

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
CITY OF PACIFICA**

THIS AGREEMENT, entered into this _____ day of _____ ,
20____, by and between the COUNTY OF SAN MATEO, hereinafter called "County,"
and CITY OF PACIFICA, hereinafter called "Contractor";

W I T N E S S E I H:

WHEREAS, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing Congregate Nutrition Program, Meals on Wheels and Supplemental Meals on Wheels Programs, and Transportation Program services.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

- Schedule A—FY 2009-2010 Description of Services
- Schedule B—FY 2009-2010 Fiscal Summary
- Schedule C—FY 2009-10 American Recovery and Reinvestment Act Description of Services
- Schedule D—FY 2009-10 American Recovery and Reinvestment Act Fiscal Summary
- Attachment H—HIPAA Business Associate requirements
- Attachment I—§ 504 Compliance

2. Services to be Performed by Contractor

In consideration of the payments set forth herein and in Schedules B and D, Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Schedules A and C.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Schedules A and C, County shall make payment to Contractor based on the rates and in the manner specified in Schedules B and D. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed ONE HUNDRED FORTY THOUSAND FIVE HUNDRED SIXTY-FIVE DOLLARS (\$140,565).

The County reserves the right to refuse payment to the Contractor or disallow costs for any expenditure, as determined by the County to be: out of compliance with the Agreement, unrelated or inappropriate to contract activities, when adequate supporting documentation is not presented, or where prior approval was required but was either not requested or not granted.

The Contractor will submit invoices and monthly program reports to Aging and Adult Services (AAS) by the tenth (10th) of each month. Program performance data will be submitted in a timely, complete, accurate, and verifiable manner using the AAS approved reporting procedures. Upon notification from AAS, the Contractor must correct inaccurate invoices and corresponding reports in order to receive reimbursement. Corrections must be made within five (5) working days. Invoices submitted more than two months past the month of service may not be reimbursed. Invoice(s) for June 2010 will be due by July 7, 2010 to facilitate timely payment.

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2009 through June 30, 2010.

This Agreement may be terminated by the Contractor, the Chief of the Health System or designee at any time without a requirement of good cause upon thirty (30) days written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Transition Plan

- A. The Contractor shall submit a transition plan to AAS within 15 days of delivery of a written Notice of Termination of a program funded either by Title III and Title VII or a Community-Based Services Program funded by the Older Californians Act. The transition plan must be approved by the County and State and shall at a minimum include the following:
1. Description of how clients will be notified about the change in their service provider.
 2. A plan to communicate with other organizations that can assist in locating alternative services.
 3. A plan to inform community referral sources of the pending termination of the service and what alternatives, if any, exist for future referrals.
 4. A plan to evaluate clients in order to assure appropriate placement.
 5. A plan to transfer any confidential medical and client records to a new contractor.
 6. A plan to dispose of confidential records in accordance with applicable laws and regulations.
 7. A plan for adequate staff to provide continued care through the term of the contract.
 8. A full inventory and plan to dispose of, transfer, or return to the State all equipment purchased during the entire operation of the contract.
 9. Additional information as necessary to effect a safe transition of clients to other community service providers.
- B. Contractor shall implement the transition plan as approved by AAS. AAS will monitor the Contractor's progress in carrying out all elements of the transition plan.

6. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

8. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever

belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

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

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in Attachment "H," and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal, State, or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations including, but not limited to: appropriate licensure; certification regulations; provisions pertaining to confidentiality of records; applicable quality assurance regulations; wages and hours of employment; occupational safety; 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. In the event of a conflict between the terms of this Agreement and Federal, State, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement. The Contractor shall keep in effect all licenses, permits, notices, and certificates that are required by law.

In compliance with Government Code 11019.9, Civil Code 1798 et. seq., Management Memo 06-12 and Budget Letter 06-34, the Contractor will ensure that confidential information is protected from disclosure in accordance with applicable laws, regulations, and policies.

Contractor shall provide services pursuant to Title 22 California Code of Regulations Sections 7352 through 7364.

The Contractor agrees to provide ongoing education and training, at least annually, for all employees and subcontractors who handle personal, sensitive or confidential information. Contractor employees and subcontractors will complete the Security Awareness Training module located on the Department of Aging's website, http://www.aging.ca.gov/resources/Security_Awareness_Training.ppt within 30 days of the start date of this Agreement or within 30 days of the start date of any new employee or subcontractor and send certificates of completion to the County. The County must maintain certificates of completion on file and provide them to the State upon request.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

Contractor shall comply with all federal statutes relating to non-discrimination. These include those statutes and laws contained in the Contractor Certification Clauses (CCC 307) which is hereby incorporated by reference. In addition, Contractor shall comply with the following:

A. 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 USC Section 2000d; 45 CFR Part 80), which prohibits recipients of federal financial assistance from discriminating against persons based on race, color, religion, or national origin.

B. Equal Access to State-Funded Benefits, Program 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, sexual orientation, color, or disability. (22 CCR 98323) (Chapter 182, Stats. 2006)

- C. Contractor assures the County that it complies with the American with Disabilities Act (ADA) of 1990, which prohibits discrimination on basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 USC Sections 12101 et seq.)
- D. Section 504 applies only to Contractors who are providing services to members of the public. Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- E. Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.
- F. General non-discrimination.

No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

- G. Equal employment opportunity.

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.

- H. Contractor agrees to include these requirements in all contracts it enters into with subcontractors to provide services pursuant to this Agreement.

- I. Violation of Non-discrimination provisions.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to:

1. Termination of this Agreement;
2. Disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
3. Liquidated damages of \$2,500 per violation; and
4. Imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

J. Compliance with Equal Benefits Ordinance.

With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

K. To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

L. Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

12. Compliance with Contractor Employee Jury Service Ordinance.

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employee's regular pay the fees received for jury service.

13. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the Agreement conflicts with or is inconsistent with any term, condition, provision,

requirement or specification in any exhibit and/or attachment to this Agreement, the provisions of this body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

14. Conflict of Interest

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

- B. 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.

15. Debarment, Suspension, and Other Responsibility Matters

- A. The Contractor certifies to the best of its knowledge and belief, that it and its subcontractors:
 - 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - 2. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them 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;
 - 3. Are 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 (A)(1) of this section;
 - 4. Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default; and

5. Contractor shall report immediately to AAS in writing any incidents of alleged fraud and/or abuse by either Contractor or Contractor's subcontractor. Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by AAS.
 - B. The Contractor agrees to timely execute any and all amendments to this Agreement or other required documentation relating to their subcontractors' debarment/suspension status.
16. **Contractor's Staff**
 - A. The Contractor shall maintain adequate staff to meet the Contractor's obligations under this Agreement.
 - B. This staff shall be available to the State and AAS for training and meetings as necessary.
17. **Corporate Status**
 - A. 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.
 - B. Failure to maintain good standing by the contracting corporation or JPA shall result in suspension or termination of this Agreement with AAS until satisfactory status is restored.

