](mailto:HOSTAP@denvergov.org), or by US Mail to:

Attn: Financial Services  
 Dept. 615, Housing Stability  
 201 W Colfax Avenue  
 Denver, Colorado 80202



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<b>Contract Number: GENRL-202057217-01 (HOST-202055551-01)</b>		
<b>Program Name: COVID Auxiliary Shelter Support (Budget 1)</b>		
<b>Contract Term: 4/1/2020 to 12/31/2020</b>		
<b>Budget Categories</b>	<b>Budget Amount</b>	<b>Narrative</b>
<b><u>DIRECT COSTS</u></b>		
<b><u>Direct Services</u></b>		
<u>Crisis Response Support</u>	\$1,690,322.00	A unit rate shall be paid per documented service provided, as outlined in Section II. No indirect costs shall be charged over this category. Rates by client type: <ul style="list-style-type: none"> <li>○ \$175 per bulk meal delivery</li> <li>○ \$379 per shift worked at emergency shelter operations or at a rate of \$47.37 per hour for shifts less than 8 hours.</li> <li>○ \$75 per direct client transport</li> <li>○ \$450 per 6-hour shift staffing and operating each laundry truck with 10-15 machines</li> <li>○ \$28 per hour for patient transport dispatch – on call staff support</li> </ul>
<b>TOTAL Costs</b>	<b>\$1,690,322.00</b>	

**Contract Summary of Amounts:**

CONTRACT VERSION	TERM	AMOUNT
Base	4/1/2020-12/31/2020	<b>\$1,690,322.00</b>
	Total	<b>\$1,690,322.00</b>

<b>Contractor Name: Bayaud Enterprises Inc</b>		
<b>Term: 1/1/2021 – 6/30/2021</b>		
<b>Contract Number: GENRL-202057217-01 (HOST-202055551-01)</b>		
<b>Program Name: COVID Auxiliary Shelter Support (Budget 2)</b>		
<b>Budget Categories</b>	<b>Budget Amount</b>	<b>Narrative</b>
<b><u>DIRECT COSTS</u></b>		





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Dispatch Service	\$20,272.00	Provide a dispatch that is on call and is in support of scheduling transports to Protective Action and Activated Respite. A unit rate shall be paid per documented service provided, \$28/hr approximately 4 hours per day.
Meal Delivery Service	\$108,600.00	Deliver bulk meals to crisis response locations per City scheduling and dispatch. A unit rate shall be paid per documented service provided, \$25 per location per meal for 8 locations.
Patient Transport Service	\$81,450.00	Provide direct client transportation for respite, protective action or as directed by city employees, a unit rate shall be paid per documented service provided, \$75/per transport approximately 6 per day.
Laundry Service	\$187,200.00	A unit rate shall be paid per documented service provided, \$450/each service, 16 services per week
<b>Subtotal</b>	<b>\$397,522.00</b>	
<b>Total Indirect Costs</b>	<b>\$39,752.00</b>	Indirect Cost Rate at 10% of Direct Costs
<b>Total Direct</b>	<b>\$397,522.00</b>	
<b>Total Costs</b>	<b>\$437,274.00</b>	

<b>Contractor Name: Bayaud Enterprises Inc</b>
<b>Term: 1/1/2021 – 6/30/2021</b>
<b>Contract Number: GENRL-202057217-01 (HOST-202055551-01)</b>
<b>Program Name: COVID Auxiliary Shelter Support - Elati Shelter (Budget 3)</b>



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<b>Budget Categories</b>	<b>Budget Amount</b>	<b>Narrative</b>
<b><u>DIRECT COSTS</u></b>		
<b><u>Personnel</u></b>		
Shelter Staff	\$304,080.00	Staffing to support shelter operations, working 100% of their time, to be reimbursed at cost.- Approximately \$28 to \$35/hr 48 hours per day. Fees include all taxes and benefits. Employees working less than 100% of their time on this program will need to allocate their time by approved timesheets.
Shelter Supervisor	\$68,780.00	Staffing to support shelter operations, working 100% of their time, to be reimbursed at cost - Approximately \$38/hr 10 hours per day/7 days per week. Fees include all taxes and benefits. Employees working less than 100% of their time on this program will need to allocate their time by approved timesheets.
Custodial Service	\$22,380.00	Fees paid to cleaning and janitorial companies - Approximately \$25/hr 5 hours per day/7 days per week. Invoice based on actual costs.
<b>Subtotal</b>	<b>\$395,240.00</b>	
<b>Supplies</b>		
Cleaning supplies, toilet paper, hand towels, disinfectant, hand sanitizer, etc.	\$7,500.00	Including but not limited to PPE and cleaning supplies such as masks, hand sanitizer, toilet paper, gloves, soap, cleaning supplies and chemicals.
<b>Subtotal</b>	<b>\$7,500.00</b>	
<b>Total Direct Cost</b>	<b>\$402,740.00</b>	
<b>Guest Needs</b>		



