

STANDARD AGREEMENT

STD. 213 (NEW 02/98)

AGREEMENT NUMBER

FF-0203-08

AMENDMENT NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

California Department of Aging

CONTRACTOR'S NAME

County of San Mateo

2. The term of this Agreement is: July 1, 2002 through June 30, 2003

3. The maximum amount of this Agreement is: \$ 2,400,486

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work 5 Page(s)

Exhibit B – Budget Detail and Payment Provision 6 Page(s)

* Exhibit C – General Terms and Conditions GTC201
(Number)

2/20/2001
(Dated)

Exhibit D – Special Terms and Conditions 23 Page(s)

Exhibit E – Additional Provisions 5 Page(s)

*View at www.dgs.ca.gov/contracts

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CALIFORNIA
Department of General Services
Use Only

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

County of San Mateo

BY (Authorized Signature)

DATE SIGNED)

PRINTED NAME AND TITLE OF PERSON SIGNING Jerry Hill, President
Board of Supervisors, San Mateo County

ADDRESS

225 West 37th Street, San Mateo, California 94403

STATE OF CALIFORNIA

AGENCY NAME

California Department of Aging

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING Rachel de la Cruz, Manager, Business Services and Contracts Section

ADDRESS

1600 K Street, Sacramento, California 95814

☐ Exempt per _____

TITLE III/VII SCOPE OF WORK

ARTICLE I. DEFINITIONS SPECIFIC TO TITLE III AND TITLE VII PROGRAMS

A. DEFINITIONS SPECIFIC TO TITLE III

1. **Program Requirements** means Title III program requirements found in the Older Americans Act (OAA); Code of Federal Regulations (CFR); Older Californians Act; Title 22, California Code of Regulations (CCR), Section 7000 et seq.; Department Program Memoranda; and State and federal laws.
2. **Title III B (Supportive Services)** means a variety of services including, but not limited to: personal care, homemaker, chore, adult day care/adult day health, case management, assisted transportation, transportation, legal assistance, information and assistance, outreach, and long-term care ombudsman.
3. **Title III C-1 (Congregate Nutrition Services)** means meals served in a congregate setting which includes a meal providing one-third (1/3) of the recommended dietary allowance (RDA), and that complies with the Dietary Guidelines for Americans, provides nutrition and health promotion education and health promotion programs, nutrition risk screening, and opportunities for socialization.
4. **Title III C-2 (Home Delivered Nutrition Services)** means nutrition services provided to homebound older individuals providing one-third (1/3) of the recommended dietary allowance (RDA), and that complies with the Dietary Guidelines for Americans nutrition, and health promotion, and nutrition risk screening.
5. **Title III D (Disease Prevention and Health Promotion Services)** means disease prevention, and health promotion, education and programs, nutrition education, nutrition counseling and nutrition risk screening services, and medication management.
6. **Eligible Service Population** for Title III means individuals 60 years of age or older, with emphasis on those in economic and social need with particular attention to low income minority individuals and older individuals residing in rural areas. [OAA, Section 305 (a) (2) (E)] [Title 22, CCR, Sections 7125, 7127, 7130, and 7135].

Scope of Work – Exhibit A

TITLE III/VII SCOPE OF WORK

- B. DEFINITIONS SPECIFIC TO TITLE VII (Allotments for Vulnerable Elder Rights Protection Activities)
1. **Chapter 2. Ombudsman Program** means advocacy services provided to or on behalf of residents of long-term care facilities, including, but not limited to: investigation and resolution of complaints; training of personnel; promotion of and attendance at resident and family councils; representation of residents' interests before governmental agencies; analysis and monitoring of the development and implementation of federal, State, and local laws, regulations, and other governmental policies and actions.
 2. **Target Client Population** (for Chapter 2—Ombudsman) means individuals 60 years of age or older who are residents of long-term care facilities. [OAA Section 321 (a) (10)] [Welfare and Institutions (W&I) Code Section 9720 (a)].
 3. **Chapter 3. Programs for Prevention of Elder Abuse, Neglect, and Exploitation** means activities to develop, strengthen, and carry out programs for the prevention and treatment of elder abuse, neglect, and exploitation.
 4. **Target Client Population** (for Chapter 3-Prevention of Elder Abuse, Neglect, and Exploitation) means individuals 60 years of age or older who are likely to be subject to abuse, neglect, and exploitation, including older individuals who live in State licensed facilities, unlicensed facilities, or domestic or community-based settings. [OAA Section 721 (c)].

ARTICLE II. SCOPE OF WORK

A. Performance of the Contractor

1. The Contractor is charged with implementing the statutory provisions of the Title III and Title VII Programs (OAA, Section 306) in accordance with State and federal laws and regulations. A good faith effort shall be made to meet the goals and objectives stipulated in the four-year Area Plan and annual updates of the Area Plan's Goals, Objectives, and Service Unit Plan, herein incorporated into this Agreement by reference. This level of performance shall not be unilaterally reduced or otherwise changed without prior consultation with, and written approval of, the Department.

TITLE III/VII SCOPE OF WORK

2. Assume full responsibility for establishing and maintaining an organization that shall have the ultimate accountability for funds received from the Department and for the effective and efficient implementation of the activities as described in the Area Plan and all pertinent State and federal laws and regulations including data reporting requirements.
3. Meet the adequate proportion requirements for priority services as required under the OAA, Section 306 (a) (2); and CCR, Section 7312.
4. Meet the requirements under the OAA, Section 301(a)(1) to secure and maintain maximum independence and dignity in a home environment for older individuals capable of self care with appropriate supportive and nutrition services.
5. Remove individual and social barriers to economic and personal independence for older individuals to the extent possible.
6. Provide a continuum of care for vulnerable older individuals.
7. Secure the opportunity for older individuals to receive managed in-home and community-based long-term care services.
8. Maintain or improve community-based services to meet the physical and mental health of older persons, as required under the OAA, Section 361(a) through funding that includes Title III D Disease Prevention and Health Promotion.
9. Conduct and/or promote activities to prevent, treat, and remedy elder abuse, neglect, and exploitation, as required under the OAA, Section 721.
10. If federal and/or State funds for meal programs increase, the number of Title III C-1 and C-2 meals served shall be maintained or increased. This program shall promote and maintain high standards of food safety and sanitation as required by the California Uniform Retail Food Facilities Law (CURFFL).

