

**FY2012 CONTRACT FOR MILL LEVY,
STATE, FEDERAL AND GRANT FUNDED PROGRAM
AGING
Sedgwick County Transportation Program**

THIS Transportation Contract (the "Contract") is made and entered into this _____ day of _____, 2011 by and between Sedgwick County, Kansas, (hereinafter referred to as the "County") and Thunder Enterprises, Inc., a Kansas corporation (hereinafter referred to as the "Contractor").

WITNESSETH

WHEREAS, County wishes to make available transportation services to residents of Sedgwick County, Kansas; and

WHEREAS, Contractor warrants that it is fully competent and capable of providing the services hereinafter described in a safe and efficient manner.

NOW, THEREFORE, in consideration of the mutual covenants, promises and Contracts set forth herein, the parties hereto agree as follows:

ARTICLE 1: NATURE OF RELATIONSHIP

- 1.1 Contractual Relationship. It is understood and agreed that the legal relationship between Contractor and the County is contractual in nature.
- 1.2 Independent Contractor. The County hereby engages and retains Contractor as an independent contractor and Contractor accepts said engagement and retention. No other relationship is intended to be created between the parties, and nothing herein shall be construed so as to give either party any rights as an agent, employee, joint venturer or partner with the other party. As an independent contractor, the Contractor and its employees will not be within the protection or coverage of the County's worker's compensation insurance (subject to the provisions of K.S.A. § 44-505). Further, neither Contractor nor any of its employees shall be entitled to receive any current or future benefits provided to employees of the County. The County shall not be responsible for withholding social security, unemployment compensation, or state or federal income tax from payments made by the County to Contractor.
- 1.3 Term. This Contract shall become a legal and binding Contract upon signature of same by both parties, but shall be effective as of January 1, 2012 (the "Effective Date"). This contract terminates on December 31, 2012. Notwithstanding the foregoing, the term of this Contract may continue on a month to month basis for a reasonable time after December 31, 2012 if: (A) both parties mutually agree to continue operating under the terms of this Contract while actively negotiating a contract for 2013; and (B) funds are available for the 2013 program year.
- 1.4 Required Certifications. If Contractor is a corporation, limited liability company or other entity that is officially organized in Kansas, it shall furnish evidence of good standing in the form of a certificate signed by the Kansas Secretary of State. If Contractor is not officially organized in Kansas, it shall furnish evidence of authority to transact business in Kansas, in the form of a certificate signed by the Kansas Secretary of State. The applicable certificate shall be provided to the County on or before the date this Contract is executed by Contractor.

ARTICLE 2: SCOPE OF SERVICES

- 2.1 *Purpose.* It is mutually agreed by and between County and Contractor that it is the purpose of this Contract that Contractor provide a program of specialized transportation services to eligible persons in order to maintain ability to reside in the community as long as possible. The program is named, "Sedgwick County Transportation" and may be referred to herein as "SCT."

ARTICLE 3: PROGRAM GOAL, OBJECTIVE AND GENERAL CONDITIONS

- 3.1 *Program Goal and Objective.* It is mutually agreed by the parties that this Contract will be evaluated by the County in terms of obtaining the following program goal and objective.
- (A) The goal of this program is to provide safe, affordable specialized transportation to access community services. The objective of this program is to provide specialized transportation to eligible persons who are residents of Sedgwick County, Kansas for eligible trips prior authorized by SCT in 2012.
- 3.2 *General Conditions.*
- (A) Contractor agrees that all rides must be prior authorized by SCT. Rides scheduled directly with the Contractor and not prior authorized by SCT, including adjustments or changes to a ride, are subject to noncompensation.
- (B) Ensure through individual trip planning, coordination of trips and time management that:
- (i) passengers are picked up no later than 30 minutes after requested pick up time. If this is not possible, Contractor must notify SCT immediately; and,
- (ii) a back up system is in place and rides are managed in such a way that no SCT passenger is left "stranded."
- (C) Contractor agrees if SCT has indicated to do so, to ask and punch/initial passenger's ride card at time of loading passenger. Should a passenger not have their ride card, Contractor is to contact SCT immediately for instruction. One attendant or guest accompanying passenger may ride free and Contractor will not make additional punches/initials on passenger's ride card. Each additional attendant or guest will require the Contractor to punch/initial passenger's ride card according to number of one-way rides provided.
- (D) Contractor agrees that SCT allows for choice of contractor when an eligible passenger makes a trip request and it is authorized, but SCT may adjust trip assignments based on passenger's needs, Contractor availability, or other factors.
- (E) Contractor agrees to comply with all policies and procedures set forth by SCT and will post or keep in each contracted vehicle the SCT Assistance guidelines and Consumer Rules of Conduct sheet. SCT passengers are not to be provided assistance beyond the door and their bags/packages are not to be carried beyond the door.
- (F) Contractor agrees that SCT customers will be given priority service.
- (G) Contractor agrees that the Federal Transit Administration (FTA) requires by law that in order to receive FTA Section 5311 reimbursement for rural general public transportation, the Contractor must have a contract with TMHC Services, Inc., and all safety-sensitive employees per FTA regulations are in FTA's drug and alcohol testing pool and that either of the two listed measures be performed by the 15th of each month: a faxed participation roster to TMHC or by the TMHC website perform updates or viewing of the participants roster.
- (H) Contractor agrees to provide a Certificate of Insurance to SCT by December 31, 2011 as proof of insurance coverage at levels described in Article 15.
- (I) Contractor agrees to perform preventive maintenance on all vehicles and to have a vehicle inspection by an ASE certified (or equivalent) mechanic or KDOT inspector completed on each of their vehicles once annually. If inspected by an ASE certified (or equivalent) mechanic,