18. Lobbying Certification

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

- A. 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.
- B. 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 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.

- C. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subgrants, and contracts under grants, loans, and cooperative agreements which exceed \$100,000) and that all subrecipients shall certify and disclose accordingly.
- D. 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.

19. 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 or as a mere volunteer and may not be reimbursed or compensated.

20. Records

- A. Contractor shall maintain complete records (which shall include, but not be limited to, accounting records, contracts, agreements, reconciliation of the "Financial Closeout Report", to be audited financial statements, a summary worksheet of results from the audit resolutions performed with supporting documentation, letters of agreement, insurance documentation in accordance with this Agreement, Memorandums and/or Letter of Understanding, patient or client records, and electronic files) of its activities and expenditures hereunder in a form satisfactory to the County and shall make all records pertaining to the Agreement available for inspection and audit by the County 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 by the State, or unless otherwise authorized in writing by the County, (b) for a longer period, if any, as is required by the applicable statute, by any other clause of this Agreement, or by B and C below, or (c) for a longer period as the County 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 A above. The Contractor shall ensure that any resource directories and all client records remain the property of the County upon termination of this Agreement, and are returned to the County or transferred to another Contractor as instructed by the County.

- 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 County 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 County 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 County during the audit resolution process.
- E. After the authorized period has expired, confidential records shall be shredded and disposed of in a manner that will maintain confidentiality.

21. Property

- A. Unless otherwise provided for in this Section, property refers to all assets, capitalized or noncapitalized, used in operation of this Agreement.
 - 1. Property includes land, building, improvements, machinery, vehicles, furniture, tools, intangibles, etc.
 - 2. Property does not include consumable office supplies such as paper, pencils, typing ribbons, file folders, etc.
- B. Property meeting all the following criteria are subject to the capitalization requirements. Such property must:
 - 1. Have a normal useful life of at least one year;
 - 2. Have a unit acquisition cost of at least \$5,000 (e.g., four identical assets which cost \$3,000 each, for a \$12,000 total would not meet this capitalization requirement); and
 - 3. Be used to conduct business under this Agreement.
- C. Noncapitalized property are those items which do not meet all three requirements in 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 service capacity, and lower operating costs). Examples of assets that might be improved and bettered include roads, bridges, curbs, gutters, tunnels, parking lots, streets, sidewalks, drainage, and lighting systems.

- E. Intangibles are property that 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 assets 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 County, 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 use the Report of Project Property Furnished/Purchased with Agreement Funds (CDA 32, revised 2/07) to report property to the County.

- 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 County 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 County. 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, until the Contractor has complied with all written instructions from the County 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 County. The County reserves the right to require the Contractor to transfer such property to another entity, or to the County.
- L. To exercise the above right, no later than 120 days after termination of the Agreement or notification of the Contractor's dissolution, the County 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 County for other purposes in this order:
 - 1. Another County program providing the same or similar service; or
 - 2. Another County-funded program.
- N. The Contractor may share use of the property and equipment or allow use by other programs, upon written approval of the County. As a condition of the approval, the County may require reimbursement under this Agreement for its use.
- 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 reimbursement item, the equipment to be purchased will be specified in the budget.

22. Access

The Contractor shall provide access to the Federal, State or County agency, Bureau of State Audits, the Controller General of the United States, or any of their duly authorized Federal, State, or County representative 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.

23. Monitoring, Assessment, and Evaluation

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

24. Audit

- A. The Contractor shall ensure that the single audit reports meet OMB Circular A-133 requirements:
 - 1. Performed timely – not less frequently than annually and a report submitted timely. The audit is required to be submitted within 30 days after receipt of the auditor’s report or nine months after the end of the audit period, whichever occurs first.
 - 2. Property procured – use procurement standards provided for in OMB Circular A-133 and provide maximum opportunities to small and minority audit firms.
 - 3. Performed in accordance with General Accepted Government Auditing Standards – shall be performed by an independent auditor and be organization-wide.
 - 4. All inclusive – includes an opinion (or disclaimer of opinion) of the financial statements; a report on internal control related to the financial statements and major programs; an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements; and the schedule of findings and questioned costs.
 - 5. Performed in accordance with provisions applicable to this program as identified in OMB Circular A-133 Compliance Supplement.
- B. The Contractor shall be required to include in its contract with the independent auditor that the auditor will comply with all applicable audit requirements/standards, the County shall have access to all audit reports and supporting work papers, and the County has the option to perform additional work, as needed.
- C. Unless prohibited by law, the cost of audits completed in accordance with provision of the Single Audit Act Amendments of 1996, are allowable charges to Federal Awards. The cost may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principle circulars.
- D. The Contractor shall cooperate in any further audits which may be required by the County or State.

25. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such issuance and to obtain such approval. The Contractor shall furnish the Department/Division with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

A. **Worker's Compensation and Employer's Liability Insurance.** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.

B. **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

Comprehensive General Liability	\$1,000,000
Motor Vehicle Liability Insurance	\$1,000,000
Professional Liability	\$1,000,000

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

26. Dissolution of Entity

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

27. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt, for transmittal, charges prepaid, addressed to:

In the case of County, to:
Heather Ledesma, FSM II
Aging and Adult Services
225 37th Avenue
San Mateo, CA 94403

In the case of Contractor, to:
Jim Lange, Senior Services Supervisor
City of Pacifica Senior Center
540 Crespi Drive
Pacifica, CA 94044
Phone (650) 738-7352
FAX 650 738-0564

28. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

29 Grievance Procedure

Consumers of services funded through AAS shall have the opportunity to file a written complaint against an AAS-funded program or an employee or volunteer of that program. All service providers must have a written grievance/complaint process for reviewing and attempting to resolve consumer complaints. The policy shall indicate a timeframe within which a complaint will be acknowledged. The timeframe to resolve a complaint at the service provider level shall be no more than thirty (30) days from the date of receiving a complaint. The written acknowledgment letter will clearly state the grievance levels within the contracted agency. The grievance process shall include confidentiality provisions to protect the complainant's right to privacy. Only information relevant to the complaint may be released to the responding party without the consent of the complainant. The complainant has a right to remain anonymous but will need to provide an address for written correspondence. An e-mail address is acceptable. The grievance and complaint process shall be posted in visible and accessible areas of each service program site. Information about the grievance process shall be delivered in writing to homebound consumers upon intake. For areas in which a substantial number of older adults are non-English speaking, the notification shall also be posted in the primary language of the program participants.