B. Administrative requirements include:

1. Initiate/procure subcontracts, as needed, pursuant to CCR, Sections 7352 through 7364.
2. Review, approve, and monitor subcontractor budgets and expenditures and any subsequent amendments and revisions to budgets.

Scope of Work – Exhibit A

TITLE III/VII SCOPE OF WORK

3. Annually monitor, evaluate, and document subcontractor performance and compliance with this Agreement.
4. Provide support and technical assistance to subcontractors and respond in writing to all written requests for direction, guidance, and interpretation of instructions to include client and service data.
5. Distribute and maintain up-to-date Department requirements so that all responsible persons have ready access to standards, policies, and procedures.
6. Provide program information and assistance to the public.
7. Maintain a four-year Area Plan, with annual updates, as specified in CCR, Sections 7300 through 7320. The annual update shall be effective during the same term as this Agreement.
8. Maintain the National Aging Program Information System (NAPIS) State Program Report (SPR) data collection and reporting requirements as outlined in the Management Information System requirements set forth by the Department.

C. Performance Specific to Ombudsman Programs:

1. Investigate and attempt to resolve complaints made by or on behalf of long-term care residents, protect residents' rights, and ensure that residents have access to ombudsman services. [OAA Section 712(a)(5)(B)(iii)] [W&I Code Section 9720(a)].
2. Maintain an ongoing presence in long-term care facilities. [OAA Section 712(a)(5)(B)(ii)]. Facility presence is measured by facility visits in the Facility Plan, hereby incorporated by reference, Section 303 of the Ombudsman Program Guide, and as reported in the National Ombudsman Reporting System/Ombudsman Manager and related software.
3. Provide information and technical support to residents, families, and the public about long-term care services. [OAA Section 712 (a)(3)(H)(iii)] [W&I Code Section 9726.1(e)]
4. Provide on-going education (other than education for certification) and consultation to facilities and community. [OAA Section 712 (a)(5)(B)(vii)] [W&I Code Section 9726.1 (e)].

TITLE III/VII SCOPE OF WORK

5. Represent the interests of residents before government agencies; analyze, comment on, and monitor federal, state and local laws, regulations, and policies. [OAA Section 712(a)(5)(B)(iv) and (v)].
6. Promote the development of community-based, citizens organizations dedicated to enhancing the quality of long-term care. [OAA Section 712(a)(5)(B)(vi) and (vii)] [W&I Code Section 9726.1(c) and (d)].
7. Witness advance health care directives and property transfers of more than \$100 for residents of skilled nursing facilities. [H&S Code Sections 1289; California Probate Code Sections 4675 and 4700, et seq.]
8. Ombudsman performance indicators and assessment criteria are enumerated in the document *LTC Ombudsman Core Elements* and will be used by the Office of the State Long-Term Care Ombudsman as a guide in evaluating the success of a local program.

Budget Detail, Payment Provisions, and Closeout – Exhibit B

TITLE III/VII BUDGET DETAIL, PAYMENT PROVISIONS, AND CLOSEOUT

ARTICLE I. FUNDS

A. Expenditure of Funds

1. The Contractor shall expend all funds received hereunder in accordance with this Agreement.
2. Any reimbursement for authorized travel and per diem shall be at rates not to exceed those amounts paid by the State in accordance with Department of Personnel Administration's rules and regulations. This is not to be construed as limiting the Contractor from paying any differences in costs from funds other than those provided by this Department, between the Department of Personnel Administration rates and any rates the Contractor is obligated to pay under other contractual agreements. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.
(CCR, Title 2 Section 599.615 et seq.)
3. The Department reserves the right to refuse payment to the Contractor or later disallow costs for any expenditure, as determined by the Department not to be in compliance with this Agreement, unrelated or inappropriate to contract activities, or when inadequate supporting documentation is presented, or where prior approval was required but was either not requested or not granted.

B. Accountability for Funds

The Contractor shall maintain accounting records for funds received under the terms and conditions of this Agreement. These records shall be separate from those for any other funds administered by the Contractor, and shall be kept in accordance with Generally Accepted Accounting Principles and Procedures.

C. Unexpended Funds

Upon termination, cancellation, or expiration of this Agreement, or dissolution of the entity, the Contractor shall return to the State immediately upon written demand, any funds provided under this Agreement, which are not payable for goods or services delivered prior to the termination, cancellation, or expiration of this Agreement, or the dissolution of the entity.

Budget Detail, Payment Provisions, and Closeout – Exhibit B

TITLE III/VII BUDGET DETAIL, PAYMENT PROVISIONS, AND CLOSEOUT

D. Availability of Funds

1. It is understood between the parties that this Agreement may have been written before ascertaining the availability of appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made.
2. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the Budget Acts of the appropriate fiscal years for the purpose of these programs. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner.
3. If the Legislature and/or Congress does not appropriate sufficient funds for any of these programs, this Agreement shall be amended to reflect any reduction in funds.
4. In the event that insufficient funds are appropriated, this Agreement may be canceled at any time by either party, by giving thirty (30) days written notice to the other party.

E. Interest Earned

Nonprofits shall maintain advances of federal funds in interest bearing accounts, unless (1), (2), or (3) apply.

- (1) The recipient receives less than \$120,000 in federal awards per year.
- (2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on federal cash balances.
- (3) The depository would require an average or minimum balance so high that it would not be feasible within the expected federal and non-federal cash resources.

For non-profit entities, interest earned in excess of \$250 on federal advances deposited in interest bearing accounts shall be remitted annually to the Department.

