

SAN JUAN BASIN AREA AGENCY ON AGING, INC.

CONTRACT

SIGNATURE AND COVER PAGES

<p>Agency San Juan Basin Area Agency on Aging 10 Burnett Ct. A-302 Durango, CO 81301</p>	<p>Contractor Archuleta County Transportation aka Mountain Express Transit 777 CR 600 Pagosa Springs, CO 81147</p> <p>Contractor's State of Incorporation: Colorado</p>
<p>Contract Maximum Amount Initial Term: 07/01/2021 TO 06/30/2022 SFY22 Grant Award \$53,453.00</p> <p>Maximum Amount for All Fiscal Years SFY20 \$64,081 (includes carryover and Family First Relief funds) CARES ACT \$11,600.00 SFY21 Grant Award \$28,841.00</p> <p>(Please see CRS for a breakdown of the budget detail)</p>	<p>Contract Performance Beginning Date The later of the Effective Date or 07/01/2021</p> <p>Initial Contract Expiration Date 06/30/2022</p> <p>Except as stated in §2.D, the total duration of this Contract, including the exercise of any options to extend, shall not exceed Three (3) Years from its Performance Beginning Date.</p>
<p>Pricing/Funding Price Structure: Cost Reimbursement Contractor shall invoice: Monthly Fund Sources: State Funds for Senior Services (SFSS) TITLE III - Part B TITLE III – Parts C1 & C2 TITLE III – Part E</p>	<p>Options The State shall have the following options if indicated with “Yes,” as further described in §2.C and §5.B.v: Option to Extend Term per §2.C: Yes Option to Increase or Decrease Maximum Amount per §5.B.v: Yes</p>
<p>Insurance Contractor shall maintain the following insurance if indicated with “Yes,” as further described in §10:</p> <p>Worker's Compensation: Yes General Liability: Yes Automobile Liability: Yes Protected Information: Yes Professional Liability Insurance: Yes Crime Insurance: No</p>	<p>Miscellaneous Authority to enter into this Contract exists in: C.R.S. § 26-1-111. Law-Specified Vendor Statute (if any): C.R.S. § 26-1-111 Procurement Method: Law Specified Solicitation Number (if any): Not Applicable</p>
<p>AAA Representative</p> <p>Christina Knoell, Executive Director</p>	<p>Contractor Representative</p> <p>Laura Vanoni, Director</p>

Exhibits

The following Exhibits are attached and incorporated into this Contract:

Exhibit A-	Statement of Work
Exhibit B-	Miscellaneous Provisions
Exhibit C-	HIPAA Business Associate Addendum
Exhibit D-	Budget Funding Request
Exhibit E-	Supplemental Provisions for Federal Awards

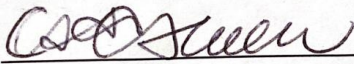
Contract Purpose

The Title III and state general funds are to support community living for Older Adults through an array of services to eligible Consumers in Colorado. The State shall distribute these funds to the Contractors, which are designated Area Agencies on Aging (AAA) that may be a local government, Nonprofit agency, or other local entity to deliver services for Older Adults, and other eligible individuals, in the PSA served by the Contractor.

Signature Page begins on next page →

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

<p style="text-align: center;">CONTRACTOR</p> <p style="text-align: center;">Archuleta County Transportation Mountain Express Transit</p> <hr/> <p>By: Archuleta County Commissioner</p> <p>Date: _____</p>	<p style="text-align: center;">SAN JUAN BASIN AREA AGENCY ON AGING, INC.</p> <div style="text-align: center;">  <hr/> <p>Christina Knoell, Executive Director</p> </div> <p style="text-align: right;">Date: <u>6/10/2021</u></p>

**SAN JUAN BASIN
AREA AGENCY ON AGING**



The sun setting is no less beautiful than the sun rising

-- Signature and Cover Pages End --

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1. PARTIES

This Contract is entered into by and between Contractor named on the Signature and Cover Pages for this Contract (the “Contractor”), and the STATE OF COLORADO acting by and through the Department of Human Services (the “State” or “CDHS”). Contractor and the State agree to the terms and conditions in this Contract.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

B. Initial Term

The Parties’ respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Signature and Cover Pages for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Signature and Cover Pages for this Contract (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Contract.

C. Extension Terms - State’s Option

If the Signature and Cover Pages for this Contract shows that the State has the Option to Extend Term, then the State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive

periods, at the same rates and under the same terms specified in the Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to §21 “Sample Option Letter.” The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract. Except as stated in §2.D, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Performance Beginning Date, or the number of years specified on the Signature and Cover Pages if such number is less than 5 years, absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in §15, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of the Contract.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by §12.A.i.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §15. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in §12.A.i.a.

iii. Payments

If the State terminates this Contract in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Contract is less than 60% completed, as determined by the State, the State may reimburse Contractor for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Contract, incurred by Contractor which are directly attributable to the uncompleted portion of Contractor’s obligations, provided that the

sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- B. **“Business Day”** means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1) C.R.S.
- C. **“Chief Procurement Officer”** means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202(6), C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.
- D. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under 24-72-302 C.R.S.
- E. **“Contract”** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto. For purposes of clarification and the removal of any doubt, subject to any future modifications thereto, the Signature and Cover Pages and Sections 1 through 21, as identified in the Table of Contents herein above, shall constitute the “main body” of this Contract exclusively.
- F. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- G. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- H. **“End of Term Extension”** means the time period defined in §2.D.
- I. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature and Cover Page for this Contract.
- J. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Signature and Cover Pages for this Contract..
- K. **“Extension Term”** means the time period defined in §2.C.

- L. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- M. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- N. **“Initial Term”** means the time period defined in §2.B.
- O. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- P. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- Q. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S.
- R. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- S. **“Services”** means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
- T. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

- U. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- V. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- W. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- X. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- Y. **“Tax Information”** means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- Z. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- AA. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. **STATEMENT OF WORK**

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of the Exhibits. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.

5. **PAYMENTS TO CONTRACTOR**

A. **Maximum Amount**

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds. The State shall not pay Contractor any amount under this Contract that exceeds the Contract Maximum for that term shown on the Signature and Cover Pages for this Contract.

B. **Payment Procedures**

i. **Invoices and Payment**

- a. The State shall pay Contractor in the amounts and in accordance with the Exhibits.
- b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State.

- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Contractor shall make all changes necessary to correct that invoice.
 - d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Contract.
- ii. Interest

Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Contract Funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in **§2.E**.

v. Option to Increase Maximum Amount

If the Signature and Cover Pages for this Contract show that the State has the Option to Increase or Decrease Maximum Amount, then the State, at its discretion, shall have the option to increase or decrease the statewide quantity of Goods and Services based upon the rates established in this Contract, and increase the maximum amount payable accordingly. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to §21 “Sample Option Letter.” Delivery of Goods and performance of Services shall continue at the same rates and terms as described in this Contract. The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract.

6. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to §17 or pursuant to any other Exhibit, for any contract having a term longer than 3 months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State at the time or times specified by the State in this Contract, or, if no time is specified in this Contract, not later than 5 Business Days following the end of each calendar quarter.

B. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor’s ability to perform its obligations under this Contract, Contractor shall, within 5 days after being served, notify the State of such action and deliver copies of such pleading or document to the State’s principal representative identified on the Signature and Cover Pages as provided in §15.

C. Performance Outside the State of Colorado or the United States, §24-102-206 C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with §15 and in a form designated by the State, within 20 days following the earlier to occur of Contractor’s decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

7. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the “Contractor Records”). Contractor Records shall include all documents, records, communications, notes and other materials maintained by

Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date 3 years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the “Record Retention Period”).

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days’ notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, in its discretion, may monitor Contractor’s performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor’s performance in a manner that does not unduly interfere with Contractor’s performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor’s records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State’s principal representative.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State, at no additional cost to the State. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate

technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a “Third-Party Service Provider” as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor’s employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State’s interests. Absent the State’s prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor’s obligations under this Contract.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State’s consideration. Failure to promptly submit a disclosure statement or to follow the State’s direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

D. Contractor shall maintain a written conflict of interest policy. Contractor shall provide the written conflict of interest policy to the State upon request.

10. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract to the extent that such insurance policies are required as shown on the Signature and Cover Page for this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State.

A. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.
- v.

B. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

C. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.
- iii. Notwithstanding sections D(i) and (ii) above, if Contractor has State Confidential Information for 10 or fewer individuals or revenues of \$250,000 or less, Contractor shall maintain limits of not less than \$50,000.
- iv. Notwithstanding sections D(i) and (ii) above, if Contractor has State Confidential Information for 25 or fewer individuals or revenues of \$500,000 or less, Contractor shall maintain limits of not less than \$100,000.

D. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

E. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

G. Primacy of Coverage

Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

H. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §15 within 7 days of Contractor's receipt of such notice.

I. Subrogation Waiver

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

J. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

K. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in the Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the

remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Contract had been terminated in the public interest under **§2.E**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State, (i) secure that right to use such Work for the State and Contractor; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §11 and the dispute resolution process in §13, shall have all remedies available at law and equity.

13. STATE'S RIGHT OF REMOVAL

The State retains the right to demand, at any time, regardless of whether Contractor is in breach, the immediate removal of any of Contractor's employees, agents, or subcontractors from the work whom the State, in its sole discretion, deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the State to be contrary to the public interest or the State's best interest.

14. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §14.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the

Procurement Official of CDHS as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109 and 24-109-101.1 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

15. NOTICES AND REPRESENTATIVES

Each individual identified on the Signature and Cover Pages shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party’s principal representative at the address set forth on the Signature and Cover Pages for this Contract or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Signature and Cover Pages for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from,

or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Contractor grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

17. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

18. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at

assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract

B. Subcontracts

Unless other restrictions are required elsewhere in this Contract, Contractor shall not enter into any subcontract in connection with its obligations under this Contract without providing notice to the State. The State may reject any such subcontract, and Contractor shall terminate any subcontract that is rejected by the State and shall not allow any Subcontractor to perform any Work after that Subcontractor's subcontract has been rejected by the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in §18.A., all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

K. Order of Precedence

In the event of a conflict or inconsistency between this Contract and any Exhibits or attachments such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. HIPAA Business Associate Agreement (if any).
- ii. Colorado Special Provisions in §19 of the main body of this Contract.
- iii. The provisions of the other sections of the main body of this Contract.
- iv. Any other Exhibit(s) shall take precedence in alphabetical order.

L. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

M. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of the Contract.

N. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

O. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.* C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

P. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§18.A.**, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

Q. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

R. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

S. Standard and Manner of Performance

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

T. Licenses, Permits, and Other Authorizations.

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

U. Indemnification

i. Applicability

This entire **§18.U** does not apply to Contractor if Contractor is a "public entity" within the meaning of the GIA.

ii. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

iii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of **§8** may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs,

expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §8.

iv. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

19. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's

discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq. C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and CDHS within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to CDHS a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101 et seq., C.R.S., CDHS may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101 et seq., C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

20. DEPARTMENT OF HUMAN SERVICES PROVISIONS

A. Exclusion, Debarment and/or Suspension

Contractor represents and warrants that Contractor, its employees, agents, assigns, or Subcontractors, are not presently excluded from participation, debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise ineligible to participate in a “federal health care program” as defined in 42 U.S.C. § 1320a-7b(f) or in any other government payment program by any federal or State of Colorado department or agency. If Contractor, its employees, agents, assigns, or Subcontractors, are excluded from

participation, or becomes otherwise ineligible to participate in any such program during the term of this Contract, Contractor shall notify the State in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to Contractor, the State may immediately terminate this Contract.

B. Emergency Planning

If Contractor provides Work that is an extension of State work performed as part of the State of Colorado Emergency Operations Plan or for a publicly funded safety net program, as defined by C.R.S. § 24-33.5-701 et seq., Contractor shall perform the Work in accordance with the State's Emergency Operations Plan or continuity of operations plan in the event of an emergency. If requested, Contractor shall provide a plan and reporting information to ensure compliance with the State's Emergency Operations Plan and C.R.S. § 24-33.5-701 et seq.

C. Restrictions on Public Benefits

If applicable, Contractor shall comply with C.R.S. §§ 24-76.5-101 – 103 exactly as the State is required to comply with C.R.S. §§ 24-76.5-101 – 103.

D. Discrimination

Contractor shall not:

- i. discriminate against any person on the basis of race, color, national origin, age, sex, religion or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions.
- ii. exclude from participation in, or deny benefits to any qualified individual with a disability, by reason of such disability.

Any person who thinks he/she has been discriminated against as related to the performance of this Contract has the right to assert a claim, Colorado Civil Rights Division, C.R.S. §24-34-301, et seq.

E. Criminal Background Check

Pursuant to C.R.S. §27-90-111 and CDHS Policy VI-2.4, any independent contractor, and its agent(s), who is designated by the Executive Director or the Executive Director's designee to be a contracting employee under C.R.S. §27-90-111, who has direct contact with vulnerable persons in a state-operated facility, or who provides state-funded services that involve direct contact with vulnerable persons in the vulnerable person's home or residence, shall:

- i. submit to and successfully pass a criminal background check, and
- ii. report any arrests, charges, or summonses for any disqualifying offense as specified by C.R.S. §27-90-111 to the State.

Any Contractor or its agent(s), who does not comply with C.R.S. §27-90-111 and CDHS Policy VI-2.4, may, at the sole discretion of the State, be suspended or terminated.

F. Fraud Policy

Contractor shall comply with the current CDHS Fraud Policy.

G. C-Stat - Performance Based Program Analysis and Management Strategy (C-Stat Strategy)

Without any additional cost to the State, Contractor shall collect and maintain Contract performance data, as determined solely by the State. Upon request, Contractor shall provide the Contract performance data to the State. This provision does not allow the State to impose unilateral changes to performance requirements.

REST OF PAGE INTENTIONALLY LEFT BLANK

21. SAMPLE OPTION LETTER (IF APPLICABLE)

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	Original Contract Number Insert CMS number or Other Contract Number of the Original Contract
Current Contract Maximum Amount Initial Term State Fiscal Year 20xx \$0.00	Option Contract Number Insert CMS number or Other Contract Number of this Option
Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00	Contract Performance Beginning Date Month Day, Year
Total for All State Fiscal Years \$0.00	Current Contract Expiration Date Month Day, Year

1. OPTIONS:

- A. Option to extend for an Extension Term
- B. Option to change the quantity of Goods under the Contract
- C. Option to change the quantity of Services under the Contract
- D. Option to modify Contract rates
- E. Option to initiate next phase of the Contract

2. REQUIRED PROVISIONS:

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
- B. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Contract, as amended.
- C. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to modify the Contract rates specified in Exhibit/Section Number/Letter. The Contract rates attached to this Option Letter replace the rates in the Original Contract as of the Option Effective Date of this Option Letter.
- D. **For use with Option 1E:** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.
- E. **For use with all Options that modify the Contract Maximum Amount:** The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.

3. Option Effective Date:

The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

<p>STATE OF COLORADO INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE</p> <p><u>SAMPLE ONLY – DO NOT SIGN</u> By: Name & Title of Person Signing for Agency or IHE</p> <p>Date: <u>SAMPLE ONLY – DO NOT SIGN</u></p>	<p>In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p>STATE CONTROLLER</p> <p><u>SAMPLE ONLY – DO NOT SIGN</u> Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p>Option Effective Date: <u>SAMPLE ONLY – DO NOT SIGN</u></p>
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EXHIBIT A

STATEMENT OF WORK

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SECTION I

EXECUTIVE SUMMARY AND RECITALS

As used herein, unless otherwise required based upon the context of use, the words and phrases set forth in Attachment A to this Exhibit A shall be the definitions ascribed hereto.

Background

It is the intent of the parties to fulfill the mandates of the Older Americans Act and the State Funding for Senior Services (OAA/SFSS) to develop greater capacity and foster the development and implementation of Comprehensive and Coordinated Service Delivery System to secure and maintain maximum independence and dignity for Older Adults. Therefore, it is the desire of the Colorado Department of Human Services (CDHS), herein referred to as the State, and the Area Agency on Aging (AAA), herein referred to as the Contractor, to enter into this Contract to provide services and Programs for Consumers in assigned Planning and Service Areas (PSA).