Should the complaint not result in resolution at the provider level, the consumer or his/her representative may bring the complaint to AAS. All notifications to the complainant shall include a statement that the complainant may appeal to AAS if dissatisfied with the result of the service provider's review. The levels of resolution are as follows:

- First Level: The service provider (AAS subcontractor)
- Second Level: The Health Services Manager over the Commissions and Provider Services Unit
- Third Level: The AAS Director
- Fourth Level: The Chief of the Health System or his/her designee
- Final Level: The California Department on Aging

30. Provision of Services

- A. Contractor shall take reasonable steps to ensure that "alternative communication services" are available to non-English speaking or Limited English Proficiency beneficiaries of services under this Agreement. (22 CCR 98211)
- B. "Alternative communication services" include, but are not limited to, the provision of services and programs by means of the following:
 - 1. Interpreters or bilingual providers and provider staff;
 - 2. Contracts with interpreter services;
 - 3. Use of telephone interpreter lines;
 - 4. Sharing of language assistance materials and services with other providers;

5. Translated written information materials, including but not limited to, enrollment information and descriptions of available services and programs; and
6. Referral to culturally and linguistically appropriate community services programs.

31. Notification of Security Breach to Data Subjects

- A. Notice must be given by the Contractor to County and any data subject whose personal information could have been breached.
- B. 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 system integrity are required.
- C. Notice may be provided in writing, electronically, or by substitute notice in accordance with State law, regulation, or policy.

32. Compliance with Use of Disposable Food Service Ware Ordinance

Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code which regulates the use of disposable food service ware. Chapter 4.106.030b states: No food service provider shall use non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County. (Ord. 4421, 05/06/08)

33. Emergency Preparedness

Contractor agrees to assist County in emergency planning and response by providing County client specific information, as requested by County.

34. Focal Point

The contractor shall serve as a “focal point” for older individuals within the community by maximizing, to the extent possible, the co-location and coordination of services for older adults at its site.

35. Program Changes

Contractor agrees to inform the County of any alteration in program or service delivery at least thirty (30) days prior to the implementation of the change, or as soon as reasonably feasible.

36. New Beginning Coalition

Providers are encouraged to actively participate in the New Beginning Coalition meetings. Participation in such meetings is a consideration in evaluating providers’ contract performances.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
Mark Church, President
Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

CITY OF PACIFICA

Contractor's Signature

Date: _____

Long Form Agreement/Business Associate v 1/09/06

SCHEDULE A

CITY OF PACIFICA

FY 2009-2010 DESCRIPTION OF SERVICES

Contractor shall operate the following Older Americans Act (OAA) and/or Community-Based Services (CBSP) program(s): a Congregate Nutrition Program, the Meals on Wheels and Supplemental Meals on Wheels Programs, and a Transportation Program. Services described in this Schedule A reflect program performance requirements (units of service) during fiscal year July 1, 2009 through June 30, 2010. These programs shall operate in accordance with the California Department of Aging and/or State licensing regulations and the standards and requirements established by Aging and Adult Services of San Mateo County. A monitoring will be conducted annually and onsite in accordance with the Area Agency on Aging Contract Monitoring Procedures Manual. Contractor agrees to provide requested programmatic and administrative documentation as part of the contract monitoring process.

Program Performance Measurement:

Contractor shall agree to distribute customer feedback surveys, which will be provided by County and returned to the County for data collection and analysis. Contractor agrees to attempt to obtain at least a 75% rating of good or better from client surveys.

I. CONGREGATE NUTRITION PROGRAM

A. Units of Service

Contractor agrees to provide 475 unduplicated clients with 11,600 senior congregate meals, and four nutrition education presentations.

B. Unit Definitions

Meal: To provide one meal that assures a minimum of one-third of the current Dietary Reference Intakes (DRI) for adults and complies with the current Dietary Guidelines for Americans, 2005.

Unit of Service: One meal

Nutrition Education: To provide regularly scheduled programs on nutrition, diet and health promotion issues. Programs and materials are to be approved by a qualified dietician or nutritionist. Methods of education may include demonstrations, audio-visual presentations or small group discussions for congregate program participants. Handout materials may be used as the sole education component for home-delivered meal program participants.

Unit of Service: One presentation

Unit of Measurement: Participants per presentation

C. Program Requirements

Program Requirements means Title III program requirements found in the Older Americans Act (OAA 42 USC Section 3001-3058), Code of Federal Regulations (45 CFR XIII, 1321); Title 22, California Code of Regulations (CCR), Section 7000 et seq., and Department Program Memoranda.

Title III C-1 (Congregate Nutrition Services) means nutrition services for older individuals in a congregate setting. Services include meals, nutrition and health promotion education, health promotion programs, nutrition risk screening, and opportunities for socialization. Each meal shall provide one-third (1/3) of the DRI and comply with the current Dietary Guidelines for Americans, 2005.

Contractor agrees to:

1. Conform to the appropriate federal, state and local requirements, especially the standards and practices identified in California Code of Regulations, Title 22, California Department of Aging Title III Program Manual, Occupational Safety and Health Administration (OSHA) requirements, current California Retail Food Code (CRFC) and San Mateo County Health System policies and procedures;
2. Enter into contracts with subcontractors which require them to provide services pursuant to Title 22 CCR, Sections 7352 through 7364, and ensure all applicable provisions required within this Agreement are included in the subcontract(s);
3. Operate five days per week throughout the Community Service Area (CSA), but not necessarily five days per week at each site. An agency may operate at a lesser frequency in a service area where five days per week is not feasible and a lesser frequency is approved in advance by AAS;
4. Notify AAS and receive approval of any plan, at least 30 days in advance of implementation, for change in the congregate meals service resulting from the relocation or closing of a kitchen, a route change or termination, reducing the number of service days and hours of operation, change in director or meal service caterer, suggested contribution amount, etc;
5. Protect participants from potential food safety issues, by discouraging any practice of participants bringing home-cooked food to share with other participants during the congregate meal service;

6. Inform clients that the Congregate Nutrition Program is partially funded by the OAA by posting signs near the contribution container at each congregate meal site indicating such. Signs will also state the suggested contribution level for eligible clients and the established fee for employees, non-congregate program volunteers, as well as any guest under 60 years of age.
 - a. All contributions are to be anonymous and voluntary;
 - b. Volunteers providing services during the meal hours are not required to pay the established fee;
 - c. Contributions from eligible clients (project income) are to be used to expand or support the meal service; and
 - d. Guest, non-congregate program volunteer, and employee fees are to be collected and maintained separately from contributions from eligible clients;
7. Utilize appropriate verbiage in written materials, newsletters, and flyers by avoiding the use of language that implies a price or fee for the meal (e.g. "This meal is sponsored by"). If there is reference to a dollar amount for a meal, the words "donation" or "contribution" must be included. AAS reserves the right to disallow payment for the meal if Contractor is out of compliance; and
8. Submit menus the month prior to the meal service for approval by the AAS nutritionist. The menus are to be submitted with Contractor's MIS and invoice documents by the 10th of each month. All menus must comply with the following:
 - a. Be planned for a minimum of four (4) weeks;
 - b. Be posted in a location easily seen by participants at each congregate meal site;
 - c. Be legible and easy to read in the language of the majority of the participants; and
 - d. Reflect cultural and ethnic dietary needs of participants, when feasible and appropriate;

Contractor assures that:

1. Means tests shall not be used to determine program/service eligibility;
2. Services shall not be denied to any client that does not contribute toward the cost of the services received;
3. Methods used to solicit voluntary contributions shall be non-coercive;
4. Donation letters sent to clients shall stipulate that contributions are voluntary and not required to receive service; and

5. Proof of age or citizenship shall not be required as a condition of receiving services.

II. MEALS ON WHEELS AND SUPPLEMENTAL MEALS ON WHEELS PROGRAMS

A. Units of Service

Contractor agrees to provide 110 unduplicated senior clients with 11,560 home-delivered meals, 10 unduplicated clients with 801 supplemental home-delivered meals, four units of nutrition education, and nutritional counseling by request and/or as determined by a dietitian or nutritionist.

