

**SECOND AMENDMENT TO AGREEMENT**

Tulare County Agreement Number 24089 is amended on \_\_\_\_\_, between the COUNTY OF TULARE, hereinafter referred to as "COUNTY" and FRESNO COUNTY ECONOMIC OPPORTUNITIES COMMISSION, hereinafter referred to as "CONTRACTOR" with reference to the following:

- A. The COUNTY and CONTRACTOR entered Agreement No. 24089 on June 23, 2009 for the congregate and homebound meal provision and delivery.
- B. The COUNTY and CONTRACTOR amended Agreement No. 24089 on March 2, 2010 to modify language contained in paragraph 2 entitled Payment for Services and to update Exhibit "A."
- C. The COUNTY and CONTRACTOR agree to amend Agreement No. 24089 to extend the term of the agreement to June 30, 2011, modify language contained in Paragraph 2, and update Exhibit "D."
- D. This amendment shall become effective July 1, 2010.

**ACCORDINGLY, IT IS AGREED:**

- I. Effective July 1, 2010 Paragraph 1 entitled Term in the original Agreement is hereby revised to identify the new termination date of June 30, 2011.
- II. Effective July 1, 2010 Paragraph 2 entitled Payment for Services is amended to read as follows:  
**PAYMENT FOR SERVICES:** It is mutually agreed that the COUNTY shall pay CONTRACTOR no more than a maximum of THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$300,000) for services rendered under this agreement. Expenses for other services or materials not herein listed are neither authorized nor reimbursable. CONTRACTOR shall be paid according to the fee schedule set forth in Exhibit "A", which Exhibit is made part of this Agreement by reference. CONTRACTOR shall submit a detailed invoice monthly to the COUNTY for services rendered.
- III. Effective July 1, 2010 Exhibit "D," entitled Special Terms and Conditions is hereby substituted in its entirety with the attached Exhibit "D," which Exhibit is made a part of this Agreement by reference.
- IV. Except as provided above, all other terms and conditions of Agreement No. 24089 shall remain in full force and effect.

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**THE PARTIES, having read and considered the above provisions, indicate their**



agreement by their authorized signatures below.

**COUNTY OF TULARE**

By \_\_\_\_\_  
Chairman, Board of Supervisors

**ATTEST: JEAN M. ROUSSEAU**  
County Administrative Officer/Clerk of the Board  
Of Supervisors of the County Of Tulare

By \_\_\_\_\_  
Deputy Clerk

**Fresno County Economic Opportunities  
Commission**

Date: 6/11/10

By [Signature]  
Title Board Chairman

Date: 6/11/10

By [Signature]  
Title Board Secretary

Corporations Code section 313 requires that contracts with a corporation shall be signed by the (1) chairman of the Board, the president or any vice-president and (2) the secretary, any assistant, the chief financial officer, or any assistant treasurer, unless the contract is also accompanied by a certified copy of the Board of Directors resolution authorizing the execution of the contract.

Approved as to Form  
County Counsel

By [Signature]  
Deputy 2010861

Dated 6/14/10



## **Special Terms and Conditions – Exhibit D**

### **ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS**

- A. The term “Agreement” or “Contract” shall mean the standard COUNTY (K/T AAA) agreement, and exhibits A, B, C, D, and E, amendments and any other documents incorporated by reference, unless otherwise provided for in this Article.
- B. In the event of any inconsistency between the articles, attachments, or provisions which constitute this contract, the following order of precedence shall apply:
  - 1. Standard COUNTY (K/T AAA) Agreement and any amendments thereto;
  - 2. Scope of Work, Exhibit A;
  - 3. Special terms and conditions, Exhibit D;
  - 4. Any other documents incorporated herein by reference.
- C. “Contractor” means the legal entity that receives funds from the Area Agency on Aging under this Agreement.
- D. “Reimbursable item” also means “allowable cost” and “compensable item.”
- E. “CFR” means Code of Federal Regulations. “CCR” means California Code of Regulations. “GC” means Government Code. “W & I” means Welfare and Institutions Code. “USC” means United States Code. “PCC” means the Public Contract Code.