Budget Detail, Payment Provisions, and Closeout – Exhibit B

TITLE III/VII BUDGET DETAIL, PAYMENT PROVISIONS, AND CLOSEOUT

ARTICLE II. BUDGET AND BUDGET REVISION

- A. The Contractor shall be compensated for expenses only as itemized in the approved Area Plan Budget.
- B. The Contractor shall comply with those provisions and restrictions regarding revisions to the approved Area Plan Budget.
- C. The final date to submit budget revisions is April 30 of the contract period unless otherwise specified by the Department.

ARTICLE III. PAYMENT

- A. The Contractor shall prepare and submit by the 30th of each month to the AAA-Based Team, in electronic format, a Detailed Expenditure Data File (SPR 107) and a Request for Funds Data file (SPR 108), unless otherwise specified by the Department.
- B. The Department shall review requests for payment to ensure compliance with the approved Area Plan Budget.
- C. During the contract period, the Department shall advance funds based on an analysis of current cash needs. The Department shall pay the Contractor a total not to exceed the amount shown on the Budget Display, which is hereby incorporated by reference.
- D. Financial Management Systems

The Contractor shall meet the following standards for its financial management systems, as stipulated in 45 CFR 92.20:

- 1. Financial Reporting
- 2. Accounting Records
- 3. Internal Control
- 4. Budgetary Control
- 5. Allowable Costs
- 6. Source Documentation
- 7. Cash Management

Budget Detail, Payment Provisions, and Closeout – Exhibit B

TITLE III/VII BUDGET DETAIL, PAYMENT PROVISIONS, AND CLOSEOUT

- E. The Department may require financial reports more frequently than indicated above or with more detail (or both), upon written notice to the Contractor, until such time as the Department determines that the financial management standards are met.

ARTICLE IV. CLOSEOUT

The Financial Closeout Report (CDA 180) shall be submitted annually to the AAA-Based Team, within sixty (60) calendar days following the end of the fiscal year, or within thirty (30) days following termination prior to the end of the contract period, unless otherwise specified by the Department.

State of California
California Department of Aging
CDA #1 (Rev. 4/98)

Award #: FF-0203-08
Date: 22-Apr-02
Amendment #:
Date:

Title III/VII Budget Display
Fiscal Year 2002-03

COUNTY OF SAN MATEO

Page 1 - Federal Funds		BASELINE	CUMULATIVE TRANSFERS	OTO	TOTAL	NET CHANGE
Title IIIB:	Administration	87,814	-	-	87,814	-
	LTC-Ombudsman-Program	25,782	-	-	25,782	-
	Other Supportive Services - Progr.	606,725	-	-	606,725	-
	Total Title IIIB	720,321	-	-	720,321	-
Title III C-1:	Administration	85,621	-	-	85,621	-
	Congregate Nutrition - Program	659,365	-	-	659,365	-
	Total Title III C-1	744,986	-	-	744,986	-
Title III C-2:	Administration	42,068	-	-	42,068	-
	Home Delivered Nutrition - Program	323,962	-	-	323,962	-
	Total Title III C-2	366,030	-	-	366,030	-
Title IIID	Preventive Health - Program	32,092	-	-	32,092	-
	Medication Management - Program	10,794	-	-	10,794	-
		42,886	-	-	42,886	-
	Total Title III	1,874,223	-	-	1,874,223	-
USDA:	Congregate Meals - C-1	132,840	-	-	132,840	-
	Home-Delivered Meals- C-2	96,786	-	-	96,786	-
	Total USDA	229,626	-	-	229,626	-
Title VII-(a)	Ombudsman - Program	32,289	-	-	32,289	-
Title VII-(b)	Elder Abuse Prevention - Program	11,270	-	-	11,270	-
	Total Title VII	43,559	-	-	43,559	-
	Total Federal Funds	2,147,408	-	-	2,147,408	-
Comments: The maximum amount of Title III/VII Baseline expenditures allowable for the first quarte					479,446	

State of California
California Department of Aging
CDA #1 (Rev. 4/98)

Award #:: FF-0203-08
Date: 22-Apr-02
Amendment #:
Date:

Title III/VII Budget Display
Fiscal Year 2002-03

COUNTY OF SAN MATEO

Page 2 - State Funds		BASELINE	CUMULATIVE TRANSFERS	OTO	TOTAL	NET CHANGE
Title IIIB:	Ombudsman - Program	92,289	-	-	92,289	-
	Other Supportive Services - Progr.	26,961	-	-	26,961	-
	Total Title IIIB	119,250	-	-	119,250	-
Title III C-1:	Administration	511	-	-	511	-
	Congregate Nutrition - Program	60,083	-	-	60,083	-
	Total Title III C-1	60,594	-	-	60,594	-
Title III C-2:	Administration	136	-	-	136	-
	Home Delivered Nutrition - Program	65,047	-	-	65,047	-
	Total Title III C-2	65,183	-	-	65,183	-
Title IIID	Preventive Health - Program	2,002	-	-	2,002	-
	Total Title III	247,029	-	-	247,029	-
Title VII-(a)	Ombudsman - Program	5,545	-	-	5,545	-
Title VII-(b)	Elder Abuse Prevention - Program	504	-	-	504	-
	Total Title VII	6,049	-	-	6,049	-
	Total State Funds	253,078	-	-	253,078	-
Grand Total, Federal & State Funds		2,400,486	-	-	2,400,486	-
Comments:						