SCT's Vehicle Mechanical & Safety Inspection form dated November, 2008 shall be completed and submitted; if inspected by a KDOT inspector, KDOT's completed form shall be submitted.

ARTICLE 4: COMPENSATION FROM THE COUNTY

- 4.1 **Compensation.** Contractor and County expressly understand and agree that payments made to Contractor pursuant to the terms of this Contract shall be on a fee-for-service basis according to the rates and according to the method of billing and payment as set forth in this Contract.
- 4.2 **Billing Procedures.** If progress and/or completion of services are provided in accordance with the terms of this Contract, County agrees to pay Contractor in accordance with the following terms:
- (A) **Monthly Billing.** A monthly billing system will be used and all billings will need to be remitted by the tenth (10th) of each month.
 - (B) **Billing Content.** All billings from Contractor to County shall include an itemization of each ride provided with units of service, date of ride, passenger name, funding code, and summary. Funding codes will be updated regularly by SCT and Contractors will be notified as new funding sources are secured.
 - (C) **Billing Procedure.** County will process the billings, verify information, and issue a check or electronic deposit to Contractor pursuant to the County's standard purchasing procedures.
 - (D) **Submission of Bills.** Contractor must submit a billing statement to County for services provided within thirty (30) days of having provided such services. Failure to submit a timely billing statement will result in extended delays in receiving payment from County for such services.
- 4.3 **Budget.** The funds provided to the Contractor pursuant to this Contract are intended to subsidize the cost of providing transportation to the passenger. The passenger and the County will compensate Contractor for the services provided as described below.
- (A) Contractor will not collect any co-pays from the passenger, passenger's attendant or guests. Passengers who owe a co-pay will pay SCT directly.
 - (B) Compensation shall be provided to Contractor based on the following mileage rates:
 - (i)

<u>0 – 2 miles:</u>	<u>\$4.00 one-way</u>
<u>2.1 – 4 miles:</u>	<u>\$8.00 one-way</u>
<u>4.1 – 6 miles:</u>	<u>\$10.00 one-way</u>
<u>6.1 – 8 miles:</u>	<u>\$13.00 one-way</u>
<u>8.1 – 10 miles:</u>	<u>\$16.00 one-way</u>
<u>10.1 – 12 miles:</u>	<u>\$19.00 one-way</u>
<u>12.1 – 14 miles:</u>	<u>\$22.00 one-way</u>
<u>14.1 – 16 miles:</u>	<u>\$25.00 one-way</u>
<u>16.1 – 18 miles:</u>	<u>\$28.00 one-way</u>
<u>18.1 – 20 miles:</u>	<u>\$31.00 one-way</u>
<u>20.1 – 22 miles:</u>	<u>\$34.00 one-way</u>
<u>22.1 – 24 miles:</u>	<u>\$37.00 one-way</u>
<u>24.1 – 26 miles:</u>	<u>\$40.00 one-way</u>
<u>26.1 – 28 miles:</u>	<u>\$43.00 one-way</u>
<u>28.1 – 30 miles:</u>	<u>\$46.00 one-way</u>
<u>30.1 – 33 miles:</u>	<u>\$50.00 one-way</u>
<u>33.1 – 37 miles:</u>	<u>\$56.00 one-way</u>
<u>37.1 – 40 miles:</u>	<u>\$60.00 one-way</u>
<u>40.1 – 43 miles:</u>	<u>\$64.00 one-way</u>
<u>43.1 – 47 miles:</u>	<u>\$68.00 one-way</u>
<u>47.1 – 50 miles:</u>	<u>\$72.00 one-way</u>
<u>50.1 – 55 miles:</u>	<u>\$76.00 one-way</u>

55.1 – 60 miles: \$80.00 one-way

- (ii) Contractor shall not be compensated for rides that leave passengers waiting more than 60 minutes after scheduled pick-up time with exceptions made for extenuating circumstances.
- (iii) Contractor will not be compensated for a trip to pick up a passenger due to a Contractor scheduling error.
- (iv) No-show trips shall be compensated to Contractor at a flat rate of \$5.00.
- (v) If two or more SCT passengers are picked up from the same location (home, apartment complex, etc.) at the same time and are transported to the same destination(s), Contractor shall be compensated as if this were a single SCT passenger trip.
- (vi) If two or more SCT passengers are picked up with one vehicle from different locations and are transported to the same destination(s), Contractor shall be compensated an additional \$5.00 for the second pick-up plus mileage from the first SCT passenger picked up.
- (vii) Transfers, or transporting an SCT passenger to two or more different destinations, will be based on mileage rate.
- (viii) One SCT attendant may ride with Contractor at no additional charge by Contractor and no compensation will be paid to Contractor.