## ARTICLE II. ASSURANCES

### A. Law, Policy and Procedures, Licenses, and Certificates

The Contractor agrees to administer this Agreement in accordance with this Agreement, and with all applicable local, State, and Federal laws and regulations including, but not limited to, discrimination, wages and hours of employment, occupational safety, and to fire, safety, health, and sanitation regulations, directives, guidelines, and/or manuals related to this Agreement and resolve all issues using good administrative practices and sound judgment. The Contractor shall keep in effect all licenses, permits, notices, and certificates that are required by law.

### B. Nondiscrimination

1. The Contractor shall comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VII of the Civil Rights Act of 1964 (42 USC 2000e et.seq), as amended by the Equal Opportunity Act of March 24, 1972 (Public Law 92-261), (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C.§794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3) as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VII of the Civil Rights Act of 1968 (42 U.S.C. §§43601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement.

ARTICLE II. ASSURANCES (Continued)

2. Equal Access to Federally-Funded Benefits, Programs and Activities (Title VI of the Civil Rights Act of 1964).

Contractor shall ensure compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d; 45 C.F.R. Part 80), which prohibits recipients of Federal financial assistance from discriminating against persons of race, color, religion, or national origin.

3. Equal Access to State-Funded Benefits, Programs and Activities

Contractor shall, unless exempted, ensure compliance with the requirements of Government Code sections 11135-11139.5, and Section 98000 et seq. of Title 22 of the California Code of Regulations, which prohibit recipients of State financial assistance from discriminating against persons based on race, national origin, ethnic group identification, religion, age, sex, color, or disability. (22 CCR 98323).(Chapter 182, Stats. 2006)

4. Contractor assures the COUNTY (K/T AAA) that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. Sections 12101 et seq.).

C. Standards of Work

The Contractor agrees that the performance of work and services pursuant to the requirements of this Agreement shall conform to accepted professional standards.

D. Conflict of Interest

1. The Contractor shall prevent employees, consultants, or members of governing bodies from using their positions for purposes including, but not limited to, the selection of subcontractors, that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as family, business, or other ties. In the event that the COUNTY (K/T AAA) determines that a conflict of interest exists, funds may be disallowed by the COUNTY (K/T AAA) and such conflict may constitute grounds for termination of the Agreement.

ARTICLE II. ASSURANCES (Continued)

2. This provision shall not be construed to prohibit employment of persons with whom the Contractor's officers, agents, or employees have family, business, or other ties, so long as the employment of such persons does not result in a conflict of interest (real or apparent) or increased costs over those associated with the employment of any other equally qualified applicant, and such persons have successfully competed for employment with the other applicants on a merit basis.

E. Covenant Against Contingent Fees

1. The Contractor warrants that no person or selling agency has been employed or retained to solicit this Agreement. There has been no agreement to make a commission in payments in order to obtain this Agreement.
2. For breach or violation of this warranty, the COUNTY (K/T AAA) shall have the right to terminate this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingency fee.

F. Payroll Taxes and Deductions

The Contractor shall promptly forward payroll taxes, insurances, and contributions, including State Disability Insurance, Unemployment Insurance, Old Age Survivors Disability Insurance, and Federal and State income taxes withheld, to designated governmental agencies.

G. Contracts in Excess of \$100,000

If all funding provided herein exceeds \$100,000, the Contractor shall comply with all applicable orders or requirements issued under the following laws:

1. Clean Air Act, as amended (42 USC 1857).
2. Clean Water Act, as amended (33 USC 1368).
3. Federal Water Pollution Control Act, as amended (33 USC 1251, et seq.).
4. Environmental Protection Agency Regulations (40 CFR, Part 15 and

Executive Order 11738).