B. Unit Definitions

Meal: To provide one meal which assures a minimum of one-third of the current Dietary Reference Intake (DRI) for adults and comply with the current Dietary Guidelines for Americans, 2005.

Unit of Service: One meal

Nutrition Counseling: To provide individual dietary evaluation and counseling performed by a dietitian or nutritionist, which relate to normal or therapeutic nutritional needs. Nutrition counseling may be provided either in person or by telephone.

Unit of Service: One client counseled

Nutrition Education: To provide regularly scheduled programs on nutrition, diet and health promotion issues. Programs and materials are to be pre-approved by a qualified dietician or nutritionist. Methods of education may include demonstrations, audio-visual presentations or small group discussions for congregate program participants. Handout materials may be used as the sole education component for home-delivered meal program participants.

Unit of Service: One presentation

Unit of Measurement: participants per presentation

C. Program Requirements

Program Requirements means Title III program requirements found in the Older Americans Act (OAA 42 USC Section 3001-3058), Code of Federal Regulations (45 CFR XIII, 1321); Title 22, California Code of Regulations (CCR), Section 7000 et seq., and Department Program Memoranda.

Title III C-2 (Home Delivered Nutrition Services) means nutrition services provided to homebound older individuals including meals, nutrition and health promotion education, and nutrition risk screening. The Older Americans Act (OAA) funded Meals on Wheels (MOW) Program and the San Mateo County sponsored Supplemental Meals on Wheels (SMOW) Program will be considered as one and the same program.

Contractor agrees to:

1. Conform to the appropriate federal, state and local requirements, especially the standards and practices identified in California Code of Regulations, Title 22, California Department of Aging Title III Program Manual, Occupational Safety and Health Administration (OSHA) requirements, current California Retail Food Code (CRFC) and San Mateo County Health department policies and procedures as set forth in MOW Policy (rev 11/96);
2. Operate the program five days of service each week, Monday through Friday. An agency may operate at a lesser frequency in a service area where five days per week is not feasible and a lesser frequency is approved in advance by AAS; Weekend and extra meal service shall be provided in accordance with MOW Policy;
3. Provide nutrition counseling for clients of MOW and SMOW who require the service, who are referred by physician's order for special diets, and who are determined by the Nutritional Screening Initiative to be at risk;
4. Prioritize service, if a short-term waiting list needs to be established. Priorities for services shall be determined based on the following descending order:
 - a. First Priority - Acute Care: A person newly released from hospital with no caregiver.
 - b. Second Priority - Limited Caregiver Assistance: A person with acute or chronic medical conditions or physical disability and with less than adequate caregiver support.
 - c. Third Priority - Other: All other homebound, frail older adults and adults with disabilities.
5. To provide one-third (1/3) of the Recommended Dietary Intakes (RDI) for adults and comply with the current Dietary Guidelines for Americans, 2005;

6. To be responsible for ensuring initial and on-going eligibility for weekend meals. The following conditions should be met before a client receives weekend meals:
 - a. The client must want the meal and be capable of storing, reheating and/or otherwise handling the meal;
 - b. The client must live alone or with a spouse who is also eligible; and/or
 - c. The client must be socially or geographically isolated during the weekend, e.g., the meals must not duplicate support from others;
7. Submit menus the month prior to the meal service for approval by the AAS nutritionist. The menus are to be submitted with Contractor's MIS and invoice documents by the 10th of each month; and
8. Participate in MOW Coalition meetings.

Contractor assures that:

1. Means tests shall not be used to determine program/service eligibility;
2. Services shall not be denied to any client over 60 years of age that does not contribute toward the cost of the services received;
3. Methods used to solicit voluntary contributions shall be non-coercive;
4. Donation letters sent to MOW clients (over 60 years of age) shall stipulate that contributions are voluntary and not required to receive service; and
5. Proof of age or citizenship shall not be required as a condition of receiving services.

To receive (SMOW) an individual must meet **all** of the following criteria:

1. Be an adult between the ages of 18 – 59 with a disability;
2. Be homebound because of incapacitating disability and/or illness;
3. Lack needed caregiver assistance from family or other resources that can aid in the provision of meals;
4. Be able to live at home if meals are provided, but unable to prepare or obtain nutritious meals;

5. Be assessed with a nutritional risk rating of 6+ (per the California Department of Aging definition); and
6. Participants under the age of 60 will be required to pay for a portion of each meal.

III. TRANSPORTATION PROGRAM

A. Units of Service

Contractor agrees to provide 80 unduplicated clients with 3,500 one-way trips.

B. Unit Definition

Transportation: To take a client from one location (home, senior center facility, etc.) to another.

Unit of Service: One one-way trip

C. Program Requirements

Program Requirements means Title III program requirements found in the Older Americans Act (OAA 42 USC Section 3001-3058), Code of Federal Regulations (45 CFR XIII, 1321); Title 22, California Code of Regulations (CCR), Section 7000 et seq., and Department Program Memoranda

Contractor agrees to:

1. Coordinate services with all other relevant transit providers, especially paratransit services available from Redi-Wheels and Redi-Coast;
2. Provide transportation for clients of senior centers or adult day programs as the established priority. Agencies should provide additional shopping assistance or medical trip services only if there is a defined need and only if resources permit;
3. Maintain written emergency and accident policies and be responsible for ensuring that all transportation staff are trained in these procedures. In addition, the agency will be responsible for ensuring that drivers participate in annual driver education that will include sensitivity training related to transporting seniors and adults with disabilities;
4. Identifying contingency plans for providing back-up coverage when a vehicle is inoperable or when the driver is ill or on vacation, if the agency operates its own vehicle; and
5. Inform paratransit riders by written notice of the suggested contribution. Contributions will be collected and included as part of the Transportation

budget. All contributions are to be voluntary, anonymous, and must be used to provide expanded transportation services. If the vehicle is provider-owned, a sign will be posted in the vehicle indicating the suggested contribution. Otherwise, written notice of suggested contribution must be posted in program service areas.

Contractor assures that:

1. Means tests shall not be used to determine program/service eligibility;
2. Services shall not be denied to any client that does not contribute toward the cost of the services received;
3. Methods used to solicit voluntary contributions shall be non-coercive;
4. Donation letters sent to clients shall stipulate that contributions are voluntary and not required to receive service; and
5. Proof of age or citizenship shall not be required as a condition of receiving services.