4.4 Taxes. The County shall not be responsible for any federal, state or local taxes that may be imposed or levied upon Contractor as a result of this Contract.

4.5 Certificate of Tax Clearance. Annually Contractor shall provide County with a certificate of tax clearance from the State of Kansas certifying Contractor has paid all state taxes. The statement of tax clearance must be provided before contract renewal/initiation and be dated no more than 30 days prior to beginning date of the contract term.

4.6 Services not Performed. Contractor shall not be entitled to receive payments for any program services Contractor is failing or has failed to perform.

4.7 Non-Supplanting Existing Funds. Contractor agrees that funds made available under this Contract will not be used to supplant existing funds or other funding sources, but will be used to increase the amounts of those other funding sources.

ARTICLE 5: APPEALS AND AUDITS

5.1 Notice of Action-Including Notice of Appeal Rights. To the extent permitted by law, the Contractor shall retain the right to appeal, pursuant to the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions (K.S.A. 77-601 *et seq.*), any final order or decision rendered at the administrative agency level which adversely affects the Contractor's interests.

ARTICLE 6: CONTRACTOR'S PERSONNEL

6.1 Qualified Personnel. Contractor has, or shall secure at its own expense, personnel who are fully qualified in accordance with all applicable state and federal laws to provide the program services described in this Contract. Such personnel shall not be County employees or have any other contractual relationship with the County. All of Contractor's personnel engaged, directly or indirectly, in the provision of program services shall meet the requirements of this Contract, all applicable federal laws, and all applicable laws of the State of Kansas.

6.2 Minimum Wages. Contractor shall comply with the minimum wage and maximum hour provisions of the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*).

6.3 Employee Conflict of Interest. Contractor shall establish written safeguards to prevent its employees from using their position with Contractor for a purpose that is, or gives rise to the perception that it is, motivated by a desire for private gain for themselves or others (particularly those with whom they have family, business, or other ties).

6.4 Participant Safeguards. Persons convicted of the following types of crimes during the consecutive ten (10) year period immediately preceding the execution of this Contract or, at any time during the pendency of this Contract, are restricted as follows:

- (A) persons convicted of any felony, drug or drug-related offense, crime of falsehood or dishonesty, or crime against another person are prohibited from performing Contract Services; administering this Contract, or handling any funds conveyed hereunder;
- (B) persons convicted of any crimes of moral turpitude, including without limitation, sex offenses and crimes against children are prohibited from performing Contract Services or otherwise interacting in any way with persons served pursuant to this Contract; and
- (C) persons convicted of a serious driving offense, including without limitation, driving under the influence of alcohol or a controlled substance, are prohibited from operating a vehicle in which a person served pursuant to this Contract is a passenger. For purposes of this section, "serious traffic offense" shall not include any offense deemed a "traffic infraction" under K.S.A. §§ 8-2116 and 8-2118.

The terms "convicted" and "conviction" shall include: (i) convictions from any federal, state, local, military, or other court of competent jurisdiction; (ii) nolo contendere ("no contest") pleas; and (iii) being placed into a diversion or deferred judgment program in lieu of prosecution.

Any issues concerning the interpretation of this Paragraph 6.4 or its application to an individual shall be referred to the Director of the Sedgwick County Department on Aging (the "Director"). The Director's decision shall be final for purposes of compliance with this Contract.

ARTICLE 7: FUNDING

7.1 Reprogramming of Funds. It is understood and agreed that in the event the amount of funds the County actually receives from the County mill levy is less than anticipated, or in the event that no funds are available to the County for funding this Contract, the County may decrease the total compensation and reimbursement to be paid hereunder or may terminate or suspend the Contract without liability. Contractor will be reimbursed, in accordance with the other terms of this Contract, for any services provided prior to the date of notice of the termination or suspension of the Contract, or notice of the decrease of total compensation and reimbursement to be paid under.

7.2 Inability to Perform Contract. It is understood and agreed that in the event Contractor's rate of progress on this Contract is leading to underspending due to inability to provide program services at the planned level at one time, the County may decrease the total compensation and reimbursement to be paid hereunder or terminate the Contract without any further liability.

7.3 Cash Basis and Budget Laws. The right of the County to enter into this Contract is subject to the provisions of the Cash Basis Law (K.S.A. §§10-1112 and 10-1113), the Budget Law (K.S.A. § 79-2935), and other laws of the State of Kansas. This Contract shall be construed and interpreted in such a manner as to ensure the County shall at all times remain in conformity with such laws. Further, the County reserves the right to unilaterally sever, modify, or terminate this Contract at any time if, in the opinion of its legal counsel, the Contract may be deemed to violate the terms of any laws of the State of Kansas.