5. Public Contract Code Section 10295.3.

H. Disbarment, Suspension, and Other Responsibility Matters

1. The Contractor certifies to the best of its knowledge and belief, that it:
  - a. Is not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Has not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - d. Has not within a three-year period preceding this Agreement had one or more public transactions (federal, State, or local) terminated for cause or default.
  - e. Contractor shall report immediately to the COUNTY (K/T AAA) in writing any incidents or alleged fraud and/or abuse by the Contractor. Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by the COUNTY (K/T AAA).

I. Agreement Authorization

If a public entity, the Contractor shall submit to the COUNTY (K/T AAA) a copy of the resolution, order, or motion referencing this Agreement number authorizing execution of this Agreement. If a private nonprofit entity, the Contractor shall submit to the COUNTY (K/T AAA) an authorization by the board of directors to

execute this Agreement, referencing this Agreement number.

J. Contractor's Staff

1. The Contractor shall maintain adequate staff to meet the contractor's obligations under this Agreement.
2. This staff shall be available to the COUNTY (K/T AAA) for training and meetings which the COUNTY (K/T AAA) may find necessary from time to time.

K. Lobbying Certification

The Contractor, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connections with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connections with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit a Standard Form-LL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**ARTICLE III. AGREEMENT**



A copy of this Agreement is on file and available for inspection at the Kings/Tulare Area Agency on Aging, 5957 S. Mooney Blvd, Visalia, California 93277.

#### **ARTICLE IV. COMMENCEMENT OF WORK**

Should the Contractor begin work in advance of receiving notice that this Agreement is approved, that work may be considered as having been performed at risk as a mere volunteer and may not be reimbursed or compensated.

#### **ARTICLE V. RECORDS**

- A. The Contractor shall maintain complete records (which shall include, but not be limited to, accounting records, contracts, agreements, reconciliation of the Final Invoice to the audited financial Statements, letters of agreement, insurance documentation in accordance with this Article, Memoranda and/or Letters of Understanding, patient or client records, and electronic files) of its activities and expenditures hereunder in a form satisfactory to the COUNTY (K/T AAA) and shall make all records pertaining to this Agreement available for inspection and audit by the COUNTY (K/T AAA) or its duly authorized agents, at any time during normal business hours. All such records must be maintained and made available by the Contractor: (a) until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by the Audit Branch of the Department of Aging, (b) for such longer period, if any, as is required by applicable statute, by any other clause of this Agreement, or by Sections B, and C of this Article, and (c) for such longer period as the Department deems necessary.
- B. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for the same periods as specified in Section A above. The Contractor shall ensure that any resource directories and all client records remain the property of the Department upon termination of this Agreement, and are returned to the Department or transferred to another Contractor as instructed by the Department.
- C. In the event of any litigation, claim, negotiation, audit exception, or other action involving the records, all records relative to such action shall be maintained and made available until every action has been cleared to the satisfaction of the State and so Stated in writing to the Contractor.
- D. Adequate source documentation of each transaction shall be maintained relative to the allowability of expenditures reimbursed by the State under this Agreement. If

the allowability of expenditures cannot be determined because records or documentation of the Contractor are nonexistent or inadequate according to

Generally Accepted Accounting Principles and Procedures, the expenditures will be questioned in the audit and may be disallowed by the State during the audit resolution process.

- E. After the authorized period has expired, confidential records shall be destroyed by shredding and disposed of in a manner that will maintain confidentiality.

#### **ARTICLE VII. ACCESS**

The Contractor shall provide access to the federal or State agency, Bureau of State Audits, the Controller General of the United States, or any of their duly authorized federal or State representatives to any books, documents, papers, records, and electronic files of the Contractor which are directly pertinent to this specific Agreement for the purpose of audit, examination, excerpts, and transcriptions.