TITLE III/VII SPECIAL TERMS AND CONDITIONS

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS

- A. The term "Agreement" shall mean the coversheet, Std. 213, all exhibits, the Budget Display, the Area Plan, Area Plan Budget, attachments and amendments, unless otherwise provided 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. contract form, Standard Agreement, etc., and any amendments thereto;
 - 2. statement of work;
 - 3. special terms and conditions including Exhibit D;
 - 4. general terms and conditions, including Exhibit C; and
 - 5. all other attachments incorporated herein by reference.
- C. The Contractor shall comply with program memos and other guidance issued by the Department. In the event of conflict between the program memos and/or other Department guidance, the provisions listed in this Agreement shall prevail.
- D. "State" and "Department," mean the State and the California Department of Aging interchangeably.
- E. "Contractor" means the Area Agency on Aging to which funds are awarded under this Agreement and which is accountable to the State and/or federal government for use of these funds and is responsible for executing its provisions and services.
- F. "Subcontractor" means the legal entity that receives funds from the Contractor under this Agreement.
- G. "Reimbursable item" also means "allowable cost" and "compensable item."
- H. "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.
- I. "Program income" means revenue generated by the Contractor or service provider from contract-supported activities. Program income is:
 - 1. Voluntary contributions received from a participant or responsible party as a result of the service.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS (Continued)

2. Income from usage or rental fees of real or personal property acquired with grant funds or funds provided under this Agreement.
3. Royalties received on patents and copyrights from contract-supported activities.
4. Proceeds from the sale of items fabricated under a contract agreement.

ARTICLE II. ASSURANCES

A. Nondiscrimination – (Federal Laws)

1. The Contractor will comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-161686), 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. §§3601 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 the application.
2. The Contractor shall comply with the provisions of 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).
3. The Contractor shall comply with Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (29 USC 794), and all requirements imposed by the applicable Health and Human Services regulations (45 CFR 84).

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE II. ASSURANCES (Continued)

B. Confidentiality

1. Identity shall include, but not be limited to, name, identifying number, symbol or other identifying characteristic assigned to the individual, such as finger or voice print or a photograph.
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. This provision will remain in force even after termination.
3. The Contractor shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
4. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the participant, any such identifying information to anyone other than the State without prior written authorization from the State, except by court order.
5. The Contractor may allow participants 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 from any participant.

C. Copyrights and Rights in Data

1. Copyrights

- a. If any material funded by this Agreement is subject to copyright, the State reserves the right to copyright such material and the Contractor agrees not to copyright such material, except as set forth in lines (b) and (c).
- b. The Contractor may request permission to copyright material by writing to the Director of the Department. 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.
- c. 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 the author.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE II. ASSURANCES (Continued)

- d. 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.

2. Rights in Data

- a. The Contractor shall not publish or transfer any materials, as defined in b. 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.
- b. 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.
- c. Subject only to the provisions of Article II. of this Exhibit, Sections B and C, 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.
- d. Materials published or transferred shall: (a) state "The materials or product were a result of a project funded by a contract with the Department of Aging"; (b) give the name of the entity, the address, and 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 Department and that the publication may not be based upon or inclusive of all raw data."

ARTICLE II. ASSURANCES (Continued)

D. Law, Policy and Procedure, Licenses, and Certificates

The Contractor agrees to administer this Agreement and require any Subcontractors to administer their subcontracts 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 judgement. The Contractor and its subcontractors shall keep in effect all licenses, permits, notices, and certificates that are required by law.

E. 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.

F. Code of Conduct

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 State determines that a conflict of interest exists, funds may be disallowed by the State and such conflict may constitute grounds for termination of the Agreement.
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.

G. 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 commission payments in order to obtain this Agreement.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE II. ASSURANCES (Continued)

2. For breach or violation of this warranty, the State 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.

H. 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.

I. Facility Construction or Repair

1. When applicable for purposes of construction or repair of facilities, the Contractor shall comply with the provisions contained in the following acts and/or will include such provisions in any applicable agreements with subcontractors:
 - a. Copeland "Anti-Kickback" Act (18 USC 874, 40 USC 2760) (29 CFR, Part 3).
 - b. Davis-Bacon Act (40 USC 276 a-7) (29 CFR, Part 5).
 - c. Contract Work Hours and Safety Standards Act (40 USC 327-330) (29 CFR, Part 5).
 - d. Executive Order 11246 of September 14, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor Regulations (41 CFR, Part 60).
2. The Contractor shall not use payments for construction, renovation, alteration, improvement, or repair of privately-owned property which would enhance the owner's value of such property to the benefit of the owner except where permitted by law and by the Department.
3. When funding is provided for construction and nonconstruction activities, the Contractor or subcontractor must obtain prior written approval from the State before making any fund or budget transfers between construction and nonconstruction.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE II. ASSURANCES (Continued)

J. 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).

K. Debarment

1. The Contractor must not make any award or permit any award at any time to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal/State assistance programs.
2. The Contractor shall timely execute any and all amendments to this Agreement or other required documentation relating to their subcontractors debarment/suspension status.

L. Agreement Authorization

1. If a public entity, the Contractor shall submit to the Department 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 Department an authorization by the board of directors to execute this Agreement, referencing this Agreement number.
2. Documentation in the form of a resolution by the Governing Board of the Area Agency on Aging is required for the original and each subsequent amendment to this Agreement. This requirement may also be met by a single resolution from the Governing Board of the Contractor authorizing the Area Agency on Aging Director or designee to execute the original and all subsequent amendments to this Agreement.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE II. ASSURANCES (Continued)

M. 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 State for training and meeting which the State may find necessary from time to time.

N. Corporate Status

1. The Contractor shall be a public or private nonprofit entity or Joint Powers Agreement (JPA). If a private nonprofit corporation or JPA, the Contractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.
2. The Contractor shall ensure that any subcontractors providing services under this Agreement shall be of sound financial status. Any private, subcontracting corporation or JPA shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement. Prior to the awarding of a subcontract to any for-profit entity, the Contractor shall submit the following to the Department for review and approval (per CCR, Title 22, Division 1.8, Section 7362):
 - (a) The RFP or IFB
 - (b) All bid proposals received.
 - (c) The proposal or bid evaluation documentation, along with the Contractor's rationale for awarding the subcontract to a for-profit entity.

Where a program may be subcontracted to a for-profit organization, the Contractor should include in its contract with the for-profit entity a requirement for performance of a program specific audit of the subcontracted program by an independent audit firm.