- 7.4 Non-Supplanting Existing Funds. Contractor assures that grant funds made available under County mill levy grants and administered under this contract will not be used to supplant existing funds or other funding sources, but will be used to increase the amounts of those other funding sources.
- 7.5 Open Meetings. By accepting public funding from the County, or funding administered by the County, Contractor agrees that all administrative meetings at which the management or distribution of such funding is a topic will be open to County Officials and/or employees of the County.

ARTICLE 8: RECORDS, REPORTS, PROCEDURES & INSPECTIONS

- 8.1 Documentation of Costs. All costs incurred by Contractor for which Contractor purports to be entitled to reimbursement shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other official documentation (hereinafter collectively referred to as "Expense Information") evidencing in proper detail the nature and propriety of the costs charged to the County.
- 8.2 Reports.
- (A) During the term of this Contract, Contractor shall furnish to the County, in such form as the County may require, such statements, records, reports, data and information (hereinafter collectively referred to as "Reports") pertaining to matters covered by this Contract as the County requests. Payments to Contractor may be withheld by the County if Contractor fails to provide all required Reports in a timely, complete and accurate manner. Any payments withheld pursuant to this Paragraph 8.2 shall be submitted to Contractor when all requested Reports are furnished to the County in an acceptable form. All records and information used in preparation of Reports are subject to review by the County to ensure the accuracy and validity of the information reported.
 - (B) Without limiting the foregoing Contractor shall report the following information to the County on a monthly basis no later than the tenth (10th) day of the month following the month in which program services were provided:
 - (i) an unduplicated count of program customers served; and
 - (ii) such other data necessary to evaluate the program's effectiveness and efficiency.
- 8.3 Access to Records.
- (A) At any time Contractor shall make any and all of its Accounting Information and other records, books, papers, documents and data available to the County (or an authorized representative of a State agency with statutory oversight authority) for the purposes of:
 - (i) assisting in litigation or pending litigation; or
 - (ii) any audits or examinations reasonably deemed necessary by the County.
 - (B) The County shall be entitled to make excerpts, copies and transcriptions of any of the foregoing information.
- 8.4 Maintenance of Records. Except as otherwise authorized by County, Contractor shall retain such documentation as listed in Paragraphs 8.1 and 8.2 for a period of three (3) years after receipt of the final expenditure report under this Contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond this three (3) year period.
- 8.5 Confidentiality. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of eligible participant records. Confidential information is valuable, sensitive and protected by law. The intent of these laws and policies is to assure that confidential information will remain confidential – this is, it will be used only as necessary to accomplish the organization's mission. All contractors, subcontractors and vendors of SCDoA and CPAAA must adhere to state and federal

regulations in order to protect the confidentiality of information about individuals to whom services are delivered.

- (A) You will only access confidential information for which you have a need to know. You will not copy, release, sell, loan, review, alter or destroy any confidential information except as properly authorized within the scope of your professional activities. You understand that your obligations will continue after termination of contract.
- (B) The following information about individuals receiving services from SCDoA, CPAAA or any of their contractors, subcontractors or vendors must not be disclosed:
 - (i) Name, address or telephone number.
 - (ii) Past or present receipt of any state or local agency or federal program services.
 - (iii) Family, social or economic circumstances.
 - (iv) Medical data, including diagnoses and past history of disease or disability.
 - (v) Income and other financial information.
 - (vi) Department evaluation of personal or medical information.
 - (vii) Program eligibility.
 - (viii) Payment responsibility of someone other than the client for program services provided to a client, unless disclosure of that responsibility meets any of these criteria:
 - (a) Is required by court order.
 - (b) Is required to enable the delivery of services for which the individual or the individual's representative has requested or applied.
 - (c) Is required for program monitoring purposes by authorized federal, state or local agencies.
 - (ix) If regulations were violated there would be an investigation and opportunity for a hearing. Sanctions for disclosure of protected confidential information may include but are not limited to: termination of contract, criminal prosecution or civil penalty assessments and potential loss of program grants or contracts.
 - (x) Six years is the length of time for record retention for all of the following: client records (after last contact), grants and contracts (after expiration), and billing and payment records (after payment is received). After six years, records are to be disposed of in a shredder.

ARTICLE 9: CONFLICTS OF INTEREST

- 9.1 Interest of Contractor. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of program services pursuant to this Contract.
- 9.2 Interest of Public Officials and Others. No officer or employee of the County or any member of its governing body or other public official shall have any interest, direct or indirect, in this Contract or the proceeds hereof.
- 9.3 Employment Conflicts.
 - (A) Contractor shall submit written notice to the County in the event:
 - (i) an employee of the County shall also be an employee of Contractor at time this Contract is executed;
 - (ii) an employee of Contractor seeks additional/alternate employment with the County during the term of this Contract;
 - (iii) an employee of the County seeks additional/alternate employment with Contractor during the term of this Contract.
 - (B) The County shall have the sole discretion to determine what actions need to be taken to resolve the conflict. The County may immediately terminate this Contract without any further liability to Contractor if Contractor fails to adhere to the County's decision.