#### **ARTICLE VIII. MONITORING, ASSESSMENT, AND EVALUATION**

- A. Authorized COUNTY (K/T AAA) representatives shall have the right to monitor, assess, and evaluate the Contractor's performance pursuant to this Agreement. Said monitoring, assessment, and evaluation may include, but is not limited to, audits, inspections of project premises, inspection of food preparation sites, and interviews of project staff and participants.
- B. The Contractor shall cooperate with the COUNTY (K/T AAA) in the monitoring, assessment, and evaluation processes, which include making any administrative program and fiscal staff available during any scheduled process.

#### **ARTICLE IX. AUDITS**

- A. Contractors that expend \$500,000 or more in Federal Awards shall arrange for an audit performed as required by the Single Audit Act of 1984, Public Law 98-502, Single Audit Act Amendments of 1966, Public Law 104-156, and Office of Management and Budget (OMB) Circular A-133 and a copy will be submitted to:

Kings/Tulare Area Agency on Aging  
5957 S. Mooney Blvd  
Visalia, California 93277

The copy shall be submitted within the earlier of 30 days after receipt of the auditor's report or nine months after the end of the fiscal year period, unless a

longer period is agreed to in advance by the cognizant or oversight agency.

Contractor will ensure that State-Funded expenditures shall be displayed discretely along with the related federal expenditures in the single audit report's "Schedule of Expenditures of Federal Awards" under the appropriate Catalog of Federal Domestic Assistance (CFDA) number as referenced in Section B of this Article.

For State contracts that do not have CFDA numbers, the Contractor shall ensure that the State-funded expenditures are discretely identified in the SEFA by the appropriate program name, identifying grant/contract number, and as passed-through the California Department of Aging.

B. This section B applies only to Title III/VII

The following closely related programs identified by CFDA number are to be considered as an "Other Cluster" for purposes of determining major programs or whether a program specific audit may be elected. The Contractor shall communicate this information to the independent auditor conducting the organization's single audit.

- 10.576 Senior Farmers Market Program
- 93.041 Special Programs for the Aging-Title VII, Chapter 3- Programs for Prevention of Elder Abuse, Neglect, and Exploitation (Title VII-B)
- 93.042 Special Programs for the Aging-Title VII, Chapter 2- Long Term Care Ombudsman services for Older Individuals (Title VII-A)
- 93.043 Special Programs for the Aging-Title III, Part D-Disease Prevention and Health Promotion Services (Title III-D)
- 93.044 Special Programs for the Aging- Title III, Part B- Grants for Supportive Services and Senior Centers (Title III-B)
- 93.045 Special Programs for the Aging-Title III, Part C-Nutrition Services (Title III-C)
- 93.052 National Family Caregiver Support-Title III, Part E
- 93.053 National Services Incentive Program (NSIP)

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other Clusters" are as defined by the OMB in the Compliance Supplement or as designated by a State for federal awards the State provides to its subrecipients that

meet the definition of a cluster of programs. When designating an "other cluster," a State shall identify the federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with §.400 (d) (1) and §400 (d) (2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in §.520 and, with the exception of R&D as described in §.200(c), whether a program-specific audit may be elected. (Federal Office of Management and Budget, (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations).

C. The COUNTY (K/T AAA) shall ensure that all Contractors expending \$500,000 or more in total Federal funds shall meet the audit requirements of OMB Circular A-133.

1. Ensure that appropriate corrective action has been taken to correct instances of noncompliance with Federal laws and regulations. Corrective action shall be taken within six months after the COUNTY (K/T AAA) receives the Contractor's audit report;
2. Consider whether Contractor audits necessitate adjustment of the COUNTY (K/T AAA's) own records; and
3. Require each Contractor to permit independent auditors to have access to the records and Financial Statements as necessary for the COUNTY (K/T AAA) to comply with OMB Circular A-133.
4. Contractors expending less than \$500,000 in total Federal funds are exempt from Federal audit requirements but records must be available for review.

D. Ensuring that the requirements of the OMB Circular A-133 are met is generally interpreted to mean that the K/T AAA) will ensure that the Contractor's audit was:

1. Performed timely – not less frequently than annually and a report submitted timely. The audit is required to be completed not later than 9 months after the end of the subcontractor's fiscal year. The audit report is due to the COUNTY (K/T AAA) not later than 30 days after the completion of the audit.
2. Properly procured – use OMB Circular A-110 procurement standards; and provide maximum opportunities to small and minority audit firms.