3. Failure to maintain good standing by the contracting corporation or JPA shall result in suspension or termination of this Agreement with the Department until satisfactory status is restored. Failure to maintain good standing by a subcontracting corporation of JPA shall result in suspension or termination of the subcontract until satisfactory status is restored.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE II. ASSURANCES (Continued)

O. Lobbying Certification

The Contractor, by signing this contract, 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 connection 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 agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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. All elements of this Agreement, as defined in Article I, Section A of this exhibit, and as approved by the Department in making this award, are hereby incorporated by reference, as if fully set forth herein.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE III. AGREEMENT (Continued)

- B. A copy of this Agreement is on file and available for inspection at the California Department of Aging, 1600 K Street, Sacramento, California 95814.

ARTICLE IV. COMMENCEMENT OF WORK

Should the Contractor or subcontractor begin work in advance of receiving notice that the 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. SUBCONTRACTS

- A. The Contractor shall satisfy, settle, and resolve all administrative, programmatic, and fiscal aspects of the program(s), including issues that arise out of any subcontracts, and shall not delegate or contract these responsibilities to any other entity. This includes, but is not limited to, disputes, claims, protests of award, or other manners of a contractual nature.
- B. In the event any subcontractor is utilized by the Contractor for any portion of this Agreement, the Contractor shall retain the prime responsibility for all the terms and conditions set forth, including but not limited to, the responsibility for preserving the State's copyrights and rights in data in accordance with Article II, Section C of this exhibit, for handling property in accordance with Article VII of this exhibit, and ensuring the keeping of, access to, availability, and retention of records of subcontractors in accordance with Article VI of this exhibit.
- C. Funds for this Agreement shall not be obligated in subcontracts for services beyond the ending date of this Agreement, unless all funding under this Agreement is appropriated without regard for fiscal year, and the Department has agreed in writing to permit the specific expenditure for a specified period of time.
- D. The Contractor shall have no authority to contract for, or on behalf of, or incur obligations on behalf of the State.
- E. Copies of subcontracts, Memorandums and/or Letters of Understanding shall be on file with the Contractor and shall be made available for review at the request of the Department.
- F. The Contractor shall monitor the insurance requirements of its subcontractors in accordance with Article XI, Section E of this exhibit.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE V. SUBCONTRACTS (Continued)

- G. The Contractor shall require all its subcontractors to indemnify, defend, and save harmless the Contractor, its officers, agents, and employees from any and all claims and losses accruing to or resulting from any contractors, subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with any activities performed for which funds from this Agreement were used and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the subcontractor in the performance of this Agreement.
- H. The Contractor shall ensure that the subcontractor will complete all reporting and expenditure documents requested by the Department. These reporting and expenditure documents shall be sent to the Contractor in a timely manner and at intervals as determined by the Department.

ARTICLE VI. RECORDS

- A. The Contractor shall maintain complete records (which shall include, but not be limited to, accounting records, contracts, agreements, letters of agreement, insurance documentation in accordance with this Article, Memorandums and/or Letters of Understanding, patient records, and electronic files) of its activities and expenditures hereunder in a form satisfactory to the State and shall make all records pertaining to this Agreement available for inspection and audit by the State 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 Department's Audit Branch, (b) for such longer period, if any, as is required by applicable statute, by any other clause of Agreement, or by Sections B, C, 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.
- 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.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE VI. RECORDS (Continued)

- 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. PROPERTY

- A. Unless otherwise provided for in this Article, property refers to all assets, capitalized or noncapitalized, used in operation of this Agreement. Property that is capitalized is referred to as property, plant, and equipment. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, and intangibles, etc. Property does not include consumable office supplies such as paper, pencils, typing ribbons, computer floppy disks, file folders, etc.
- B. Property meeting all of the following criteria are subject to the capitalization requirements. Subject property must:
 - 1. Have a normal useful life of at least 1 year;
 - 2. Have a unit acquisition cost of at least \$5000 (e.g., four identical assets which cost \$3000 each, for a \$12,000 total would not meet this capitalization requirement); and
 - 3. Be used to conduct business under this Agreement.

As used in this Agreement, the term "equipment" shall refer only to capitalized property.

- C. Noncapitalized property are those items which do not meet all three requirements in this Article, Section B above.
- D. Additions, improvements, and betterments to assets meeting all of the conditions in Section B above must be capitalized. Additions typically involve physical extensions of existing units. Improvements and betterments typically do not increase the physical size of the asset. Instead, improvements and betterments enhance the condition of an asset (e.g., extend life, increase

ARTICLE VII. PROPERTY (Continued)

service capacity, and lower operating costs). Examples of assets that might be improved and bettered include roads, bridges, curbs and gutters, tunnels, parking lots, streets and sidewalks, drainage, and lighting systems.

- E. Intangibles are property which lack physical substance but give valuable rights to the owner and can be capitalized or noncapitalized. Examples of intangible property include patents, copyrights, leases, and computer software. By contrast, hardware consists of tangible equipment (e.g., computer printer, terminal, etc.).

Costs include all amounts incurred to acquire and to ready the intangible asset for its intended use. Typical intangible property costs include the purchase price, legal fees, and other costs incurred to obtain title to the asset.

- F. The Contractor shall record the following information when property is acquired:

1. Date acquired;
2. Property description (include model number);
3. Property identification number (serial number);
4. Cost or other basis of valuation;
5. Fund source; and
6. Rate of depreciation (or depreciation schedule), if applicable.