9.4 Advisory Council Members. If any Contractor staff or board members serve on any County advisory councils, they shall not be present during nor participate in any discussion (inside or outside of the advisory council's meeting) relating to the program and may not vote in person or by proxy on any matter related to, affecting or affected by the program.

9.5 Gratuities and Favors. Contractor shall not directly or indirectly offer any of the County's officers, employees, or agents anything having monetary value including, without limitation, gratuities and favors.

ARTICLE 10: ASSIGNMENT & SUBCONTRACTING

10.1 Assignment. Neither this Contract nor any rights or obligations hereunder shall be assigned or otherwise transferred by Contractor without the prior written consent of the County. This Contract is binding upon and fully enforceable against the successors and assigns of Contractor, whether consented to or not.

10.2 Subcontracting. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the County. All approved subcontracts shall conform to the applicable requirements set forth in this Contract including any and all appendices and amendments, if any. Notwithstanding the County's consent to any subcontracting, Contractor shall remain fully responsible for all obligations of this Contract.

ARTICLE 11: PUBLICATION OF CONTRACT RESULTS

11.1 Contract Related Publications. If this Contract results in a book or other material that may be copyrighted, the author is free to copyright the work. However, the County hereby reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all such copyrighted material and all material which can be copyrighted.

11.2 Documentation of Originality or Source. All published material and written reports submitted under this Contract or in conjunction with any third party Contracts under this Contract will be originally developed material unless specifically provided for otherwise. Material not originally developed that is included in reports shall have the source identified either in the body of the report or in a footnote (regardless of whether the material is verbatim or in an extensive paraphrase format). All published material and written reports shall give notice that funds were provided by a grant from the County.

ARTICLE 12: EQUAL OPPORTUNITY & AFFIRMATIVE ACTION

12.1 Discrimination Prohibited.

(A) In carrying out this Contract, Contractor shall not discriminate against any person on the basis of race, ancestry, national origin, color, sex, disability, age, or religion and shall comport its performances with all pertinent provisions set out in all applicable Federal and State anti-discrimination acts and associated regulations, all as amended, including, but not limited to:

- (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.* and 45 C.F.R. Part 80);
- (ii) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.* and 29 C.F.R. Parts 1602, 1604, 1605, and 1606);
- (iii) the Age Discrimination in Employment Act (29 U.S.C. 621 *et seq.* and 29 C.F.R. Part 1625);
- (iv) the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.* and 45 C.F.R. Parts 90 and 91);

- (v) the Americans with Disabilities Act ("ADA") (42 U.S.C. 12101 *et seq.*, 28 C.F.R. Parts 35 and 36, and 29 C.F.R. Parts 1602, 1627, and 1630);
- (vi) the Rehabilitation Act of 1973 (29 U.S.C. 794 *et seq.* and 45 C.F.R. Parts 84 and 85);
- (vii) the Kansas Acts Against Discrimination (K.S.A. 44-1001 *et seq.* and K.A.R. Articles 21-30, 21-31, 21-32, 21-33, 21-34, 21-50, and 21-70); and
- (viii) the Kansas Discrimination in Employment Act (K.S.A. 44-1110 *et seq.* (including the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 *et seq.* and K.A.R. Article 21-80)).

12.2 Non-Compliance.

- (A) Contractor shall be deemed to be in default of this Contract and it may be immediately canceled, terminated or suspended, in whole or in part, by the County if Contractor violates the applicable provisions of any of the acts, regulations or policies cited in Paragraph 12.1. Furthermore,
 - (i) The Contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin or ancestry;
 - (ii) In all solicitations or advertisements for employees, Contractor shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Human Rights Commission
 - (iii) If the Contractor fails to comply with the manner in which the Contractor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
 - (iv) If the Contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency.

12.3 Flow Through of Requirements. Contractor shall include the provisions of Paragraphs 12.2 in all of Contractor's subcontracts and purchase orders in order to ensure such provisions are binding upon Contractor's subcontractors.

12.4 Exempt Contractors.

- (A) The provisions of this Article 12 (with the exception of those provisions relating to the ADA) are recommended but not enforceable against Contractor if:
 - (i) Contractor employs fewer than four (4) employees at all times during the term of this Contract; or
 - (ii) all of Contractor's contracts with the County cumulatively total Five Thousand (\$5,000.00) or less during the fiscal year of the County pursuant to K.S.A. 44-1030(c).

12.5 EPA Approved Building. Contractor will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the Contract are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the Contract is under consideration for such listing by the EPA.

ARTICLE 13: SUSPENSION & TERMINATION

13.1 Suspension of Services. The County may, in its sole discretion, indefinitely suspend Contractor's performance of program services pursuant to this Contract by providing two (2) days notice to

Contractor. Contractor shall resume performance of services within three (3) days after receipt of notice from the County.