SCHEDULE B

CITY OF PACIFICA

FY 2009-2010 FISCAL SUMMARY

Contractor shall operate the following Older Americans Act (OAA) and/or Community-Based Services (CBSP) program(s): a Congregate Nutrition Program, the Meals on Wheels and Supplemental Meals on Wheels Programs, and a Transportation Program. Services described in this Schedule B reflect program funding and payment methods during fiscal year July 1, 2009 through June 30, 2010. These programs shall operate in accordance with the California Department of Aging and/or State licensing regulations and the standards and requirements established by Aging and Adult Services of San Mateo County. Funds shall be used to subsidize the fees of seniors who are unable to pay the full cost of services.

I. CONGREGATE NUTRITION PROGRAM

Aging and Adult Services will pay Contractor in consideration of Congregate Nutrition Program services rendered through combined OAA and Nutrition Services Incentive Program (NSIP) funds, the rate of \$3.70 per meal.

The maximum reimbursement for the Congregate Nutrition Program during the contract term July 1, 2008 through June 30, 2009 shall not exceed FORTY-TWO THOUSAND NINE HUNDRED TWENTY DOLLARS (\$42,920).

II. MEALS ON WHEELS AND SUPPLEMENTAL MEALS ON WHEELS PROGRAMS

Aging and Adult Services will pay Contractor in consideration of Meals on Wheels Program services rendered through combined OAA and NSIP funds, the rate of \$5.00 per home-delivered meal, and in consideration of Supplemental Meals on Wheels Program services rendered through the Meals on Wheels Trust, the rate of \$6.00 per supplemental home-delivered meal.

The maximum reimbursement for the Meals on Wheels Program during the contract term July 1, 2009 through June 30, 2010 shall not exceed FIFTY-SEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$57,800).

The maximum reimbursement for the Supplemental Meals on Wheels Program during the contract term July 1, 2009 through June 30, 2010 shall not exceed FOUR THOUSAND EIGHT HUNDRED SIX DOLLARS (\$4,806).

III. TRANSPORTATION PROGRAM

Aging and Adult Services (AAS) will pay the Contractor in consideration of Transportation Program services rendered through OAA Title IIIB funds. The reimbursement amounts are calculated based on the following formula: **Actual Expenditure** minus (-) **Total Revenue** (Matching and Non-Matching Contributions and Project Income) equals (=) **Total Reimbursement** amount. If the Contractor prefers to have the reimbursement amount equally spread throughout the contract year, this can be achieved by utilizing the reimbursement formula indicated above, as long as the total reimbursement amount does not exceed the total cost of the services rendered.

The maximum reimbursement for the Transportation Program during the contract term July 1, 2009 through June 30, 2010 shall not exceed SEVEN THOUSAND DOLLARS (\$7,000).

Contractor agrees to the following:

- A. Contractor is responsible for covering the cost of all components of each program outlined above and shall be reimbursed for actual expenditures on the approved budget for each program;
- B. A mid-year review, scheduled for January 2010, will require a reconciliation of year-to-date outcomes. Based on these outcomes, a budget revision may be required;
- C. The Contractor will submit invoices and monthly program reports to Aging and Adult Services (AAS) by the tenth (10th) of each month. Upon notification from AAS, the Contractor must correct inaccurate invoices and corresponding reports in order to receive reimbursement. Invoices submitted more than two months past the month of service may not be reimbursed. Invoice(s) for June 2010 will be due by July 7, 2010 to facilitate timely payment;
- D. Offer services throughout the twelve-month contract period, unless prior written approval is received from Aging and Adult Services;
- E. Submit a closing report with supporting documentation of expenses by July 23, 2010;

Documentation should include the following:

- General ledger of expenditures for the contracted program
- Applicable payroll register
- Lease agreements and allocation percentage for rent cost
- Equipment invoices
- Vendor invoices for large purchases
- CDA 32 form – Report of property furnished/purchased

- F. Program Income must be reported and expended under the same terms and conditions as the program funds from which it is generated; and
- G. Program Income must be used to pay for current allowable costs of the program in the same fiscal year that the income was earned.

The maximum reimbursement for contracted services between San Mateo County Aging and Adult Services and the City of Pacifica is \$112,526 in OAA, NSIP and Meals on Wheels Trust funds, and \$13,726 in County General Funds for general program support for a total amount of ONE HUNDRED TWENTY-SIX THOUSAND TWO HUNDRED FIFTY-TWO DOLLARS (\$126,252) for the contract term July 1, 2009 through June 30, 2010.

SCHEDULE C

CITY OF PACIFICA

FY 2009-2010 AMERICAN RECOVERY AND REINVESTMENT ACT DESCRIPTION OF SERVICES

Contractor shall operate the following Older Americans Act (OAA) and/or Community-Based Services (CBSP) program: Congregate Nutrition Program and the Meals on Wheels Program. Services described in this Schedule C reflect program performance requirements (units of service) during fiscal year July 1, 2009 through June 30, 2010. These programs shall operate in accordance with the California Department of Aging and/or State licensing regulations and the standards and requirements established by Aging and Adult Services of San Mateo County. A monitoring will be conducted annually and onsite in accordance with the Area Agency on Aging Contract Monitoring Procedures Manual. Contractor agrees to provide requested programmatic and administrative documentation as part of the contract monitoring process.

I. **CONGREGATE NUTRITION PROGRAM** **American Recovery and Reinvestment Act (ARRA)**

A. Contractor shall make every effort to increase the number of meals served over prior fiscal year. The Nutrition Stimulus funds are intended to provide meals to seniors in need of food, restore nutrition services that have been cut, and reinstate staff positions, which may have been eliminated or reduced.

B. Program Requirements

Program Requirements means Title III program requirements found in the Older Americans Act (OAA 42 USC Section 3001-3058), Code of Federal Regulations (45 CFR XIII, 1321); Title 22, California Code of Regulations (CCR), Section 7000 et seq., and Department Program Memoranda.

American Recovery and Reinvestment Act of 2009 (ARRA) means the law enacted by Congress and signed into law on February 17, 2009 that contains funding for a variety of programs that support Americans during challenging economic times. The law includes funding to support the Title III C Elderly Nutrition Program services including nutritious meals, nutrition education, and other appropriate nutrition services for older Americans in order to maintain health, independence, and quality of life.

Nutrition Stimulus funds means the ARRA funds awarded to CDA to help older Californians maintain their health and independence by providing Title III C meals to seniors in need of food and restoring congregate and home-delivered nutrition services and staff positions that have been eliminated or reduced.

Title III C-1 (Congregate Nutrition Services) means nutrition services for older individuals in a congregate setting. Services include meals, nutrition and health promotion education, health promotion programs, nutrition risk screening, and opportunities for socialization. Each meal shall provide one-third (1/3) of the DRI and comply with the current Dietary Guidelines for Americans, 2005.