The Contractor shall keep track of property purchased with Contract funds, whether capitalized or not. The Contractor shall submit to the Department, annually with the Closeout, a current inventory of property furnished or purchased by the Contractor with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose. The Contractor shall maintain an annual inventory of property furnished or purchased by the subcontractor with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose. The Contractor shall use the Report of Project Property Furnished/Purchased with Agreement Funds (CDA 32) to report property to the Department.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE VII. PROPERTY (Continued)

- G. Prior to disposal of any property purchased by the Contractor or the subcontractor with funds from this Agreement, the Contractor must obtain approval from the Department regardless of the acquisition value. Disposition, which includes sale, trade-in, discarding, or transfer to another agency may not occur until approval is received from the Department. The Contractor shall use the Request to Dispose of Property (CDA 248) to dispose of property.
- H. The Contractor shall immediately investigate and within five (5) days fully document the loss, destruction, or theft of such property.
- I. The State reserves title to all State-purchased or financed property not fully consumed in the performance of this Agreement, unless otherwise required by federal law or regulations or as otherwise agreed by the parties.
- J. Contractor shall exercise due care in the use, maintenance, protection, and preservation of such property during the period of the project, and shall assume responsibility for replacement or repair of such property during the period of the project and until the Contractor has complied with all written instructions from the Department regarding the final disposition of the property.
- K. In the event of the Contractor's dissolution or upon termination of this Agreement, the Contractor shall provide a final property inventory to the State. The State reserves the right to require the Contractor to transfer such property to another entity, or to the State.
- L. To exercise the above right, no later than 120 days after termination of the Agreement or notification of the Contractor's dissolution the State will issue specific written disposition instructions to the Contractor.
- M. The Contractor shall use the property for the purpose for which it was intended under the Agreement. When no longer needed for that use, the Contractor shall use it, if needed, and with written approval of the State for other purposes in this order:
 - 1. Another Department program providing the same or similar service; or
 - 2. Another Department-funded program; or
 - 3. State/federally-funded program.
- N. The Contractor may share use of the property and equipment or allow use by other programs, upon written approval of the Department. As a condition of the approval, the Department may require reimbursement under this Agreement for its use.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE VII. PROPERTY (Continued)

- O. The Contractor or subcontractor shall not use equipment or supplies acquired under this Agreement with federal and/or State monies for personal gain or to usurp the competitive advantage of a privately-owned business entity.
- P. If purchase of equipment is a reimbursable item, the equipment to be purchased will be specified in the budget.
- Q. The Contractor shall include the provisions contained in this Article in all its subcontracts awarded under this Agreement.

ARTICLE VIII. 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 or subcontractor which are directly pertinent to this specific Agreement for the purpose of audit, examination, excerpts, and transcriptions. The Contractor shall include this requirement in its subcontracts.

ARTICLE IX. MONITORING, ASSESSMENT, AND EVALUATION

- A. Authorized State 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 State in the monitoring, assessment, and evaluation processes, which include making any Administrative program and fiscal staff available during any scheduled process.

ARTICLE X. AUDITS

- A. Contractor will arrange for an audit to be performed as required by the Single Audit Act Amendments of 1996, Public Law 98-502, OMB Circular A-133, and a copy submitted to the:

California Department of Aging
Attention: Audit Branch
1600 K Street
Sacramento, California 95814

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE X. AUDITS (Continued)

- B. The following closely related programs identified by Catalog of Federal Domestic Assistance (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. This Section B applies to Title III/VII only.

US Department of Agriculture

10.570 Nutrition Programs for the Elderly

US Department of Health and Human Services, Administration on Aging

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 F-
Disease Prevention and Health Promotion Services
(Title III-F)

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)

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 Office of Management and Budget (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 Contractor shall ensure that all subcontractors expending \$300,000 or more in total federal funds have met the audit requirements of the OMB Circular A-133.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE X. AUDITS (Continued)

1. Ensure that appropriate corrective action has been taken to correct instances of noncompliance with federal laws and regulations. Corrective action should be taken within six months after the Contractor receives the subcontractor's audit report;
 2. Consider whether subcontractor audits necessitate adjustment of the Contractor's own records; and
 3. Require each subcontractor to permit independent auditors to have access to the records and financial statements as necessary for the Contractor to comply with OMB Circular A-133.
 4. Subcontractors expending less than \$300,000 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 Contractor will ensure that the subcontractor'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 Contractor 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 – should 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. All audits shall be performed in accordance with and address all issues contained in any federal OMB Compliance Supplement that applies to this program.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE X. AUDITS (Continued)

6. All audits or subcontractor shall consider the programs identified in "B" as a cluster for purposes of determining major programs or whether a program specific audit may be elected. This paragraph applies to Title III/VII only.
- E. These requirements should be included in subcontractor Agreements. Further, subcontractor should be required to include in its contracts with the auditors selected by subcontractors, that the auditors will comply with all applicable audit requirements.
- F. The Contractor shall have the responsibility of resolving audits of its subcontractors.
- G. If the subcontractor is not required to obtain an audit in accordance with Section C, the Contractor must determine whether the subcontractor expended the funds provided under this Agreement in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subcontractor or through other means (e.g., monitoring reviews) if the subcontractor has not had an audit.
- H. The Department shall have access to all audit reports of Contractors and subcontractors 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. 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.
- J. Contractor may not charge to Federal Awards the cost of auditing a non-federal entity which has federal awards expended of less than \$300,000 per year, and is thereby exempted under OMB Circular A-133, Subsection.200(d) from having an audit conducted under the Act. Contractor may arrange for agreed upon procedures, the scope of which is less than That of an audit, to be performed by independent auditors on subcontractors not subject to OMB Circular A-133, for purposes of fiscal monitoring. The costs of such agreed upon procedures performed by an independent auditor may be charged to this Award as a cost of monitoring under Administration of the Area Plan.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE X. AUDITS (Continued)

- K. The Contractor assures the State that all subcontractors are audited as required by State requirements and federal law.
- L. The Contractor shall include in its contract with an independent auditor a clause permitting access by the State to the work papers of the independent auditor.
- M. Audits to be performed shall be, minimally, financial and compliance audits, and may include economy and efficiency and/or program results audits.
- N. The Contractor shall cooperate with and participate in any further audits which may be required by the State.

ARTICLE XI. INSURANCE

- A. Prior to commencement of any work under this Agreement, the Contractor shall provide for the term of this Agreement, the following insurance:

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 Department in cases of higher than usual risks.