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Bus tickets, Hygiene items, Coffee, etc.	\$5,384.00	Items given directly to clients. List is specific to contracted program and may include but is not limited to food, transportation, moving expenses, storage units, vouchers, gas cards, toiletries/hygiene items, clothing and/or uniforms for work.
<b>Subtotal</b>	\$5,384.00	
<b>Total Direct Costs</b>	<b>\$402,740.00</b>	
<b>TOTAL Costs</b>	<b>\$408,124.00</b>	

<b>Contractor Name: Bayaud Enterprises Inc</b>		
<b>Term: 1/1/2021 – 6/30/2021</b>		
<b>Contract Number: GENRL-202057217-01 (HOST-202055551-01)</b>		
<b>Program Name: COVID Auxiliary Shelter Support Coliseum (Budget 4)</b>		
<b>Budget Categories</b>	<b>Budget Amount</b>	<b>Narrative</b>
<b><u>DIRECT COSTS</u></b>		
<b>Personnel</b>		
Lead Staff	\$167,808.00	Staffing to support shelter operations, working 100% of their time, to be reimbursed at cost.- Approximately (3) Lead Staff working per day, 24 hours per day @ \$38 per hour. Fees include all taxes and benefits. Employees working less than 100% of their time on this program will need to allocate their time by approved timesheets. Includes training hours.
Shelter Staff	\$612,352.00	Staffing to support shelter operations, working 100% of their time, to be reimbursed at cost.- Approximately 13 Shelter Staff working per day, 104 hours per day @ \$32 per hour. Fees include all taxes and benefits. Employees working less than 100% of their



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		time on this program will need to allocate their time by approved timesheets. Includes training hours.
<b>Subtotal</b>	<b>\$780,160.00</b>	
<b>Contractual Training</b>		
Staff Training	-	De-escalation Training (no charge/in house trainer)
Staff Training	\$4,800.00	Trauma Informed Care Training
Staff Training	\$1,500.00	Mental Health First Aid
<b>Subtotal</b>	<b>\$6,300.00</b>	(One Time Cost)
<b>Custodial Services</b>		
Daily Cleaning	\$22,625.00	Cleaning shelter area living space the bowl and showers \$125 per day
Bio Hazard Cleanup	\$101,360.00	Staffing to support shelter operations, working 100% of their time, to be reimbursed at cost.- Approximately 2 staff per day, 16 hours per day @ \$32/hr. Fees include all taxes and benefits. Employees working less than 100% of their time on this program will need to allocate their time by approved timesheets.
<b>Subtotal</b>	<b>\$123,985.00</b>	
Program Supplies	\$5,000.00	Program/Project-related supplies not given directly to a client and/or directly related to program function. This includes PPE, specialized program software, laundry supplies, beds, mats, mat covers, sanitizer, storage bags, etc.



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<b>Subtotal</b>	<b>\$5,000.00</b>	
<b>Total Direct Cost</b>	<b>\$780,160.00</b>	
<b>Total Cost</b>	<b>\$915,445.00</b>	
<b>TOTAL BUDGET ALL LOCATIONS</b>		
<b>Total #1 Budget</b>	\$1,690,322.00	
<b>Total #2 Budget</b>	\$437,274.00	
<b>Total #3 Budget</b>	\$408,124.00	
<b>Total #4 Budget</b>	\$915,445.00	
<b>Total All Budgets</b>	<b>\$3,451,165.00</b>	

## VIII. 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



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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 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:



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- 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 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.



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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.





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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 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



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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



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policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.

3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses

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

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

3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out 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.



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

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

**5. BREACH DISCOVERY AND NOTIFICATION.**

5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.

5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.

5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable 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 HOST 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;



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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



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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.



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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.



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**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.

**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.