Reporting means that recipients of grants made under the ARRA will be required to report data. Reporting requirements must meet the Standard Data Elements for reports under Section 1512 of the ARRA of 2009, Public Law 111-5. These reporting requirements have not been finalized. AAS will inform Contractor when more information is available.

Program Income means revenue generated by the Contractor or subcontractor from contract-supported activities. Program income is:

1. Voluntary contributions received from a participant or responsible party as a result of services;
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; and
4. Proceeds from sale of items fabricated under contract agreement.

Indirect Costs means costs incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objective specifically benefited, without effort disproportionate to the result achieved.

Eligible Service Population for Nutrition Stimulus funds 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, older individuals with Limited English Proficiency, and older individuals residing in rural areas. [OAA, Section 305 (a)(2)(E)] [Title 22, CCR, Sections 7125, 7127, 7130, and 7135].

Contractor agrees to:

1. Conform to the appropriate Federal, State and local requirements, especially the standards and practices identified in California Code of Regulations, Title 22, California Department of Aging Title III Program Manual, Occupational Safety and Health Administration (OSHA) requirements, current California Retail Food Code (CRFC), San Mateo

County Health System policies and procedures, and any other subsequent program memorandum, provider bulletins, or instructions issued during the term of this Agreement;

2. Enter into contracts with subcontractors which require them to provide services pursuant to Title 22 CCR, Sections 7352 through 7364, and ensure all applicable provisions required within this Agreement are included in the subcontract(s);
3. Operate five days per week throughout the Community Service Area (CSA), but not necessarily five days per week at each site. An agency may operate at a lesser frequency in a service area where five days per week is not feasible and a lesser frequency is approved in advance by AAS;
4. Notify AAS and receive approval of any plan, at least 30 days in advance of implementation, for change in the congregate meals service resulting from the relocation or closing of a kitchen, a route change or termination, reducing the number of service days and hours of operation, change in director or meal service caterer, etc.;
5. Protect participants from potential food safety issues, by discouraging any practice of participants bringing home-cooked food to share with other participants during the congregate meal service;
6. Inform clients that the Congregate Nutrition Program is partially funded by the OAA by posting signs near the contribution container at each congregate meal site indicating such. Signs will also state the suggested contribution level for eligible clients and the established fee for employees, non-congregate program volunteers, as well as any guest under 60 years of age.
 - a. All contributions are to be anonymous and voluntary;
 - b. Volunteers providing services during the meal hours are not required to pay the established fee;
 - c. Contributions from eligible clients (project income) are to be used to expand or support the meal service; and
 - d. Guest, non-congregate program volunteer, and employee fees are to be collected and maintained separately from contributions from eligible clients;
7. Utilize appropriate verbiage in written materials, newsletters, and flyers by avoiding the use of language that implies a price or fee for the meal. If there is reference to a dollar amount for a meal, the words "donation" or "contribution" must be included. AAS reserves the right to disallow payment for the meal if Contractor is out of compliance; and

8. Submit menus for approval to AAS registered dietitian at least four weeks prior to distribution. All menus must comply with the following:
 - a. Be planned for a minimum of four (4) weeks;
 - b. Be posted in a location easily seen by participants at each congregate meal site;
 - c. Be legible and easy to read in the language of the majority of the participants; and
 - d. Reflect cultural and ethnic dietary needs of participants, when feasible and appropriate;

Contractor assures that that following conditions are met:

1. Services are provided only to the defined Eligible Service Population;
2. 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";
3. Means tests shall not be used by any Contractor for any meal provided by Nutrition Stimulus funds;
4. Services shall not be denied to any Nutrition Stimulus or Title III C client that does not contribute toward the costs of services received;
5. Methods used to solicit voluntary contributions for Nutrition Stimulus or Title III C services shall be non-coercive;
6. Donation letters sent to clients for Nutrition Stimulus or Title III C services shall stipulate that contributions are voluntary and not required to receive service;
7. Cost sharing shall not be implemented for any Nutrition Stimulus or Title III C service until so notified by the County; and
8. Proof of age or citizenship shall not be required as a condition of receiving services.

C. ARRA Specific Terms and Conditions

1. This Agreement is issued under the authority of the American Recovery and Reinvestment Act of 2009, P.L. 111-5. By receiving funds under this Agreement, the Contractor assures that it will carry out the project/program as authorized and will comply with the terms and conditions and other requirements of this Agreement;

2. Buy American – Use of American Iron, Steel, and Manufactured Goods. Contractors may not use any funds obligated under this Agreement for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless Health and Human Services (HHS) waives the application of this provision. (ARRA Sec. 1605);

3. Wage Rate Requirements

[This term and condition shall not apply to tribal contracts entered into by the Indian Health Service funded with this appropriation. (ARRA Title VII-Interior, Environment, and Related Agencies, Department of Health and Human Services, Indian Health Facilities)] Subject to further clarification issued by the Office of Management and Budget, and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by Contractors and subcontracts on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this award shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United State Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code. (ARRA Sec.1606);

4. Recipient shall also use grant funds in a manner that maximizes job creation and economic benefit (ARRA Sec. 1602);

5. Limit on Funds (ARRA)

None of the funds appropriated or otherwise made available by the Nutrition Stimulus funds may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. (ARRA Sec. 1604);

6. Disclosure of Fraud or Misconduct

Contractors awarded funds made available under the ARRA shall promptly refer to the HHS Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws

pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. The HHS Office of Inspector General can be reached at <http://www.oig.hhs.gov/fraud/hotline/> ;

7. ARRA: One-Time Funding

Unless otherwise specified, ARRA funding to existent or new contractors should be considered one-time funding; and

8. This Agreement is subject to the requirements of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments under Title 45 Code of Federal Regulations, Part 92.

D. Resolution of Language Conflicts

In the event of any inconsistency between the articles, attachments, or provisions which constitute this contract, the following order of precedence shall apply:

1. The terms and conditions of this ARRA of 2009 Award and other requirements have the following order of precedence if there is any conflict in what they require: (1) the ARRA; (2) other applicable Federal statutes and their implementing regulations; (3) M-09-10; and (4) terms and conditions of ARRA award;
2. Standard Agreement (STD 213), all Exhibits and any amendments thereto;
3. All other contract policy terms and conditions contained in applicable Department of Health and Human Services (HHS) Grant Policy Statements apply unless they conflict or are superseded by the terms and conditions implementing their ARRA requirements. Recipients are responsible for contacting the County for any needed clarifications;
4. Any other documents incorporated herein by reference; and
5. Program memos and other guidance issued by the State.

**II. MEALS ON WHEELS
American Recovery and Reinvestment Act (ARRA)**

Contractor shall make every effort to increase the number of meals served over prior fiscal year. The Nutrition Stimulus funds are intended to provide meals to seniors in need of food, restore nutrition services that have been cut, and reinstate staff positions, which may have been eliminated or reduced.