Automobile liability including non-owned auto liability, of not less than \$1,000,000 for volunteers and paid employees providing services supported by this Agreement.

If applicable, contractors and subcontractors shall comply with the Public Utilities Commission (PUC) General Order No. 115-F which requires higher levels of insurance for charter-party carriers of passengers and is based on seating capacity as follows:

\$750,000 if seating capacity is under 8
\$1,500,000 if seating capacity is 8 – 15
\$5,000,000 if seating capacity is over 15

unless otherwise amended by future regulation.

Professional liability of not less than \$1,000,000 as it appropriately relates to the services rendered. Coverage shall include medical malpractice and/or errors and omissions.

- 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.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE XI. INSURANCE (Continued)

- 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 State, 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 Department of Aging, State of California, 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 Department 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 Department, 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 Department may, in addition to any other remedies it may have, terminate this Agreement.
- E. The Contractor shall require its subcontractors under this program, other than units of local government which are similarly self-insured, to maintain adequate insurance coverage for general liability, worker's compensation liabilities, and if appropriate, auto liability including non-owned auto and professional liability, and further, the Contractor shall require all of its subcontractors to hold the Contractor harmless. The subcontractor's Certificate of Insurance shall also name the Contractor, not the State, as the certificate holder. The Contractor shall maintain certificates of insurance for all its subcontractors.
- F. A copy of each appropriate Certificate of Insurance referencing this Agreement Number, or letter of self-insurance, shall be submitted to the Department with this Agreement.

ARTICLE XI. INSURANCE (Continued)

- G. 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).
- H. The entity providing Ombudsman services must be insured or self-insured for professional liability covering all Ombudsman activities including, but not limited to, investigation of patient complaints.

ARTICLE XII. TERMINATION

- A. The State may terminate performance of work under this Agreement for its convenience in whole or, from time to time, in part, if CDA determines that a termination is in the State's interest. CDA 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 terminated 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. The State may terminate this Agreement 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.
 - 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 Department 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.

Special Terms and Conditions - Exhibit D
Title III and Title VII

ARTICLE XII. TERMINATION (Continued)

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.
 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 State and of the procedure for doing so.
- D. In the event of a termination notice, the Department 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 Department 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 non-profit organizations. If such a determination is made, the Contractor may be subject to special conditions or restrictions.

ARTICLE XIII. 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 Department as a result of breach of this Agreement by the Contractor, whether such breach occurs before or after completion of the project.

ARTICLE XIV. DISSOLUTION OF ENTITY

The Contractor shall notify the Department immediately of any intention to discontinue existence of the entity or to bring an action for dissolution.

ARTICLE XV. REVISIONS, WAIVERS, OR MODIFICATIONS

- A. Should either party during the term of this Agreement desire a revision, waiver, or modification in this Agreement, such revision, waiver or modification shall be proposed in writing to the other party. The other party shall accept in writing within thirty (30) days of receipt of request or it shall be considered rejected, except those revisions, waivers, or modifications put into effect under Section B. Once accepted, such revisions, waivers, or modifications shall require an Agreement amendment through the Department's amendment process to provide for the change mutually agreed to by the parties. The revision, waiver, or modification is not effective until the appropriate State processes have been completed.
- B. The State reserves the right to revise, waive, or modify the Agreement to reflect any restrictions, limitations, or conditions enacted by Congress or the Legislature.

ARTICLE XVI. 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. Notices mailed to the State shall be addressed to the California Department of Aging, AAA Based Teams, 1600 K Street, Sacramento, California 95814. Notices mailed to the Contractor shall be to the address indicated on the coversheet of this Agreement.
- C. Either party may change its address by written notice to the other party in accordance with this Article.

ARTICLE XVII. DEPARTMENT CONTACT

- A. The name of the Department's contact to request revisions, waivers, or modifications affecting this Agreement, will be provided by the State to the Contractor upon full execution of this Agreement.
- B. The Contractor shall present the name of its contact for this Agreement to the Department. The Contractor shall immediately notify the State, in writing, of any change of its contact or address.

Additional Provisions – Exhibit E

TITLE III/VII ADDITIONAL PROVISIONS

ARTICLE I. ASSURANCES SPECIFIC TO TITLE III AND TITLE VII

- A. General Assurances. The Contractor shall assure that the following conditions are met:
1. Services are provided only to the defined Eligible Service Population.
 2. If the Contractor makes any award of funds to a public or private nonprofit agency, for the following purposes: (1) acquiring, altering, leasing, or renovating a facility, including a mobile facility, for use as a multipurpose senior center or (2) constructing a facility, including a mobile facility, for use as a multipurpose senior center, the Contractor shall adhere to the program requirements and to 45 CFR Part 74, "Procurement Standards," procurement by contractors and subcontractors for nonprofit organizations, and 45 CFR Part 92.36, procurement for State and local governments, as applicable.
 3. The Contractor shall comply with the standards and guidelines for procurement of supplies, equipment, construction, and services as provided in 45 CFR, Part 92.36, "Procurement Standards."
 4. The Contractor assures that when an existing facility has been altered (with funds made available by this Agreement) and is used as a multipurpose senior center, the period of time in which such facility shall be used as a center is as follows:
 - a. Not less than three (3) years from the date the Agreement terminates where the amount of the Agreement, including the non-federal share, does not exceed \$30,000.
 - b. If the Agreement amount exceeds \$30,000, the fixed period of time shall be not less than three (3) years from the date of Agreement plus one (1) year for each additional \$10,000, or part thereof, to a maximum of \$75,000.
 - c. For Agreement amounts which exceed \$75,000, the fixed period of time shall be no less than ten (10) years.
 5. Any agency awarded Title III funds for senior center acquisition or construction has a completed and notarized Notice of Assurances to the State of California of the Use of Property and the United States' Right of Recapture (CDA 214) recorded with the county recorder. The Contractor shall periodically validate continuing use of such facility as a senior center during the recapture period.