3. Performed in accordance with Government Auditing Standards – shall be performed by an independent audit and be organization-wide.
  4. All inclusive – includes an audit of the financial Statements; an assessment of internal controls, including tests of transactions; and a determination of compliance with laws and regulations of all major Federal programs and selected non-major program transactions.
  5. Performed in accordance with provisions applicable to this program as identified in OMB Circular A-133 Compliance Supplement.
- E. The Contractor shall include in its contracts with the auditors selected by the Contractor that the auditors will comply with all applicable audit requirements.
- F. The COUNTY (K/T AAA) shall have the responsibility of resolving audits of its Contractors. The COUNTY (K/T AAA) shall prepare a summary worksheet of results from the audit resolutions performed for all Contractors. The summary worksheet shall include, but not be limited to, contract amount; amount resolved; variances; whether an audit was relied upon or the COUNTY (K/T AAA) performed an independent expense verification review of the Contractor in making the determination; whether audit findings were issued, and if applicable date of management letter.
- G. If the Contractor is not required to obtain an audit in accordance with Section C of this Article, the COUNTY (K/T AAA) must determine whether the Contractor expended the funds provided under this Agreement in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the Contractor or through other means (e.g., monitoring/expense verification reviews).
- The summary worksheet shall include, but not be limited to, contract amount; amount resolved; variances; whether an audit was relied upon or the COUNTY (K/T AAA) performed an independent expense verification review of the Contractor in making the determination; whether audit findings were issued, and if applicable date of management letter.
- H. The California Department of Aging shall have access to all audit reports of the COUNTY (K/T AAA) and Contractor and has the option to perform audits and/or additional work, as needed.
- I. Unless prohibited by law, the cost of audits made in accordance with provisions of the Single Audit Act Amendments of 1996, are allowable charges to Federal Awards. The costs may be considered a direct cost, or an allocated indirect cost, as determined in accordance with provisions of applicable OMB cost principle

circulars.

- J. Contractor may not charge to Federal Awards the cost of any audit under the Single Audit Act Amendments of 1996 not conducted in accordance with the Act. Contractor may not charge to Federal Awards the cost of auditing a non-Federal entity which has Federal awards of less than \$500,000 per year, and is thereby exempted under OMB Circular A-133, Subsection .200(d).
- K. The Contractor shall cooperate with and participate in any further audits, which may be required by the State or COUNTY (K/T AAA).

#### **ARTICLE X. INSURANCE**

- A. Prior to commencement of any work under this Agreement, the Contractor shall provide for the term of this Agreement, the following insurance:
  - 1. General liability of not less than \$1,000,000 per occurrence for bodily injury and property damage combined. Higher limits may be required by the COUNTY (K/T AAA) in cases of higher than usual risks.
  - 2. Professional liability of not less than \$1,000,000 as it appropriately relates to the services rendered.
  - 3. Worker's Compensation Insurance coverage
- B. The insurance will be obtained from an insurance company acceptable to the Department of General Services, Office of Risk and Insurance Management, or be provided through partial or total self-insurance acceptable to the Department of General Services.
- C. Evidence of insurance shall be in a form and content acceptable to the Department of General Services, Office of Risk and Insurance Management. Insurance obtained through commercial carriers shall meet the following requirements:
  - 1. The Certificate of Insurance shall provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the COUNTY (K/T AAA), or ten (10) days written notice if the reason for cancellation is for non-payment of insurance premium.
  - 2. The Certificate of Insurance shall provide the Statement: "The Kings/Tulare Area Agency on Aging and County of Tulare, its officers, agents, employees, and servants are included as additional insureds, with

respect to work performed for the State of California under this Agreement.” Professional liability coverage is exempt from this requirement.