A. Unit Definitions

Meal: To provide one meal that assures a minimum of one-third of the current Dietary Reference Intakes (DRI) for adults and complies with the current Dietary Guidelines for Americans, 2005.

Unit of Service: One meal

B. Program Requirements

Program Requirements means Title III program requirements found in the Older Americans Act (OAA 42 USC Section 3001-3058), Code of Federal Regulations (45 CFR XIII, 1321); Title 22, California Code of Regulations (CCR), Section 7000 et seq., and Department Program Memoranda.

American Recovery and Reinvestment Act of 2009 (ARRA) means the law enacted by Congress and signed into law on February 17, 2009 that contains funding for a variety of programs that support Americans during challenging economic times. The law includes funding to support the Title III C Elderly Nutrition Program services including nutritious meals, nutrition education, and other appropriate nutrition services for older Americans in order to maintain health, independence, and quality of life.

Nutrition Stimulus funds means the ARRA funds awarded to CDA to help older Californians maintain their health and independence by providing Title III C meals to seniors in need of food and restoring congregate and home-delivered nutrition services and staff positions that have been eliminated or reduced.

Title III C-2 (Home Delivered Nutrition Services) means nutrition services provided to homebound older individuals including meals, nutrition and health promotion education, and nutrition risk screening.

Program Income means revenue generated by the Contractor or subcontractor from contract-supported activities. Program income is:

1. Voluntary contributions received from a participant or responsible party as a result of services;
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; and
4. Proceeds from sale of items fabricated under contract agreement.

Indirect Costs means costs incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objective specifically benefited, without effort disproportionate to the result achieved.

Eligible Service Population for Nutrition Stimulus funds 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, older individuals with Limited English Proficiency, and older individuals residing in rural areas. [OAA, Section 305 (a)(2)(E)] [Title 22, CCR, Sections 7125, 7127, 7130, and 7135].

Contractor agrees to:

1. Conform to the appropriate Federal, State and local requirements, especially the standards and practices identified in California Code of Regulations, Title 22, California Department of Aging Title III Program Manual, Occupational Safety and Health Administration (OSHA) requirements, current California Retail Food Code (CRFC), San Mateo County Health System policies and procedures as set forth in Meals on Wheels Policy (rev 11/96), and any other subsequent program memorandum, provider bulletins, or instructions issued during the term of this Agreement;
2. Enter into contracts with subcontractors which require them to provide services pursuant to Title 22 CCR, Sections 7352 through 7364, and ensure all applicable provisions required within this Agreement are included in the subcontracts(s);
3. Operate the program five days of service each week, Monday through Friday. Weekend and extra meal service shall be provided in accordance with Meals on Wheels Policy;
4. Provide nutrition counseling for clients of Meals on Wheels and Supplemental Meals on Wheels who require the service, who are referred by physician's order for special diets, and who are determined by the Nutritional Screening Initiative to be at risk;
5. Prioritize service if a short-term waiting list needs to be established. Priorities for services shall be determined based on the following descending order:
 - a. First Priority - Acute Care: A person newly released from hospital with no caregiver;
 - b. Second Priority - Limited Caregiver Assistance: A person with acute or chronic medical conditions or physical disability and with less than adequate caregiver support;

- c. Third Priority - Other: All other homebound, frail older adults and adults with disabilities;
6. To provide one-third (1/3) of the RDI for adults and comply with the current Dietary Guidelines for Americans, 2005;
7. To be responsible for ensuring initial and on-going eligibility for weekend meals. The following conditions should be met before a client receives weekend meals:
 - a. The client must want the meal and be capable of storing, reheating and/or otherwise handling the meal;
 - b. The client must live alone or with a spouse who is also eligible; and/or
 - c. The client must be socially or geographically isolated during the weekend, e.g., the meals must not duplicate support from others;
8. To participate in Meals on Wheels Coalition meetings; and
9. Submit menus for approval to AAS registered dietitian at least (4) four weeks prior to distribution. All menus must comply with the following:
 - a. Be planned for a minimum of four (4) weeks;
 - b. Be legible and easy to read in the language of the majority of the participants; and
 - c. Reflect cultural and ethnic dietary needs of participants, when feasible and appropriate.

Contractor assures that that following conditions are met:

1. Services are provided only to the defined Eligible Service Population;
2. 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;"
3. Means tests shall not be used by any Contractor for any meal provided by Nutrition Stimulus funds;
4. Services shall not be denied to any Nutrition Stimulus or Title III C client that does not contribute toward the costs of services received;
5. Methods used to solicit voluntary contributions for Nutrition Stimulus or Title III C services shall be non-coercive;

6. Donation letters sent to clients for Nutrition Stimulus or Title III C services shall stipulate that contributions are voluntary and not required to receive service;
7. Cost sharing shall not be implemented for any Nutrition Stimulus or Title III C service until so notified by the County; and
8. Proof of age or citizenship shall not be required as a condition of receiving services.

C. ARRA Specific Terms and Conditions

1. This Agreement is issued under the authority of the American Recovery and Reinvestment Act of 2009, P.L. 111-5. By receiving funds under this Agreement, the Contractor assures that it will carry out the project/program as authorized and will comply with the terms and conditions and other requirements of this Agreement;
2. Buy American – Use of American Iron, Steel, and Manufactured Goods. Contractors may not use any funds obligated under this Agreement for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless Health and Human Services (HHS) waives the application of this provision. (ARRA Sec. 1605);
3. Wage Rate Requirements

[This term and condition shall not apply to tribal contracts entered into by the Indian Health Service funded with this appropriation. (ARRA Title VII-Interior, Environment, and Related Agencies, Department of Health and Human Services, Indian Health Facilities)] Subject to further clarification issued by the Office of Management and Budget, and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontracts on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this award shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United State Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code. (ARRA Sec.1606);

4. Recipient shall also use grant funds in a manner that maximizes job creation and economic benefit; (ARRA Sec. 1602);

5. Limit on Funds (ARRA)

None of the funds appropriated or otherwise made available by the Nutrition Stimulus funds may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. (ARRA Sec. 1604);

6. Disclosure of Fraud or Misconduct

Contractors awarded funds made available under the ARRA shall promptly refer to the HHS Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. The HHS Office of Inspector General can be reached at <http://www.oig.hhs.gov/fraud/hotline/> ;

7. ARRA: One-Time Funding

Unless otherwise specified, ARRA funding to existent or new contractors should be considered one-time funding; and

8. This Agreement is subject to the requirements of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments under Title 45 Code of Federal Regulations, Part 92.

D. Resolution of Language Conflicts

In the event of any inconsistency between the articles, attachments, or provisions which constitute this contract, the following order of precedence shall apply:

1. The terms and conditions of this ARRA of 2009 Award and other requirements have the following order of precedence if there is any conflict in what they require: (1) the ARRA; (2) other applicable Federal statutes and their implementing regulations; (3) M-09-10; and (4) terms and conditions of ARRA award;
2. Standard Agreement (STD 213), all Exhibits and any amendments thereto;

3. All other contract policy terms and conditions contained in applicable Department of Health and Human Services (HHS) Grant Policy Statements apply unless they conflict or are superseded by the terms and conditions implementing their ARRA requirements. Recipients are responsible for contacting the County for any needed clarifications;
4. Any other documents incorporated herein by reference; and
5. Program memos and other guidance issued by the State.