Additional Provisions – Exhibit E

TITLE III/VII ADDITIONAL PROVISIONS

6. Any multipurpose senior center constructed with funds made available by this Agreement shall be used for that purpose for at least twenty (20) years after completion of that construction.
7. Any facility to be used as a senior center and acquired with funds made available by this Agreement, shall be used for that purpose for at least ten (10) years from the date of acquisition.
8. Department funds will be made available only for the support of activities specified in an approved and current Area Plan that is in compliance with law and regulations.

B. Assurances Specific to Ombudsman Programs:

The Contractor shall assure the following:

1. The identity of the complainant or resident of the long-term care facility shall not be disclosed unless: (a) consent is given in writing by the individual or their legal representative as appointed by the court; (b) consent is given orally and the consent is documented contemporaneously in writing by an Ombudsman; or (d) such disclosure is required by court order. Files maintained by the Ombudsman Program will be disclosed only at the discretion of the Ombudsman having authority over the disposition of that file.
2. The subcontract to the Ombudsman Program contains a provision for support of Ombudsman Program staff and volunteers by the Legal Assistance Provider. The Contractor agrees that the Agreement shall further provide assurance that the Legal Assistance Provider will enter into a Memorandum of Understanding with the Ombudsman Program wherein the Legal Assistance Provider shall provide advice to Ombudsman Program staff and volunteers.
3. Each Ombudsman program shall maintain a separate budget. The Ombudsman Coordinator shall have input into budget preparation and be informed of budget expenditures specific to the Ombudsman program.
4. The Ombudsman staff will have office space for conducting interviews/investigations in a confidential manner.
5. Each Ombudsman Program shall have information systems sufficient to run State-approved database systems and to receive and send e-mail messages to and from the Department.

Additional Provisions – Exhibit E

TITLE III/VII ADDITIONAL PROVISIONS

- C. Assurances Specific to Legal Assistance Providers. The Contractor shall assure that the following conditions are met:
1. The subcontract between the Contractor and a Legal Assistance Provider shall contain a provision for support of the Ombudsman Program staff and volunteers by the Legal Assistance Provider. The Contractor further assures that the subcontract shall require the Legal Assistance Provider enter into a Memorandum of Understanding with the Ombudsman Program wherein the Legal Assistance Provider shall provide advice to Ombudsman Program staff and volunteers.
 2. Waiver of this part can be obtained from the Department pursuant to Exhibit D, Article XV., of this Agreement entitled, "Revisions, Waivers, or Modifications."

ARTICLE II. REPORTING PROVISIONS

- A. The Contractor shall submit program performance reports in accordance with Department requirements. Data reported must be timely, complete, accurate, and verifiable. The Contractor must submit program data reports electronically to the Data Analysis and Regulations Team (DART), California Department of Aging, 1600 K Street, Sacramento, CA 95814, according to the frequency listed:
1. Service Units (SPR 101), quarterly,
 2. Detailed and Summary Client Profile (SPR 102A and 102B), annually,
 3. Provider Profile (SPR 103), annually,
 4. Staffing Profile (SPR 104), annually,
 5. Unduplicated Client Count (SPR 105), annually, and
 6. Focal Point (SPR 106), annually.

Quarterly reports are due thirty (30) days after the end of the quarter (October 31, January 31, April 30, and July 31). Annual reports are due sixty (60) days after the end of the fiscal year (August 30). For late reports, the Contractor shall submit written explanation and corrective action plan to the DART by the 5th of the following month. This corrective action plan shall include the date the report will be submitted.

The Contractor shall have a plan to ensure accuracy of data from all levels. This plan shall include a method for the Contractor and Subcontractors to verify the accuracy of their data prior to submission to the DART.

Additional Provisions – Exhibit E

TITLE III/VII ADDITIONAL PROVISIONS

B. Long Term Care Ombudsman programs shall submit quarterly National Ombudsman Reporting System (NORS) AoA Output Reports to the Office of the State Long Term Care (LTC) Ombudsman.

- Quarterly reports are due 30 days after the end of the quarter (October 31, January 31, April 30, and July 31).
- Annual NORS AoA Output Reports shall be due 60 days after the end of the fiscal year (August 30).

NORS data must be timely, complete, accurate, and verifiable. For any reports - 30 days or more in arrears of the due date, the Contractor shall immediately provide a written explanation to the State LTC Ombudsman. This written explanation shall include the reasons for the delay and the date the report will be submitted, the date being contingent on agreement of that date by the State LTC Ombudsman.

ARTICLE III. APPEAL PROCESS

If the Contractor disputes the administration of this Agreement, either fiscal or nonfiscal, said Contractor shall use the appeal procedure established by the Department in CCR, Sections 7700 through 7706. Unless the Department notifies the Contractor of a different stated time, the Contractor shall file an appeal within thirty (30) days of the disputed action.

Costs of administration or court review are not reimbursable.

ARTICLE IV. FACILITY CONSTRUCTION OR REPAIR

A. When applicable for purposes of construction or repair of facilities, the Contractor shall comply with the provisions contained in the following acts and/or will include such provisions in any applicable agreements with subcontractors:

1. Copeland "Anti-Kickback" Act (18 USC 874, 40 USC 2760) (29 CFR, Part 3),
2. Davis-Bacon Act (40 USC 276 a-7) (CFR, Part 5),
3. Contract Work Hours and Safety Standards Act (40 USC 327-330) (29 CFR, Part 5), and
4. Executive Order 11246 of September 14, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor Regulations (41 CFR, Part 60).

Additional Provisions – Exhibit E

TITLE III/VII ADDITIONAL PROVISIONS

- B. The Contractor shall not use payments for construction, renovation, alteration, improvement, or repair of privately-owned property which would enhance the owner's value of such property to the benefit of the owner except where permitted by law and by the Department.
 - 1. When funding is provided for construction and non-construction activities, the Contractor or subcontractor must obtain prior written approval from the State before making any fund or budget transfers between construction and nonconstruction.