3. The K/T AAA shall be named the certificate holder and the address must be listed on the certificate.
- D. The insurance provided herein shall be in effect at all times during the term of this Agreement. In the event the insurance coverage expires during the term of this Agreement, the Contractor agrees to provide the COUNTY (K/T AAA), at least thirty (30) days prior to the expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for a period not less than the remaining Agreement term or for a period not less than one (1) year. In the event the Contractor fails to keep in effect at all times said insurance coverage, the COUNTY (K/T AAA) may, in addition to any other remedies it may have, terminate this Agreement.
- E. A copy of each appropriate Certificate of Insurance referencing this Agreement Number, or letter of self-insurance, shall be submitted to the COUNTY (K/T AAA) with this Agreement.
- F. The Contractor shall be insured against liability for Worker’s Compensation or undertake self-insurance in accordance with the provisions of the Labor Code and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement (Labor Code Section 3700).

## ARTICLE XI. TERMINATION

### A. Termination for Convenience

The COUNTY (K/T AAA) may terminate performance of work under this Agreement for its convenience in whole or, from time to time, in part, if the COUNTY (K/T AAA) determines that a termination is in the COUNTY (K/T AAA)’s interest. The COUNTY (K/T AAA) shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof. Such termination shall be effective thirty (30) days from the delivery of the Notice of Termination. The parties agree that, as to the termination portion of the Agreement, the Agreement shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the Agreement shall not be void

### B. Termination for Default

The COUNTY (K/T AAA) may by written notice of default to the Contractor, terminate this Agreement, in whole or in part, as a consequence of any of the following events:

1. A violation of the law or failure to comply with any condition of this Agreement.
  2. Inadequate performance or failure to make progress so as to endanger performance of this Agreement.
  3. Failure to comply with reporting requirements.
  4. Evidence that the Contractor is in an unsatisfactory financial condition as determined by an audit of the COUNTY (K/T AAA) or evidence of a financial condition that endangers performance of this Agreement and/or the loss of other funding sources.
  5. Delinquency in payment of taxes or payment of costs for performance of this Agreement in the ordinary course of business.
  6. Appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization or the arrangement of liquidation proceedings by or against the Contractor.
  7. Service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against the Contractor's assets or income.
  8. The commission of an act of bankruptcy.
  9. Finding of debarment or suspension, Article II I.
  10. The Contractor's organizational structure has materially changed.
- C. Such termination of this Agreement shall take effect immediately in the case of threat to life, health, or safety of the public or, in all other cases, upon thirty (30) days subsequent to written notice to the Contractor. The notice shall describe the action being taken, the reason for such action, and any conditions of the termination, including the date of termination. Said notice shall also inform the Contractor of its right to appeal such decision to the COUNTY (K/T AAA) and of the procedure for doing so.
- D. In the event of a termination notice, the COUNTY (K/T AAA) will present written notice to the Contractor of any condition, such as, but not limited to,



transfer of clients, care of clients, return of unspent funds, and disposition of property, which must be met prior to termination.

- E. The COUNTY (K/T AAA) may determine that a Contractor may be considered a "high risk" agency as described in 45 CFR 92.12 for local governments and 45 CFR 74.14 for nonprofit organizations. If such a determination is made, the Contractor may be subject to special conditions or restrictions.

#### **ARTICLE XII. REMEDIES**

The Contractor agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the COUNTY (K/T AAA) as a result of breach of this Agreement by the Contractor, whether such breach occurs before or after completion of the project.

#### **ARTICLE XIII. DISSOLUTION OF ENTITY**

The Contractor shall notify the COUNTY (K/T AAA) immediately of any intention to discontinue existence of the entity or to bring an action for dissolution.

#### **ARTICLE XIV. REVISIONS OR MODIFICATIONS**

- A. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.
- B. The COUNTY (K/T AAA) reserves the right to revise, waive, or modify the Agreement to reflect any restrictions, limitations, or conditions, enacted by Congress or the Legislature or as directed by the Executive Branch of State Government.