13.2 Termination in Specific Circumstances. In addition to the other provisions of the Contract authorizing termination in specific situations, the Contract may be terminated as specified in Paragraphs 13.3 and 13.4 below.

13.3 Termination for Cause.

- (A) Contractor shall be deemed to have materially breached this Contract, and the County shall be entitled to terminate the Contract by providing written notice to the Contractor if Contractor:
- (i) fails to fulfill in a timely and proper manner any of its obligations under this Contract (and fails to cure such default within five (5) days after receipt of written notice);
 - (ii) violates any of the terms, covenants, representations, warranties, conditions, or stipulations of this Contract;
 - (iii) authorizes the winding up or reorganization of Contractor;
 - (iv) makes a general assignment for the benefit of creditors; or
 - (v) appoints a receiver.
- (B) In such event, the County may pursue all damages incurred by the County as a result of Contractor's breach including, without limitation, incidental, consequential and punitive damages (to the extent allowed by law). The County may withhold any payments due to Contractor for the purpose of set-off until such time as the exact amount of damages due the County from Contractor are determined. In addition, any information prepared by Contractor to carry out this Contract including, without limitation, data, studies, surveys, records, drawings, maps and reports shall, at the option of the County, become the property of the County. Said items shall be delivered to the County within ten (10) days after receipt of a written request from the County.

13.4 Termination for Convenience.

- (A) Either party may terminate this Contract, in whole or in part, without stating any reason therefor by providing thirty (30) days written notice to the other party. To be effective, a partial termination shall be assented to in writing by the non-terminating party. Notwithstanding the foregoing, a refusal by a non-terminating party to assent to partial termination shall in no way limit the other party's right to unilaterally terminate the entire Contract.
- (B) If the County terminates for convenience, Contractor shall not incur new obligations for the terminated portion after the effective date of the termination and shall cancel as many outstanding obligations as possible. If the Contract is terminated by either party pursuant to this Paragraph 13.4, the Contractor shall be paid for work satisfactorily completed prior to the effective date of termination, provided the provisions of Paragraph 4.2 have been complied with by Contractor.

ARTICLE 14: INDEMNIFICATION

14.1 Indemnification.

- (A) Contractor shall indemnify, defend and hold harmless the County and its commissioners, officers, employees, agents, legal representatives, successors and assigns (collectively referred to as the "Indemnified Parties") from and against all losses, costs, claims, damages, expenses and liabilities, including without limitation attorneys' fees, (collectively referred to as the "Liabilities") to the extent:
- (i) attributable, directly or indirectly, to the Contractor's failure to perform any of its obligations under this Contract;

- (ii) attributable, directly or indirectly, to Contractor's violation of any of the terms, covenants, representations, warranties, conditions, or stipulations contained in this Contract; or
- (iii) caused or alleged to be caused, in whole or in part, by the negligence or intentional misconduct of Contractor (or any of its directors, officers, members, agents, subcontractors or anyone else for whose acts the Contractor may be liable) regardless of whether or not such Liabilities are caused in part by one or more of the Indemnified Parties.

ARTICLE 15: INSURANCE

- 15.1 Insurance. Contractor shall maintain insurance according to statutory requirements and in amounts not less than the amounts listed herein. Contractor shall provide to County a Certificate of Insurance evidencing such coverage.
- (A) Bodily Injury, each occurrence, \$500,000.00; aggregate, \$500,000.00;
 - (B) Property Damage, each occurrence, \$500,000.00; aggregate, \$500,000.00;
 - (C) Personal Injury, each person aggregate, \$500,000.00; general aggregate, \$500,000.00
 - (D) Automobile Liability – Owned, non-owned, hired, rented, or otherwise, bodily injury, each person \$100,000.00; bodily injury, each occurrence, \$500,000.00; property damage, each occurrence, \$500,000.00;
 - (E) Professional Liability, \$500,000.00.

ARTICLE 16: NOTICES

- 16.1 Notice Requirements. Any formal notice required or permitted under this Contract shall be deemed sufficiently given if said notice is personally delivered, sent by registered or certified mail (return receipt requested) or sent by means of telefacsimile or telecopier, to the party to whom said notice is to be given. Notices delivered in person or sent via telefacsimile or telecopier shall be deemed to be served effective as of the date the notice is delivered or sent, as applicable. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be served seventy-two (72) hours after the date said notice is postmarked to the addressee, postage prepaid.
- 16.2 Notice Information: Until changed by written notice given by one party to the other, the addresses and numbers of the parties shall be as follows:

<p>If to the County: Sedgwick County Department on Aging Attn: Director West River Plaza 2622 W. Central, Suite 500 Wichita, KS 67203 FAX (316) 660-1936</p>	<p>If to Contractor: Thunder Enterprises, Inc. 2120 S. Santa Fe Wichita, KS 67211 (316) 262-4955</p>
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AND