- A. The following statements describe essential facts that are relied upon when entering into this Contract. These statements ensure that the minimum requirements have been met.
1. The State received Federal Funds through the Coronavirus Aid, Relief, and Economic Security (CARES) Act to provide an array of services to eligible Consumers in Colorado.
 2. The State shall distribute these funds to the Contractor, which is a designated AAA that may be a local government, Non-profit agency, or other local entity to deliver services for Older Adults, and other eligible individuals, in the PSA served by the Contractor.
 3. The State, through the Department of Human Services, is the policy-making body for the Older Americans Act and State Funding for Senior Services, and for Programs operated by the Contractor under this Contract that receive funding from the State.
 4. The State is authorized by statute to provide the Contractor with direction on the use of such funds and to enter into Contracts that specify how the Contractor will use these funds to provide services in accordance with Older Americans Act Programs, as described in 12 Colorado Code of Regulations 2510-1 Rule Manual, Staff Manual Volume 10.
 5. The Contractor is accountable to the State for using funds obtained through this Contract appropriately in the delivery of services for Older Adults and other eligible individuals, and for complying with applicable state and federal laws, policies, audit requirements, Contract requirements and State directives.
 6. The State is authorized by statute to monitor the Contractor's use and management of these funds; to oversee its governance of the human services Programs in the Contractor's assigned PSA; and to review the Contractor's compliance with law, policies, audit requirements, Contract requirements, and State policy directives.

7. In accordance with the current plan objectives cited in the “State Plan on Aging” regarding Monitoring performance of contracted Area Agencies on Aging, the State will, at a minimum, perform Evaluations to ensure reporting compliance by reviewing programmatic and financial performance and communicating deficiencies to the Contractor as needed.
 8. The State may refuse to Contract with, and may take legal action against, the Contractor that breaches its Contract with the State or fails to use or expend Contract funds in accordance with applicable laws, policies, and State directives.
 9. State fiscal rules require that a Contractor shall have a fully executed Contract prior to delivery of services.
- B. The CARES Act provides grants for State and community-based Programs to foster the development and implementation of a Comprehensive and Coordinated Service Delivery System to serve Consumers in their communities. Specifically, the CARES Act authorizes states to Contract with Area Agencies on Aging to provide an array of community services, as approved by the State.

These services may include, but are not limited to:

1. Elder Abuse Prevention services including: Long-Term Care (LTC) Ombudsman and Legal Assistance Services;
2. Supportive Services such as: Information and Assistance, Case Management, Assisted Transportation, Outreach, Transportation, Adult Day Care, Chore, Homemaker, and Personal Care;
3. Nutrition Services such as Congregate Meals, Home-Delivered Meals, Nutrition Counseling, Nutrition Education, and Nutrition Screening;
4. Health Promotion and Evidence-Based Disease Prevention Programs such as Health Promotion, Education, and Screening;
5. Caregiver support services such as Respite, Counseling, and Education Programs; and,
6. Planning and infrastructure building to address a possible future COVID-19 outbreak or other pandemic or natural disaster.

SECTION II

REFERENCES

In addition to the "Compliance With Law" requirements set forth at Paragraph 19 E. of the Contract Colorado Special Provisions, the Contractor and its agent(s) shall at all times during the term of this Contract, be bound by and strictly adhere to the following Federal and State laws, rules, regulations and the State Unit on Aging (SUA) Policies and Procedures as they currently exist and may hereafter be amended, which documents are incorporated herein by this reference:

- A. Federal Older Americans Act;
- B. Code of Federal Regulation (CFR), Title 45 Public Welfare;
- C. Older Coloradans Act, C.R.S. 26-11-100.1 et seq.;
- D. C.R.S. Title 25 Health and 26 Human Services Code;
- E. Colorado Long-Term Care Ombudsman Act, C.R.S. 26-11.5 et seq.;
- F. Colorado Department of Human Services Staff Manual Volume 10;
- G. Administration on Aging Fiscal Guide, Older Americans Act, Titles III and VII;
- H. Colorado Retail Food Establishment Rules and Regulations;
- I. Dietary Guidelines for Americans;
- J. Dietary Reference Intakes (DRIs);
- K. SUA Policy and Procedures Manual;
- L. SUA Policy Directives;
- M. Code of Federal Regulation (CFR) Title 48 Section 3.908 Whistleblower Protection;
- N. Title II Part 200 of the Code of Federal Regulations;
- O. CAPS Fees C.R.S. 24-75-402; CAPS Statute C.R.S. 26-3.1-111; CAPS Implementation Regulation 12 CCR 2518-1, Volume 30.960; and,
- P. Additional guidance provided as a result of the COVID-19 outbreak.

SECTION III

REQUIREMENTS AND SERVICES

A. GENERAL REQUIREMENTS

1. COMPLIANCE WITH LAW

Contracting organizations shall comply with Federal, State, and local laws, rules, regulations, standards, and contractual requirements applicable to providing the contracted service(s).

2. COMPLIANCE WITH SERVICE STANDARDS

Contracting organizations shall comply with applicable Program policies and standards included in this Contract. Services shall be implemented according to these standards, unless the State has granted a waiver of compliance.

3. SERVICE ELIGIBILITY

Eligibility for services is controlled by laws and regulations relating to the OAA/SFSS. Contracting organizations must comply with eligibility criteria.

A Means Test may not be utilized to determine eligibility for OAA/SFSS services.

Service may not be denied to a Consumer based on their unwillingness or inability to contribute toward the cost of the service.

4. TARGET POPULATIONS

Contracting organizations must seek to serve eligible Consumers, with particular attention to older individuals identified in Section 306, Area Plans (4)(A)(i) of the OAA. Older individuals identified in this section include:

- a. Older individuals with Greatest Social Need;
- b. Older individuals with Greatest Economic Need;
- c. Older individuals at risk for institutional placement;
- d. Low-Income minority older individuals;
- e. Older individuals with limited English proficiency; and
- f. Older individuals residing in Rural areas.

5. SERVICE COORDINATION

The Contractor shall show demonstrable efforts are being made with other aging service providers within the geographic service area to ensure that a comprehensive, coordinated system of services are available to older people. The Contractor shall document these Coordination efforts.

6. INVOLVEMENT OF OLDER PERSONS

Contracting organizations shall involve older persons, including program Consumers, in decisions relative to service design, delivery, and ongoing quality improvement processes.

7. VOLUNTEERS

If the Contracting organization utilizes volunteers to provide services, the Contracting organization shall document how volunteers will be utilized in the Program(s) including, but not limited to, the use of time sheets and job descriptions.

8. EVALUATION

The Contractor shall implement a quality improvement process, which includes, at a minimum, Monitoring of service quality and Consumer satisfaction.

Method of receiving Consumer input on the quality of service needs to be documented and utilized on a regular basis. Examples include site councils, project councils, Consumer forums, Consumer satisfaction surveys, telephone interviews, and visits.

9. ACCOUNTING SYSTEM REQUIREMENTS

The Contractor shall establish and maintain an accounting system that adequately identifies each revenue source and the application of funds. The accounting records shall contain information pertaining to projects, Contracts or sub-awards, authorizations, obligations, unobligated balances, assets, liabilities, outlays, expenditures and revenue. Each funding source shall bear only reasonable and allowable costs.

Transactions and other significant events shall be clearly documented. The documentation is to be readily available for examination by persons authorized by the State.

The Contractor shall establish and maintain adequate Internal Control systems and standards that apply to the operation of the organization.

10. AUDIT REQUIREMENTS

This Contract is funded with Federal financial assistance funds and State funds. The Contractor of this Program is considered an independent Contractor of Title III Federal financial assistance, subject to audit requirements under Title II Part 200 of the Code of Federal Regulations.

12. REIMBURSEMENT METHOD

The Contractor shall invoice the State on approved forms and according to established due dates.

Monthly or quarterly service units in the State Approved System are required to justify the payment or reimbursement of funds. At a minimum, all registered services shall have a unit-based dollar amount.