#### **ARTICLE XV. NOTICES**

- A. Any notice to be given hereunder by either party to the other may be effected by personal delivery in writing or by registered or certified mail, overnight mail, postage prepaid, return receipt requested, or overnight mail, provided Contractor retains receipt, and shall be communicated as of actual receipt.
- B. Any notice given to the COUNTY (K/T AAA) for a Contractor's change of legal name, main address, or name of Director shall be addressed to the Director of the COUNTY (K/T AAA).

- C. All other notices with the exception of those identified in Article VII.B. shall be addressed to the Kings/Tulare Area Agency on Aging, 5957 S. Mooney Blvd, Visalia, California 93277. Notices mailed to the Contractor shall be to the address indicated in Section 15: "Notices" of this Agreement.
- D. Either party may change its address by written notice to the other party in accordance with this Article.

#### **ARTICLE XVI. COUNTY (K/T AAA) CONTACT**

- A. The COUNTY (K/T AAA) will provide the Contractor with the name of the COUNTY (K/T AAA)'s contact to request revisions, waivers, or modifications affecting this Agreement upon full execution of this Agreement.
- B. The Contractor shall submit the name of its Contract Representative for this Agreement by submitting a Contract Representative form to the COUNTY (K/T AAA). This form requires the contact's address, phone number, e-mail address, and FAX number to be included on this form. For any change in this information, the Contractor shall submit an amended Contract Representative form to the same address.

#### **ARTICLE XVII. INFORMATION INTEGRITY AND SECURITY**

- A. **Information Assets**  
The Contractor shall have in place operational policies, procedures, and practices to protect State information assets, i.e. public, confidential, sensitive and/or personal information as specified in State Administrative Manual, Section 4841.2., GC Section 11019.9, Department of Finance (DOF) Management Memo 06-12, and DOF Budget Letter 06-34)  
Information assets include (but are not limited to):
  - a. Information collected and/or accessed in the administration of the State programs and services.
  - b. Information stored in any media form, paper or electronic.
- B. **Encryption on Portable Computing Devices**  
The Contractor is required to encrypt (or use an equally effective measure), any data collected under this Agreement that is confidential, sensitive, and/or personal including data stored on portable computing devices (including but not limited to, laptops, personal digital assistants, and notebook computers) and/or portable electronic storage media (including but not limited to, discs and thumb/flash

drives, portable hard drives).

C. Disclosure

1. The Contractor shall ensure that personal, sensitive and confidential information is protected from inappropriate or unauthorized access or disclosure in accordance with applicable laws, regulations and State policies. The requirement to protect information shall remain in force until superseded by laws, regulations or policies.
2. The Contractor shall protect from unauthorized disclosure names and other identifying information, concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant.
3. "Identifying information" shall include, but not be limited to, name, identifying number, social security number, state driver's license or state identification number, financial account numbers, symbol or other identifying characteristics assigned to the individual, such as finger or voice print or a photograph.
4. The Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
5. The Contractor shall not, except as otherwise specifically authorized or required by this Agreement or court order, disclose any identifying information obtained under the terms of this Agreement to anyone other than CDA without prior written authorization from CDA. The Contractor may be authorized, in writing, by a participant to disclose identifying information specific to the authorizing participant.
6. The Contractor may allow a participant to authorize the release of information to specific entities, but shall not request or encourage any participant to give a blanket authorization or sign a blank release, nor shall the Contractor accept such blanket authorization from any participant.