Sedgwick County Counselor's Office
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203-3790
FAX (316) 383-7007

ARTICLE 17: MISCELLANEOUS

- 17.1 Publicity. Contractor shall not publicize in any manner whatsoever the program services to be performed under this Contract or Contractor's participation in the program without prior written consent of the County.
- 17.2 Applicable Law. This Contract shall be governed by, interpreted and construed in accordance with the laws of the State of Kansas, without regard to its conflict of law provisions.
- 17.3 Waiver. The failure of either party to insist upon the strict performance of any of the terms or conditions of this Contract or to exercise any option, right or remedy herein contained, should not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by the waiving party.
- 17.4 Descriptive Headings. The descriptive headings of the provisions of this Contract are formulated and used for convenience only and shall not be deemed to affect the meaning and construction of any such provision.
- 17.5 Attorneys' Fees. In any action or proceeding, arising out of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees.
- 17.6 Amendments. This contract may not be amended unless such amendment is in writing and signed by both parties hereto. Any change that affects objectives of this Contract must be approved by the County Council on Aging and the Sedgwick County Board of Commissioners. Any line item change to the approved budget, must be requested and justified in writing to the Sedgwick County Department on Aging and approved by said department. Line item changes exceeding ten percent (10%) of the approved line item amount must be presented to and approved by the Sedgwick County Board of Commissioners.
- 17.7 Survivorship. Notwithstanding the termination of this Contract, Contractor's obligations with respect to **Article 5** ("Appeals & Audits"), **Article 8** ("Records, Reports, Procedures & Inspections"), **Article 11** ("Publication of Contract Results"), **Article 14** ("Indemnification"), and **Article 17** ("Miscellaneous") and any other terms and conditions which by their nature should survive termination, shall survive the termination of this Contract.
- 17.8 Invalidity. In the event that any provision in this Contract shall be adjudicated invalid under applicable laws, such invalid provision shall automatically be considered reformed and amended so as to conform to all applicable legal requirements, or, if such invalidity cannot be cured by reformation or amendment, the same shall be considered stricken and deleted, but in neither such event or events shall the validity or enforceability of the remaining valid portions hereof be affected thereby.
- 17.9 Phraseology. In this Contract, the singular includes the plural, the plural includes the singular and any gender includes the other gender.
- 17.10 Incorporation of Appendices. Any appendices attached hereto are incorporated by reference are a part of this Contract to the same extent as if fully set forth herein.
- 17.11 Authorities Incorporated by Reference. The parties shall be bound by those provisions and requirements that are applicable and relevant to the program. The Contractor is responsible for reviewing the contents

of the applicable authorities and shall be obligated to perform in accordance with their terms whether or not the Contractor has obtained or reviewed a copy of the authorities.

- 17.12 Licenses and Permits. Contractor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state or local authority for carrying out this Contract. Contractor shall notify County immediately if any required license, permit, bond or insurance is canceled, suspended or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate revocation by County, in its discretion.
- 17.13 Merger: This Contract and the documents incorporated by reference constitute the entire Contract between the parties with respect to their relationship as it relates to the provision of program services. There are no verbal understandings, Contracts, representations or warranties between the parties that are not expressly set forth herein. This Contract supersedes all prior Contracts and understandings between the parties, both written and oral.

ARTICLE 18: HIPAA PRIVACY AND SECURITY REQUIREMENTS

18.1 Definitions.

- (A) Terms used in this Agreement shall have the same meaning as those terms in the Privacy Rule, as codified in 45 CFR § 164.500, *et seq.*; and the Security Rule, as codified in 45 CFR § 162.102, *et seq.*; or as provided for in the American Recovery and Reinvestment Act of 2009 (ARRA) and regulations adopted under that act.

18.2 Obligations and Activities of Business Associate.

- (A) Business Associate acknowledges the Security Provisions - Sections 164.308, 164.310, 164.312 and 164.316 of title 45, Code of Federal Regulations, and in the case of a Business Associate that obtains or creates protected health information pursuant to a written contract (or other written arrangement) described in section 164.502(e)(2) of title 45, Code of Federal Regulations, with the Covered Entity, the Business Associate may use and disclose the protected health information only if such use or disclosure is in compliance with the applicable requirement of section 164.504(e) of such title. The additional requirements of Sec. 13404 of the Health Information Technology for Economic and Clinical Health Act (HITECH) part of the American Recovery and Reinvestment Act of 2009 (ARRA), that relate to privacy and that are made with respect to the Covered Entity shall also be applicable to the Business Associate and shall be incorporated into this Agreement.