13. RECOVERY OF IMPROPER PAYMENTS

The Contractor shall notify the State immediately if they believe they have received an overpayment or other erroneous or improper payment. The Contractor is required to refund any erroneous or improper payment within 90 days of written demand by the State.

B. PROGRAM REQUIREMENTS

With regard to Programs provided, in accordance with the provisions contained herein, as well as the OAA/SFSS and CARES Act, the Contractor shall:

1. Establish and maintain a Comprehensive and Coordinated Service Delivery System for the provision of services including supportive, nutrition, information, caregiver, and advocacy services to Consumers in accordance with the Older Americans Act, as amended, Colorado Revised Statutes and regulations, and approved State Plan on Aging;
2. Submit for-profit Contracts annually to the State for approval prior to delivery of services;
3. Complete and submit the State prescribed Subcontractor approval form to the State prior to delivery of any service by a Subcontractor and, if requested by the State, submit the Contract for review and approval prior to execution;
4. Not use funds made available under the CARES Act for lobbying activities, as described at Section 24-6-301, C.R.S. and OMB Guidance Part 200.450, including, but not limited to activities intended to influence decision or activity by non-judicial Federal, State or local officials or body;
5. Make reasonable efforts to obtain support from private sources and other public organizations to enhance or maintain services and purchase capital assets;
6. Provide leadership and advocacy for Older Adults residing within the Planning and Service Area (PSA), including monitoring and evaluating factors and issues affecting Older Adults within the PSA;
7. Evaluate the costs/benefits, quality, accessibility, utilization, priority, targeting, and overall effectiveness of Programs, services, and activities, which the Contractor provides through the Funding Request; and
8. Disseminate information and Policy Directives to applicable providers within 10 business days or within the timeframe as directed by the State.

C. MANAGEMENT AND ADMINISTRATION

With regard to Programs provided, in accordance with the provisions contained herein, as well as the Older Americans Act and State Funding for Senior Services (OAA/SFSS) and CARES Act, the Contractor shall:

1. Complete an investigation and recovery of all erroneous or improper payments within ninety-days (90) of discovery of error in payment;
2. Be accountable for Contract requirements, the dissemination and implementation of required policies and procedures (e.g. OMB circulars, State Policy Directives, AoA Program Instruction or Information Memorandums), and timely and accurate submission of reports to the State; and
3. Ensure all required State deliverables are provided timely and accurately which includes:
 - A. Service Units
 - a. Contractor shall enter service units monthly into the State Approved System by close of business on the 23rd of each month or as instructed by the State.
 - B. Monthly Reimbursement Requests
 - a. Contractor shall submit monthly by the last business day of the month in the State Approved System or as instructed by the State.

D. PROGRAMS AND SERVICES DELIVERY

Programs and services shall be delivered in accordance with the Older Americans Act, other applicable Federal and State rules and regulations, and Colorado Department of Human Services rules, policies, and procedures (i.e. Staff Manual Volume 10, the SUA Policy and Procedures Manual, and SUA Policy Directives) and additional guidance provided as a result of the COVID-19 outbreak.. The Contractor shall:

1. Provide training and technical assistance to service providers (Sub-contractors);
2. Provide services to protect the health, safety, welfare, and rights of the Older Adults within the PSA;
3. Ensure Consumer access and awareness of AAA Services through outreach and marketing which may include a AAA website, social media, or other means;
4. Ensure that criminal background checks are conducted for employees, volunteers, and Contractors according to rule or policy directive;
5. Identify and coordinate with community organizations and service providers in developing, expanding or maintaining a community-based system of services, which meet the needs of the Consumers residing within the PSA; and

E. PROGRAM INCOME

Program Income is any income generated through delivery of CARES Act services by a Contractor (i.e., voluntary contributions).

1. Program Income shall be solicited through non-coercive, voluntary contributions provided by Consumers;
2. Program Income shall be added to funds committed to the project or Program, and used to increase access to services or to further eligible project or Program objectives;
3. Program Income shall include earnings and expenditures of Program Income to be reported monthly in accordance with the format and time period required by the State;
4. The Contractor shall collect and report Program Income monthly to the State in accordance with the format and time period required by the SUA; and
5. Program Income shall be expended the same month that it is earned and shall be drawn down prior to requesting State or Federal funds. Program Income cannot be carried over from one month to the next.

F. FUNDING REQUEST

The Funding Request presents information related to the amount of resources the Contractor has budgeted for each fiscal year, for what purpose the funds will be used and who will be served. The Contractor shall:

1. Have an independent audit conducted annually and performed in accordance with Federal regulations, including Title II Part 200 of the Code of Federal Regulations, State statutes and rules;
2. Maintain financial records and other records pertinent to this agreement, pursuant to generally accepted accounting principles and using appropriate and sufficient documentation of expenses; and
3. Upon request, make fiscal records, books, documents, papers, plans and writings available to the State; and

G. DATA COLLECTION AND REPORTING

The Contractor shall ensure that:

1. Each service provider utilizes the State prescribed system for the collection of data that will accurately reflect the project and financial operations;
2. Programmatic and fiscal data are on file and available to the State including service expenditures, local cash, local in-kind, and Program Income;
3. The service provider has completed required reports on the prescribed forms in accordance with the State directives;

4. Service provider applications fiscal and programmatic records are retained until formal notice is received from the State advising that records are no longer necessary for audit purposes;
5. Expenditures are tracked and if needed, action plans are developed to correct deficiencies;
6. The State approved Consumer Information Assessment forms are used and providers and staff are trained regarding the appropriate and correct use of these forms;
7. Utilize the State prescribed systems for the collection and exchange of required data and information. This data and information should accurately reflect the project and financial operations;
8. Evidence of Program Income contributions are documented and retained; and,
9. Training and technical assistance is provided to staff and providers regarding approved data entry methods. This training should include information on how to maintain accurate information in the State data management systems.

H. ELDER RIGHTS AND ABUSE PREVENTION SERVICES

1. Long-Term Care Ombudsman Services: The local Long-Term Care (LTC) Ombudsman Services are established, under the oversight of the Office of the Colorado Long-Term Care Ombudsman (CLTCO), which operates under Contract with the State, to: investigate and resolve complaints on behalf of Residents of long-term care facilities; educate Residents and their families regarding rights and Choices; provide information and consultation for Consumers regarding options with regard to nursing homes or assisted living residences or alternatives to nursing home placement; advocate for long-term care system reform; and provide other services as described in the State Unit on Aging (SUA) Area Agency on Aging (AAA) Policies and Procedures and Training Manuals and additional guidance provided as a result of the COVID-19 outbreak..
2. Legal Assistance Services: The local Legal Assistance Program is established, under the oversight of the Office of the Colorado Legal Assistance Developer (CLAD), which operates under Contract with the State to offer advice, counsel, and legal intervention for eligible Consumers regarding issues such as public benefits, health care, financial exploitation, Consumer problems, advanced directives, and guardianship as described in the State Unit on Aging (SUA) Area Agency on Aging (AAA) Policies and Procedures and Training Manuals and additional guidance provided as a result of the COVID-19 outbreak..

I. SUPPORTIVE SERVICES

1. Information and Assistance: This Program includes one-on-one or group contacts between information and assistance provider and Consumer or the Consumer's caregiver as described in the State Unit on Aging (SUA) Area Agency on Aging (AAA) Policies and Procedures and Training Manuals and additional guidance provided as a result of the COVID-19 outbreak..
2. Outreach: This Program includes interventions with Consumers and/or their caregivers for the purpose of identifying potential adults and encouraging the Consumer or caregivers' use of existing services and benefits as described in the State Unit on Aging (SUA) Area Agency on Aging (AAA) Policies and Procedures and Training Manuals and additional guidance provided as a result of the COVID-19 outbreak..
3. Transportation Services: The Contractor shall make Transportation and assisted Transportation available to Consumers for the purpose of accessing services necessary to remain independent and socially integrated in the community as described in the State Unit on Aging (SUA) Area Agency on Aging (AAA) Policies and Procedures and Training Manuals and additional guidance provided as a result of the COVID-19 outbreak..