D. Training/Education

1. The Contractor must provide ongoing education and training, at least annually, to all employees and subcontractors who handle personal, sensitive or confidential information. Contractor employees, subcontractors, and volunteers must complete the required Security Awareness Training module located at [www.aging.ca.gov](http://www.aging.ca.gov) within 30 days of the start date of the Contract/Agreement or within 30 of the start date of any new employee, subcontractor or volunteer. The Contractor must maintain certificates of completion on file and provide them to CDA upon request. Training may be provided on an individual basis or in groups. A sign-in sheet is acceptable documentation for group training in lieu of individual certificates. If internet access is not available, a hardcopy of the training module may be provided to employees and/or volunteers for their

- completion.
2. Contractor may substitute CDA's Security Awareness Training program for its own Security Training provided such training meets or exceeds CDA's training requirement. Contractors/Vendors shall maintain documentation of training and education provided to their staff, volunteers, and/or subcontractors.
  3. All employees and volunteers who handle personal, sensitive, or confidential information relating to CDA's programs must participate in Security Awareness Training.
- E. **Health Insurance Portability and Accountability Act (HIPPA)**  
The Contractor agrees to comply with the privacy and security requirements of the HIPPA to the extent applicable and to take all reasonable efforts to implement HIPPA requirements. Contractor will make reasonable efforts to ensure that subcontractors comply with the privacy and security requirements of HIPPA.
- F. **Security Incident Reporting**  
A security incident occurs when CDA information assets are accessed, modified, destroyed, or disclosed without proper authorization, or is lost, or stolen. The Contractor must report all security incidents to the appropriate CDA Program Manager immediately upon detection. A Security Incident Report form (CSA 1025) must be submitted to the CDA Information Security Officer within five (5) business days of the date the incident was detected.
- G. **Notification of Security Breach to Data Subjects**
- i. Notice must be given by the contractor or subcontractor to any data subject whose personal information could have been breached.
  - ii. Notice must be given in the most expedient time possible and without unreasonable delay except when notification would impede a criminal investigation, or when necessary measures to restore the system integrity are required.
  - iii. Notice may be provided in writing, electronically, or by substitute notice in accordance with State law, regulation, or policy.
- H. **Software Maintenance**  
The Contractor shall apply security patches and upgrades and keep virus software up-to-date on all systems on which State data may be used.

## **ARTICLE XVIII. COPYRIGHTS AND RIGHTS IN DATA**

- A. **Copyrights**
1. If any material funded by this Agreement is subject to copyright, the State

and COUNTY (K/T AAA) reserves the right to copyright such material and the Contractor agrees not to copyright such material, except as set forth in subdivisions (b) and (c) of this section.

2. The Contractor may request permission to copyright material by writing to the Director of the California Department of Aging. The Director shall consent to or give the reason for denial to the Contractor in writing within sixty (60) days of receipt of the request.

If the material is copyrighted with the consent of the Department, the State reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, prepare derivative works, publish, distribute and use such materials, in whole or in part, and to authorize others to do so, provided written credit is given to the author.

3. The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this contract for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

**B. Rights in Data**

1. The Contractor shall not publish or transfer any materials, as defined in item 2 below, produced or resulting from activities supported by this Agreement without the express written consent of the Director of the Department. That consent shall be given, or the reasons for denial shall be given and any conditions under which it is given or denied, within thirty (30) days after the written request is received by the Department. The Department may request a copy of the material for review prior to approval of the request. This subsection is not intended to prohibit Contractors from sharing identifying client information authorized by the participant or summary program information which is not client-specific.
2. As used in this Agreement, the term "subject data" means writings, sound recordings, pictorial reproductions, drawings, designs, or graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this Agreement. The term does not include financial reports, cost analyses, and similar information incidental to contract administration, or the exchange of that information between Area Agencies on Aging to

facilitate uniformity of contract and program administration on a Statewide basis.

3. Subject only to the provisions of Article XVIII and Article XIX of this Exhibit, the State may use, duplicate, or disclose in any manner, and have or permit others to do so subject to State and Federal law, all subject data delivered under this Agreement.
4. Materials published or transferred by Contractor shall: (a) state "The materials or product were a result of a project funded by a contract with the California Department of Aging"; (b) give the name of the entity, the address, and the telephone number at which the supporting data is available; and (c) include a Statement that "The conclusions and opinions expressed may not be those of the California Department of Aging and that the publication may not be based upon or inclusive of all raw data."