SCHEDULE D

CITY OF PACIFICA

FY 2009-2010 AMERICAN RECOVERY AND REINVESTMENT ACT FISCAL SUMMARY

Contractor shall operate the following Older Americans Act (OAA) and/or Community-Based Services (CBSP) program(s): Congregate Nutrition Program and the Meals on Wheels Program. Services described in this Schedule D reflect program funding and payment methods during fiscal year July 1, 2009 through June 30, 2010. These programs shall operate in accordance with the California Department of Aging and/or State licensing regulations, applicable federal laws, and the standards and requirements established by Aging and Adult Services of San Mateo County. Funds shall be used to subsidize the fees of seniors who are unable to pay the full cost of services.

Nutrition Stimulus Funds means the ARRA funds awarded to CDA to help older Californians maintain their health and independence by providing Title III C meals to seniors in need of food and restoring congregate and home-delivered nutrition services and staff positions that have been eliminated or reduced.

Allowable expenditures of Nutrition Stimulus funds include:

1. Restoration of meals, services, and jobs;
2. Backfill the loss of other city, county, and State funds;
3. To mitigate waiting lists; and
4. To purchase equipment.

Per Administration on Aging (AoA) guidance, if equipment is needed to maintain and provide more meals, Contractors are strongly encouraged to make such purchases from their regular FY 2009 OAA appropriations due to stringent Office of Inspector General (OIG) oversight of these types of purchases;

The ARRA included \$46M to the OIG to monitor and evaluate the implementation of the ARRA. There will be enhanced tracking of these funds for reasonable costs, transparency, and accountability to the OIG. While ARRA Nutrition Stimulus funds do not prohibit the use of the award for infrastructure investments made by local governments, there will be enhanced tracking conditions. Recipients of Nutrition Stimulus funds would bear the responsibility for documenting reasonable costs, transparency and accountability to the OIG.

I. CONGREGATE NUTRITION PROGRAM American Recovery and Reinvestment Act (ARRA)

Aging and Adult Services (AAS) will pay the Contractor in consideration of Congregate Nutrition Program services rendered through ARRA funds.

The maximum reimbursement through ARRA funds for the Congregate Nutrition Program during the contract term July 1, 2009 through June 30, 2010 shall not exceed NINE THOUSAND SIX HUNDRED ELEVEN DOLLARS (\$9,611).

II. MEALS ON WHEELS PROGRAM American Recovery and Reinvestment Act (ARRA)

Aging and Adult Services (AAS) will pay the Contractor in consideration of Meals on Wheels Program services rendered through ARRA funds.

The maximum reimbursement through ARRA funds for the Meals on Wheels Program during the contract term July 1, 2009 through June 30, 2010 shall not exceed FOUR THOUSAND SEVEN HUNDRED TWO DOLLARS (\$4,702).

Contractor agrees to the following:

- A. Contractor is responsible for covering the cost of all components of each program outlined above and shall be reimbursed for actual expenditures on the approved budget for each program;
- B. A mid-year review, scheduled for January 2010, will require a reconciliation of year-to-date outcomes. Based on these outcomes, a budget revision may be required;
- C. The Contractor will submit invoices and monthly program reports to Aging and Adult Services (AAS) by the tenth (10th) of each month. Upon notification from AAS, the Contractor must correct inaccurate invoices and corresponding reports in order to receive reimbursement. Invoices submitted more than two months past the month of service may not be reimbursed. Invoice(s) for June 2010 will be due by July 7, 2010 to facilitate timely payment;
- D. Offer services throughout the twelve-month contract period, unless prior written approval is received from Aging and Adult Services;
- E. Submit a closing report with supporting documentation of expenses by July 23, 2010;

Documentation should include the following:

- General ledger of expenditures for the contracted program
- Applicable payroll register
- Lease agreements and allocation percentage for rent cost
- Equipment invoices
- Vendor invoices for large purchases
- CDA 32 form – Report of property furnished/purchased

- F. Program Income must be reported and expended under the same terms and conditions as the program funds from which it is generated; and
- G. Program Income must be used to pay for current allowable costs of the program in the same fiscal year that the income was earned.

The maximum reimbursement for contracted services between San Mateo County Aging and Adult Services and City of Pacifica in ARRA funds is a total amount of FOURTEEN THOUSAND THREE HUNDRED THIRTEEN DOLLARS (\$14,313) for the contract term July 1, 2009 through June 30, 2010.

Attachment H
Health Insurance Portability and Accountability Act (HIPAA)
Business Associate Requirements

Definitions

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 164.304 and 164.501. (All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

- a. *Designated Record Set.* “Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.
- b. *Electronic Protected Health Information.* “Electronic Protected Health Information” (“EPHI”) means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- c. *Individual.* “Individual” shall have the same meaning as the term “individual” in Section 160.103 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- d. *Privacy Rule.* “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- e. *Protected Health Information.* “Protected Health Information” shall have the same meaning as the term “protected health information” in Section 160.103 and is limited to the information created or received by Contractor from or on behalf of County.
- f. *Required By Law.* “Required by law” shall have the same meaning as the term “required by law” in Section 164.103.
- g. *Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- h. *Security Incident.* “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate
- i. *Security Rule.* “Security Rule” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

Obligations and Activities of Contractor

- a. Contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- d. Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. If Contractor has protected health information in a designated record set, Contractor agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- g. If Contractor has protected health information in a designated record set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- h. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, County available to the County or to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- i. Contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

- j. Contractor agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (i) of this Schedule, to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- k. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of County.
- l. Contractor shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. Contractor shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. Contractor shall report to County any Security Incident within 5 business days of becoming aware of such incident.
- o. Contractor shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at County's request, to the County for purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

Permitted Uses and Disclosures by Contractor

Except as otherwise limited in this Schedule, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

Obligations of County

- a. County shall provide Contractor with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Contractor's permitted or required uses and disclosures.
- c. County shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

Permissible Requests by County

County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by County, unless the Contractor will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

Duties Upon Termination of Agreement

- a. Upon termination of the Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.
- b. In the event that Contractor determines that returning or destroying Protected Health Information is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protection Health Information.

Miscellaneous

- a. *Regulatory References.* A reference in this Schedule to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. *Amendment.* The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. *Survival.* The respective rights and obligations of Contractor under this Schedule shall survive the termination of the Agreement.
- d. *Interpretation.* Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. *Reservation of Right to Monitor Activities.* County reserves the right to monitor the security policies and procedures of Contractor

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person - Type or Print

Name of Contractor(s) - Type or Print

Street Address or P.O. Box

City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

Signature

Title of Authorized Official

Date

*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."