J. NUTRITION SERVICES

1. Congregate and Home Delivered Meals: The Contractor assures that this Program provides an array of Nutrition Services, including at a minimum Nutrition Education, Nutrition Screening, nutrition Assessment, and Nutrition Counseling. Therapeutic Diets, modified diets including Medical Foods, and other Nutrition Services may be provided as feasible and appropriate. The Program offers Nutrition Services, meal preparation and delivery of nutritious meals to senior centers, dining centers, Nutrition Sites, or Consumer homes or residence as described in the State Unit on Aging (SUA) Area Agency on Aging (AAA) Policies and Procedures and Training Manuals and additional guidance provided as a result of the COVID-19 outbreak.

K. CAREGIVER SERVICES

The Caregiver services shall meet the requirements described in Staff Manual Volume 10 and additional guidance provided as a result of the COVID-19 outbreak.. These services shall include, but are not limited to: information, access assistance, respite, Counseling, and supplemental services, such as medical equipment, offered to caregivers of Consumers and grandparents raising children under the age of eighteen.

ATTACHMENT A TO EXHIBIT A

DEFINITIONS

Within this Contract the following terms are defined.

"Administration" means the Administration for Community Living of the United States Department of Health and Human Services.

"Area Agency on Aging (AAA)" means a private, Nonprofit, or public agency designated by the State Unit on Aging (SUA) to administer the Older Americans Act and related Programs within a Planning and Service Area (PSA) in the State of Colorado.

"Area Agency on Aging Advisory Council" means a representative body of laypersons and service providers, designated by the AAA to represent the interests of Older Adults within the boundaries of a Planning and Service Area.

"Area Plan" means a document submitted by the Area Agency on Aging (AAA) to the State Unit on Aging (SUA) every four years in a format specified by the State Department, which includes goals and measurable objectives; and identifies planning, Coordination, administration, supportive, and Nutrition Services, as well as Evaluation activities to be undertaken.

"Assessment" means the process of determining eligibility for a Program, and may be used to measure the changes in a client due to participation in a Program.

"Coronavirus Aid, Relief, and Economic Security (CARES) Act" means the federal Act passed to meet the needs of older adults and people with disabilities as communities implement measures to prevent the spread of COVID-19. The grants will fund home-delivered meals; care services in the home; respite care and other support to families and caregivers; information about and referral to supports; and more.

"Case Management" means assistance, either in the form of access or care coordination, in circumstances where the eligible individual and/or their caregivers are experiencing diminished functioning capacities, personal conditions, or other characteristics which require the provision of services by formal service providers. Activities of Case Management shall include: assessing needs, developing care plans, authorizing services, arranging services, coordinating the provision of services among providers, follow-up, and reassessment, as required.

"Choice" means the ability for the Consumer to make a selection when faced with two or more possibilities.

"Chore Services" means those services designed to increase the safety of Older Adults living at home such as assistance with heavy housework, yard work or sidewalk maintenance. Chore Service activities are one-time, seasonal, or occasional in nature, and shall be planned with input from the Older Adult based on an evaluation of the Older Adult's strengths and needs, and the degree of physical and/or cognitive impairment of the Older Adult.

"Colorado Long-Term Care Ombudsman" (CLTCO) means an entity with expertise and experience in the fields of long-term care and advocacy, serving on a full-time basis to carry out the functions identified in the Older Americans Act.

"Comprehensive and Coordinated Service Delivery System" means a system for providing all necessary Supportive Services, including Nutrition Services, in a manner designed to:

- A. Facilitate the accessibility and use of interrelated social, supportive, and Nutrition Services provided to meet the needs of Older Adults in a Planning and Service Area;
- B. Develop and make the most effective use of Supportive Services and Nutrition Services in meeting the needs of Older Adults within the Planning and Service Area;
- C. Use resources efficiently and with a minimum of duplication; and,
- D. Encourage and assist public and private entities that have unrealized potential for meeting the service needs of Older Adults to provide such assistance on a voluntary basis.

"Congregate Meal" means the provision of a meal that meets all requirements as specified in Staff Manual Volume 10 of these rules to an eligible Older Adult at a Nutrition Site, senior center or some other congregate setting.

"Consumer" means an individual, over 60, or an individual who is eligible for services from an Area Agency on Aging under the Older Americans or Older Coloradans Acts.

"Contract" means an agreement, allowable and enforceable by law, between two or more competent parties, for a legal consideration. More specifically, in regard to these rules, it is a legal written agreement between agencies or other entities to provide, supply, or perform on the one part, and remunerate on the other part, a particular service, goods, or materials, in (a) particular time frame(s) and location(s).

"Contractor" means an organization or person that provides goods, materials, and/or services for remuneration under the stipulations of a Contract.

"Coordination" means a formal or informal arrangement through which the State Unit on Aging (SUA), Area Agency on Aging (AAA), or another entity or coalition brings together the planning and service resources of two (2) or more public and/or private agencies in Colorado for the purpose of expanding or strengthening services for Older Adults. Coordination refers to cooperative efforts, in support of common objectives, directed toward joint planning and resource development, increased quality and quantity of services, and the improvement of services to achieve a more effective and efficient comprehensive system.

"Counseling" means the provision of advice or support to assist Older Adults to address issues, concerns, or make decisions.

"Education" means a supportive service designed to assist Older Adults to better cope with their economic, health, and personal needs through services such as Consumer education, continuing education, health education, falls prevention education, medication management education, pre-retirement education, financial planning, and other education and training services which advances the objectives of the Older Americans Act.

“Elder abuse, Neglect, and Exploitation” means abuse, neglect, or exploitation, of an Older Adult.

“Evaluation” means the process of a review of the direction, compliance with regulations and policy and procedures, efficiency and effectiveness of a Program or part of a Program through use of an evaluation tool developed by the SUA or AAA including completed written documentation of the findings.

"Funding Request" means the documentation submitted annually by each AAA to the SUA, in a format prescribed that includes updated budgetary information.

"Greatest Economic Need" means the need resulting from an income level at or below the federal poverty guidelines.

“Greatest Social Need” means the need caused by non-economic factors, which include: physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status that restricts the ability of a person to perform normal daily tasks; or threatens the capacity of a person to live independently.

“Health Promotion and Evidence-Based Disease Prevention Program” means a Program that meets the current definition of evidence-based disease prevention and health promotion as defined by the Administration on Aging and has:

- A. Demonstrated through evaluation to be effective for improving the health and wellbeing or reducing disease, disability and/or injury among Older adults;
- B. Proven effective with Older Adult population, using Experiment or Quasi-Experimental Design;
- C. Research results published in a peer-review journal;
- D. Been fully translated in one or more community site(s); and
- E. Developed dissemination products that are available to the public.

"Home-Delivered Meal" means the provision of a meal that meets all requirements as described in Staff Manual Volume 10, of these rules to an eligible individual at that person's home.

"Homemaker Services" means providing assistance to persons who meet the eligibility requirements for in-home services and who are unable to perform two or more of the following instrumental activities of daily living: preparing meals, laundry, shopping for personal items, managing money, using the telephone, or doing light housework.

"In-Kind Match" means services, goods, or property donated by a Contractee or third party, which are allowable costs of the Contract, for which no cash reimbursement is required, and which are applied to a requirement for the non-federal/non-state share of Program expenses.

Internal Control" means processes designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- A. Effectiveness and efficiency of operations;
- B. Reliability of financial reporting; and,
- C. Compliance with applicable laws and regulations.

"Legal Assistance" means legal advice, counseling, and representation provided by an attorney or other person acting under the supervision of an attorney.

"Local Ombudsman" means an individual trained and designated as qualified by the state Long-Term Care Ombudsman to act as a representative of the office of the state Long-Term Care Ombudsman, Section 26-11.5-103(2) C.R.S.

"Long-Term Care Ombudsman Services" means actions taken to identify, investigate, or seek to resolve complaints made by or on behalf of an Older Adult who resides in a long-term care facility, relating to actions, inactions, or decisions of providers or public agencies that may adversely affect the health, safety, welfare, and rights of the Residents.

"Low-Income" means incomes at or below the Federal Poverty level.

"Means Test" means the use of an Older Adult's income or resources to determine eligibility pursuant to these rules.

"Medical Food" means a food formulated to be consumed or administered entirely under supervision of a physician, and intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

"Monitoring" means a review by the Contractor agency of one or more Contract activities, that may include on-site visits to the Contractor agency; and/or data collection activities of Contractors and Subcontractors, for the purpose of assuring that the Contract is being administered in accordance with the Older Americans Act Programs, and that the purposes of the Contract are being met.

"Nonprofit" as applied to any agency, institution, or organization, means an agency, institution, or organization owned and/or operated by one or more corporations or associations whose profits shall be used exclusively for the charitable, educational or scientific purpose for which it was formed.

"Nutrition Counseling" means the provision of individualized advice and guidance, by a Registered Dietitian in accordance with federal or state law and/or policy, to individuals or their caregivers, for those individuals at nutritional risk because of their health or nutritional history, dietary intake, medication use, or chronic illnesses. Nutrition Counseling addresses the options and methods for improving nutrition status.

"Nutrition Education" means a Program to promote better health by providing accurate and culturally sensitive nutrition, information and instruction to Older Adults and caregivers in a group or individual setting overseen by a dietitian or individual of comparable expertise.

"Nutrition Screening" means the process of identifying Older Adults at nutritional risk or with malnutrition.

"Nutrition Services" means services and activities intended to provide Older Adults with assistance in maintaining a well-balanced diet, including Congregate and Home-Delivered Meals, Nutrition Screening, Nutrition Counseling and Nutrition Education.

"Nutrition Site" means a location where Congregate Meals are provided, and may include senior centers, community buildings, elderly housing complexes, and public schools.

"Older Adult" means a person who is sixty (60) years of age or older.

"Older Americans Act funds" means Federal funds authorized under the Older Americans Act.

"Personal Care" means providing personal assistance, stand-by assistance, supervision or cues for persons who meet the eligibility requirements for in-home services.

"Planning and Service Area" (PSA) means a geographic area of the state, designated by the State Unit on Aging for purposes of planning, development, delivery, and overall administration of services under an Area Plan.

"Poverty Level" is based on the federal poverty guidelines.

"Program" means a particular set of services and activities authorized and funded.

"Program Income" means any income generated by a Contractee from activities, part or all of the cost of which is borne by the funding.

"Registered Dietitian" means an individual who has:

- A. Met current minimum academic requirements with successful completion of both specified didactic education and supervised-practice experiences through programs accredited by The Accreditation Council for Education in Nutrition and Dietetics of the Academy of Nutrition and Dietetics;
- B. Successfully completed the Registration Examination for Dietitians and remitted the annual registration fee; and
- C. Complied with the Professional Development Portfolio recertification requirements.

"Resident" means any Older Adult who is sixty (60) years of age or older, who is a current, prospective, or former patient or Consumer of any long-term care facility.

"Rural" means any area that is not defined as urban.

"Screening" means the process of administering a standard instrument or tool to determine an Older Adult's needs.

“State Funding for Senior Services (SFSS)” means any Colorado (State) funding, including Older Coloradans Act funding and general funds, provided for service provision for eligible Consumers in Colorado, with the exception of State matching funds for Federal program funding. The Program delivery system and eligibility criteria for these State-funded Consumer services is mirrored after the Older Americans Act.

"State Unit on Aging" (SUA) means the unit in the State, designated by the Executive Director to administer the Colorado State Plan on Aging including Older Americans Act Programs. In Colorado, this agency is the Colorado Department of Human Services, Division of Aging and Adult Services.

“Subcontract” shall be defined the same as “Contract”, except that Subcontracts are awarded by Area Agencies on Aging (AAA). An agency to which a Contract is made by the AAA to provide services pursuant to the Older Americans Act requirements is a Subcontractee.

“Supportive Services” means those services as described in these rules and as included in the State Plan on Aging.

“Therapeutic Diet” means a diet intervention ordered by a health care practitioner as part of the treatment for a disease or clinical condition manifesting an altered nutritional status, to eliminate, decrease, or increase certain substances in the diet (e.g., sodium, potassium). Therapeutic Diets provide the corresponding treatment that addresses a particular disease or clinical condition, which is manifesting an altered nutritional status by providing the specific nutritional requirements to remedy the alteration.

“Transportation” (one-way trip) means going from one location to another in a vehicle. It does not include any other activity.

"Urban Area" means a central place and its adjacent densely settled territories with a combined minimum population of 50,000 or an incorporated place or a census designated place with 20,000 or more inhabitants.

EXHIBIT B

MISCELLANEOUS PROVISIONS

- A. If the Contractor fails to comply with State policies or has materially failed to comply with the terms of this Contract, or if the Contractor fails to carry out required corrective action by the specified dates the State may suspend, terminate a Contract, in whole or in part, or withhold or recover funds in whole or in part from the Area Agency on Aging. The process for terminating Contracts and withdrawal of designation of an Area Agency on Aging shall be done in accordance with rules and regulations governing this process, as outlined in Staff Manual Volume 10.
- B. The State shall document any non-compliance and shall notify the Contractor of the required corrective action and the dates when such action is due.
- C. The State shall notify the Contractor in writing ten (10) working days prior to the effective date of the suspension or termination or withholding or recovering of funds of the reason(s) for the suspension or termination or withholding or recovering of funds. Such notification shall explain the right of the Contractor to appeal such decision as outlined in the appeals and fair hearing section of the Staff Manual Volume 10.
- D. If in the State's judgment an emergency situation exists, the State may suspend or terminate the Contract or withhold or recover funds effective immediately.
- E. Suspensions shall remain in effect until the Contractor has taken corrective action satisfactory to the State, or has given evidence satisfactory to the State that such corrective action will be taken.
- F. New obligations against the Contract in question incurred by the Contractor during the suspension period shall not be allowed unless the State expressly authorizes the new obligation in the notice of suspension or an amendment to the notice of suspension.
- G. If a Contract or part thereof remains in suspension until the end of the Contract period, such Contract or part thereof shall be automatically terminated.
- H. If a Contract is suspended or terminated, the State or its agent may administer the Area Plan during the suspension period or until a new Contractor is designated and receives funding from the State.
- I. Termination on other grounds shall occur if any of the following conditions exist:
 - 1. The State and Contractor mutually agree upon the terms;
 - 2. The State notifies the Contractor in writing of the termination, effective date, and in case of partial termination, the portion of the funding to be terminated; and/or
 - 3. The Contractor fails to carryout required corrective action by the dates specified by the State.

- J. If, in the case of a partial termination, the Contractor determines that the remaining portion of the Contract will not accomplish the purposes for which the Contract was awarded, the Contractor may terminate the Contract in its entirety.
- K. When a Contract is terminated, the Contractor shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The State shall allow full credit to the Contractor for the non-cancelable obligations properly incurred by the Contractor prior to termination.
- L. The State may refuse to Contract with and may take legal action against any Contractor that breaches its Contract with the State or fails to use or expend Federal and State funds in accordance with applicable laws, regulations, policies and the State directives.
- M. The State shall notify the Contractor in writing of the required corrective action(s) and due date(s). The Contractor or Sub-contractor shall not incur new obligations during periods of suspension unless authorized. If Contractor or Sub-contractor remains in suspension until the end of the Contract period, the Contract will automatically be terminated. The Contractor or Sub-contractor shall be notified of rights to a hearing, appeal or other administrative actions.
- N. Federal law and regulations governing the privacy of certain health information requires a "Business Associate Contract" between the State and the Contractor. 45 C.F.R. Section 164.504(e). Attached and incorporated herein by reference and agreed to by the parties is a HIPAA Business Associate Addendum for HIPAA compliance. Terms of the Addendum shall be considered binding upon execution of this Contract and shall remain in effect during the term of the Contract including any extensions.

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“Agreement”) between the State and Contractor is agreed to in connection with, and as an exhibit to, the Contract. For purposes of this Agreement, the State is referred to as “Covered Entity” and the Contractor is referred to as “Business Associate”. Unless the context clearly requires a distinction between the Contract and this Agreement, all references to “Contract” shall include this Agreement.

1. PURPOSE

Covered Entity wishes to disclose information to Business Associate, which may include Protected Health Information (“PHI”). The Parties intend to protect the privacy and security of the disclosed PHI in compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. No. 104-191 (1996) as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) enacted under the American Recovery and Reinvestment Act of 2009 (“ARRA”) Pub. L. No. 111-5 (2009), implementing regulations promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Parts 160, 162 and 164 (the “HIPAA Rules”) and other applicable laws, as amended. Prior to the disclosure of PHI, Covered Entity is required to enter into an agreement with Business Associate containing specific requirements as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and all other applicable laws and regulations, all as may be amended.

2. DEFINITIONS

The following terms used in this Agreement shall have the same meanings as in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

The following terms used in this Agreement shall have the meanings set forth below:

- a. Business Associate. “Business Associate” shall have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and shall refer to Contractor.
- b. Covered Entity. “Covered Entity” shall have the same meaning as the term “covered entity” at 45 C.F.R. 160.103, and shall refer to the State.
- c. Information Technology and Information Security. “Information Technology” and “Information Security” shall have the same meanings as the terms “information technology” and “information security”, respectively, in §24-37.5-102, C.R.S.

Capitalized terms used herein and not otherwise defined herein or in the HIPAA Rules shall have the meanings ascribed to them in the Contract.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Permitted Uses and Disclosures.
 - i. Business Associate shall use and disclose PHI only to accomplish Business Associate’s obligations under the Contract.

- i. To the extent Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.
 - ii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:
 - A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;
 - B. the person notifies Business Associate of any Breach involving PHI of which it is aware.
 - iii. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.
- b. Minimum Necessary. Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).
- c. Impermissible Uses and Disclosures.
 - i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.
 - ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.
- d. Business Associate's Subcontractors.
 - i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.
 - ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.
 - iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.
- e. Access to System. If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such

system including, but not limited to, any policies promulgated by the Office of Information Technology and available at <http://oit.state.co.us/about/policies>.

- f. Access to PHI. Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.
- g. Amendment of PHI.
 - i. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.
 - ii. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.
- h. Accounting Rights. Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.
- i. Restrictions and Confidential Communications.
 - i. Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:
 - A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or
 - B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.
 - ii. Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.
 - iii. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.
- j. Governmental Access to Records. Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.
- k. Audit, Inspection and Enforcement.
 - i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.

- ii. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.

l. Appropriate Safeguards.

- i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.
- ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.
- iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.
- iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.

m. Safeguard During Transmission.

- i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.
- ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.

n. Reporting of Improper Use or Disclosure and Notification of Breach.

- i. Business Associate shall, as soon as reasonably possible, but immediately after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health Information as such notice is required by 45 C.F.R. 164.410 or a breach for which notice is required under §24-73-103, C.R.S.
- ii. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.
- iii. Business Associate shall, as soon as reasonably possible, but immediately after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.

- iv. Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.
- o. Business Associate's Insurance and Notification Costs.
 - i. Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:
 - A. loss of PHI data;
 - B. Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and
 - C. claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.
 - ii. All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
 - iii. Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.
 - iv. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.
- p. Subcontractors and Breaches.
 - i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.
 - ii. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.
- q. Data Ownership.
 - i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
 - ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.

- r. Retention of PHI. Except upon termination of this Agreement as provided in Section 5, below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 3.h, above, for a period of six years.

4. OBLIGATIONS OF COVERED ENTITY

- a. Safeguards During Transmission. Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.
- b. Notice of Changes.
 - i. Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.
 - ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.

5. TERMINATION

- a. Breach.
 - i. In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both.
 - ii. Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.
- b. Effect of Termination.
 - i. Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.
 - ii. If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
 - iii. If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

6. INJUNCTIVE RELIEF

Covered Entity and Business Associate agree that irreparable damage would occur in the event Business Associate or any of its Subcontractors or agents use or disclosure of PHI in violation of this Agreement, the HIPAA Rules or any applicable law. Covered Entity and Business Associate further agree that money damages would not provide an adequate remedy for such Breach. Accordingly, Covered Entity and Business Associate agree that Covered Entity shall be entitled to injunctive relief, specific performance, and other equitable relief to prevent or restrain any Breach or threatened Breach of and to enforce specifically the terms and provisions of this Agreement.

7. LIMITATION OF LIABILITY

Any provision in the Contract limiting Contractor's liability shall not apply to Business Associate's liability under this Agreement, which shall not be limited.

8. DISCLAIMER

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.

9. CERTIFICATION

Covered Entity has a legal obligation under HIPAA Rules to certify as to Business Associate's Information Security practices. Covered Entity or its authorized agent or contractor shall have the right to examine Business Associate's facilities, systems, procedures, and records, at Covered Entity's expense, if Covered Entity determines that examination is necessary to certify that Business Associate's Information Security safeguards comply with the HIPAA Rules or this Agreement.

10. AMENDMENT

- a. Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.
 - i. In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.
 - ii. Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.

- iii. Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.
- iv. Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:
 - A. Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or
 - B. Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.
- b. Amendment of Appendix. The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.

11. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Covered Entity shall provide written notice to Business Associate if litigation or administrative proceeding is commenced against Covered Entity, its directors, officers, or employees, based on a claimed violation by Business Associate of HIPAA, the HIPAA Rules or other laws relating to security and privacy or PHI. Upon receipt of such notice and to the extent requested by Covered Entity, Business Associate shall, and shall cause its employees, Subcontractors, or agents assisting Business Associate in the performance of its obligations under the Contract to, assist Covered Entity in the defense of such litigation or proceedings. Business Associate shall, and shall cause its employees, Subcontractor's and agents to, provide assistance, to Covered Entity, which may include testifying as a witness at such proceedings. Business Associate or any of its employees, Subcontractors or agents shall not be required to provide such assistance if Business Associate is a named adverse party.

12. INTERPRETATION AND ORDER OF PRECEDENCE

Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. In the event of an inconsistency between the Contract and this Agreement, this Agreement shall control. This Agreement supersedes and replaces any previous, separately executed HIPAA business associate agreement between the Parties.

13. SURVIVAL

Provisions of this Agreement requiring continued performance, compliance, or effect after termination shall survive termination of this contract or this agreement and shall be enforceable by Covered Entity.

APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT

This Appendix (“Appendix”) to the HIPAA Business Associate Agreement (“Agreement”) is an appendix to the Contract and the Agreement. For the purposes of this Appendix, defined terms shall have the meanings ascribed to them in the Agreement and the Contract.

Unless the context clearly requires a distinction between the Contract, the Agreement, and this Appendix, all references to “Contract” or “Agreement” shall include this Appendix.

1. Additional Permitted Uses. In addition to those purposes set forth in Section 2(a) of the Addendum, Associate may use Protected Information as follows: _____

_____ None except as otherwise directed in writing by the State _____

2. Additional Permitted Disclosures. In addition to those purposes set forth in Section 2(b) of the Addendum, Associate may disclose Protected Information as follows:

_____ None except as otherwise directed in writing by the State _____

3. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under this Contract:

_____ None except as otherwise directed in writing by the State _____

4. Receipt. Associate’s receipt of Protected Information pursuant to this Contract shall be deemed to occur as follows, and Associate’s obligations under the Addendum shall commence with respect to such PHI upon such receipt:

_____ None except as otherwise directed in writing by the State _____

5. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information: _____

_____ As may be directed in writing by the State. _____

6. Additional Terms. *[This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.]*

_____ None _____

EXHIBIT D

BUDGET FUNDING REQUEST

COLORADO CARES ACT TITLE III & TITLE VII

SAN JUAN BASIN AREA AGENCY ON AGING, INC.

REGION 9

APRIL 24, 2020 TO SEPTEMBER 30, 2021

BUDGET FUNDING SFY 20 & SFY 21

	COLORADO CARES ACT FUNDS
COLORADO CARES ACT TITLE III - PART B	\$94,452.30
COLORADO CARES ACT TITLE III - NUTRITION	\$235,478.16
COLORADO CARES ACT TITLE III - PART E	\$45,523.22
COLORADO CARES ACT TITLE VII - OMBUDSMAN	\$8,841.82
GRAND TOTAL	\$384,295.50

EXHIBIT E**Supplemental Provisions for Federal Awards**

For the purposes of this Exhibit only, Contractor is also identified as "Subrecipient." This Contract has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions for Federal Awards, the Special Provisions, the Contract or any attachments or exhibits incorporated into and made a part of the Contract, the Supplemental Provisions for Federal Awards shall control. In the event of a conflict between the Supplemental Provisions for Federal Awards and the FFATA Supplemental Provisions (if any), the FFATA Supplemental Provisions shall control.

1) Federal Award Identification

- i. Subrecipient: **Region 9, San Juan Basin Area Agency on Aging, Inc.;**
- ii. Subrecipient DUNS number: **360639777;**
- iii. The Federal Award Identification Number (FAIN) is **2001COSSC3-00; 2001COHDC3-00; 2001COFCC3-00; and 2001COHDC3-00;**
- iv. The Federal award date is **April 1, 2020;**
- v. The subaward period of performance start date is April 1, 2020 and end date is September 30, 2021;
- vi. Federal Funds available 04/24/20 to 09/30/21

COLORADO CARES ACT REGION 9					
	PROGRAM TITLE	GRANT #	CFDA #	FEDERAL GRANT AWARD 04/24/20 TO 09/30/21	FEDERAL FUNDS AVAILABLE REGION 9
4-24-20 TO 9-30-21	COLORADO CARES ACT TITLE III PART B	2001COSSC3-00	93.044	\$3,035,209.00	\$94,452.30
4-24-20 TO 9-30-21	COLORADO CARES ACT TITLE III NUTRITION SERVICES	2001COHDC3-00	93.045	\$7,284,502.00	\$235,478.16
4-24-20 TO 9-30-21	COLORADO CARES ACT TITLE III PART E	2001COFCC3-00	93.052	\$1,408,258.00	\$45,523.22
4-24-20 TO 9-30-21	COLORADO CARES ACT TITLE VII OMBUDSMAN	2001COHDC3-00	93.045	\$303,521.00	\$8,841.82
GRAND TOTAL COLORADO CARES ACT TITLE III AND TITLE VII				\$12,031,490.00	\$384,295.50

- vii. Federal award project description: Older Americans Act Title III – Grants for State and Community Programs on Aging and Older Americans Act Title VII – Allotments for Vulnerable Elder Rights Protection Activities;
- viii. The name of the Federal awarding agency is Department of Health and Human Services, Administration for Community Living; the name of the pass-through entity is the State of Colorado, Department of Human Services (CDHS); and the contact information for the awarding official is Instructions regarding payments can be obtained at 1-877-614-5533; Yi-Hsin Yan, Formula/Mandatory Grants Specialist, Office of Grants Management on behalf of Tanielle Chandler, Director, Office of Grants Management, U.S. Administration for Community Living, DHHS, 330 C Street SW, Washington, DC 20201
- ix. The Catalog of Federal Domestic Assistance (CFDA) number is:

SFY 2020 COLORADO CARES ACT				
	PROGRAM TITLE	GRANT #	CFDA #	FEDERAL GRANT AWARD 04/24/20 TO 09/30/21
4-24-20 TO 9-30-21	COLORADO CARES ACT TITLE III PART B	2001COSSC3-00	93.044	\$3,035,209.00
4-24-20 TO 9-30-21	COLORADO CARES ACT TITLE III NUTRITION SERVICES	2001COHDC3-00	93.045	\$7,284,502.00
4-24-20 TO 9-30-21	COLORADO CARES ACT TITLE III PART E	2001COFCC3-00	93.052	\$1,408,258.00
COLORADO CARES ACT TITLE III TOTAL				\$11,727,969.00
4-24-20 TO 9-30-21	COLORADO CARES ACT TITLE VII OMBUDSMAN	2001COHDC3-00	93.045	\$303,521.00
COLORADO CARES ACT TITLE VII TOTAL				\$303,521.00
GRAND TOTAL COLORADO CARES ACT TITLE III AND TITLE VII				\$12,031,490.00

- x. This award is not for research & development;
- xi. The indirect cost rate for the Federal award (including if the de minimis rate is charged per 2 CFR §200.414 Indirect (F&A) costs) is pre-determined based upon the State of Colorado and CDHS cost allocation plan.
- 1) All requirements imposed by CDHS on Subrecipient so that the Federal award is used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award, are stated in Exhibit A, Statement of Work.
 - 2) Any additional requirements that CDHS imposes on Subrecipient in order for CDHS to meet its own responsibility to the Federal awarding agency, including identification of any required financial and performance reports, are stated in Exhibit A, Statement of Work.
 - 3) Subrecipient's approved indirect cost rate is **no (0%) indirect rate**.
 - 4) Subrecipient must permit CDHS and auditors to have access to Subrecipient's records and financial statements as necessary for CDHS to meet the requirements of 2 CFR §200.331 Requirements for pass-through entities, §§ 200.300 Statutory and National Policy Requirements through §200.309 Period of performance, and Subpart F—Audit Requirements of this Part.
 - 5) The appropriate terms and conditions concerning closeout of the subaward are listed in Section 18 of this Exhibit and Exhibit A, Statement of Work.
 - 6) Performance and Final Status. Subrecipient shall submit all financial, performance, and other reports to CDHS no later than 45 calendar days after the period of performance end date or sooner termination of this Contract containing an evaluation and review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

1) Matching Funds

If a box below is checked, the accompanying provision applies.

- i. Subrecipient is not required to provide matching funds.
 - ii. Subrecipient shall provide matching funds as stated in Exhibit A, Statement of Work. Subrecipient shall have raised the full amount of matching funds prior to the Effective Date and shall report to CDHS regarding the status of such funds upon request. Subrecipient's obligation to pay all or any part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Contract by the authorized representatives of the Subrecipient and paid into the Subrecipient's treasury or bank account. Subrecipient represents to CDHS that the amount designated as matching funds has been legally appropriated for the purposes of this Contract by its authorized representatives and paid into its treasury or bank account. Subrecipient does not by this Contract irrevocably pledge present cash reserves for payments in future fiscal years, and this Contract is not intended to create a multiple-fiscal year debt of the Subrecipient. Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Subrecipient's laws or policies.
- 2) Record Retention Period. The record retention period previously stated in this Contract is replaced with the record retention period prescribed in 2 CFR §200.333.
- 3) Single Audit Requirements. If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient's fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- i. Election. Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of CDHS. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from CDHS and CDHS approves in advance a program-specific audit.
 - ii. Exemption. If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
 - iii. Subrecipient Compliance Responsibility. Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by 2 CFR Part F-Audit Requirements

1) Contract Provisions. Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Contract:

- i. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

"During the performance of this contract, the contractor agrees as follows:

- a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- a) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”
- ii. 4.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- iii. Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- iv. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- i. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
 - ii. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C.1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 2) Compliance. Subrecipient shall comply with all applicable provisions of The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), including but not limited to these Supplemental Provisions for Federal Awards. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. CDHS may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3) Procurement Procedures. Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 4) Certifications. Unless prohibited by Federal statutes or regulations, CDHS may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis (2 CFR §200.208). Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to CDHS at the end of the Contract that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(b)(3). If the required level of activity or effort was not carried out, the amount of the Contract must be adjusted.
- 5) Event of Default. Failure to comply with the Uniform Guidance or these Supplemental Provisions for Federal Awards shall constitute an event of default under the Contract pursuant to 2 CFR §200.339 and CDHS may terminate the Contract in accordance with the termination provisions in the Contract.
- 6) Close Out. Subrecipient shall close out this Contract within 90 days after the End Date. Contract close out entails submission to CDHS by Subrecipient of all documentation defined as a deliverable in this Contract, and Subrecipient's final reimbursement request. CDHS shall withhold 5% of the allowable costs until all final project documentation has been submitted and accepted by State as substantially complete. If the project has not been closed by the Federal awarding agency within 1 year and 90 days after the End Date due to Subrecipient's failure to submit required documentation that CDHS has requested from Subrecipient, then Subrecipient may be prohibited from applying for new Federal awards through the State until such documentation has been submitted and accepted.
- 7) Erroneous Payments. The closeout of a Federal award does not affect the right of the Federal awarding agency or CDHS to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the record retention period.

EXHIBIT END