Business Associate agrees to the following:

- (i) not to use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- (ii) to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (iii) to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (iv) to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (v) to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered

Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- (vi) to provide access, at the request of Covered Entity, and in a reasonable time and manner, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524, if the Business Associate has Protected Health Information in a designated record set.
- (vii) to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in a reasonable time and manner, if Business Associate has protected health information in a designated record set.
- (viii) to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (ix) to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.
- (x) to provide to Covered Entity or an Individual, within ten (10) business days of receipt of a written request from the Covered Entity or an Individual, information collected in accordance with Section 2.9 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

18.3 Permitted Uses and Disclosures by Associate.

- (A) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the purposes of the contractual relationship, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

18.4 Specific Use and Disclosure Provisions.

- (A) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the contractual or legal responsibilities of the Business Associate.
- (B) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (C) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- (D) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

18.5 Obligations of Covered Entity

- (A) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- (B) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- (C) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

18.6 Permissible Requests by Covered Entity.

- (A) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. If necessary in order to meet the Business Associate's obligations under the Original Contract, the Business Associate may use or disclose protected health information for data aggregation or management and administrative activities of Business Associate.

18.7 Term.

- (A) The Term of this Agreement shall be effective as of date of execution of the agreement by the parties, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, has been returned to Covered Entity or, at Covered Entity's option, is destroyed, or, if it is infeasible to destroy Protected Health Information, the protections are extended to such information, in accordance with the termination provisions in this Section.

18.8 Miscellaneous.

- (A) A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- (B) The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- (C) The respective rights and obligations of Business Associate under Sections 18.11(A) and 18.11(B) of this Agreement shall survive the termination of this Agreement.
- (D) Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- (E) In addition to any implied indemnity or express indemnity provision in the Original Contract, Business Associate agrees to indemnify, defend and hold harmless the Covered Entity, including any employees, agents, or subcontractors against any actual and direct losses suffered by the Indemnified Party(ies) and all liability to third parties arising out of or in connection with any breach of this Agreement or from any negligent or wrongful acts or omissions, including failure to perform its obligations under the Privacy and Security Regulations, by the Business Associate or its employees, directors, officers, subcontractors, agents, or other members of its workforce. Accordingly, upon demand, the Business Associate shall reimburse the Indemnified Party(ies) for any and all actual expenses (including reasonable attorney's fees) which may be imposed upon any Indemnified Party(ies) by reason of any suit, claim, action, proceeding or demand by

any third party resulting from the Business Associate's breach or other action under this Agreement.

18.9 Security Rule Requirements.

- (A) Business Associate agrees, to the extent any Protected Health Information created, received, maintained or transmitted by or in electronic media, also referred to as electronic protected health care information, as defined by 45 CFR § 160.103, that it will only create, maintain or transmit such information with appropriate safeguards in place.
- (B) Business Associate shall therefore: implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health care information; ensure that any agent, including subcontractors, to whom it provides such information shall agree to also implement reasonable and appropriate safeguards to protect the information; and report to the Covered Entity any security incident, as that term is defined by 45 CFR § 164.304, of which it becomes aware.

18.10 Termination.

- (A) Contractor agrees that if the Covered Entity determines the Contractor has violated any material term of this Agreement, the Covered Entity may terminate the contract for cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - (i) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Original Contract if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - (ii) Immediately terminate the Original Contract if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - (iii) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

18.11 Effect of Termination.

- (A) Except as provided in paragraph 18.11(B), upon termination of this Agreement, for any reason, Business Associate shall return to Covered Entity or, at the Covered Entity's option, destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (B) In the event that Business Associate determines that destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make destruction infeasible. Upon such notice, the Covered Entity and the Business Associate shall enter into a supplemental Agreement which shall require the Business Associate to extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

18.12 Notification of Breach.

- (A) A business associate of a covered entity that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured protected health information shall, following the discovery of a breach of such information, notify the covered entity of such breach. Such notice shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the business associate to have been,

accessed, acquired, or disclosed during such breach. The business associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in notification to the individual under 45 C.F.R. § 164.404(e) at the time of the required notification to the Covered Entity, or as promptly thereafter as the information is available.

- (B) For purposes of this section, a breach shall be treated as discovered by the business associate as of the first day on which such breach is known to such associate (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of such associate) or should reasonably have been known to such associate (or person) to have occurred by the exercise of reasonable diligence.
- (C) Subject to section 18.12(D), all notifications required under this section shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach by the business associate involved in the case of a notification required under section 18.11(B). The business associate involved in the case of a notification required under section 18.11(B), shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.
- (D) If a law enforcement official determines that a notification or notice required under this section would impede a criminal investigation or cause damage to national security, such notification or notice shall be delayed in the same manner as provided under section 164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a disclosure covered under such section.
If a law enforcement official states to the business associate that any notification or notice would impede a criminal investigation or cause damage to national security, the business associate shall:
 - (i) If the statement is in writing and specifies the time for which a delay is required, delay such notification or notice for the time period specified by the official; or
 - (ii) If the statement is made orally, document the statement, including the identity of the official making the statement, and delay the notification or notice temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in (a) is submitted during that time.

18.13 Application of Additional Provisions

- (A) Application of knowledge elements associated with contracts. Section 164.504(e)(1)(ii) of title 45, Code of Federal Regulations, shall apply to the business associate, with respect to compliance with such subsection, in the same manner that such section applies to the Covered Entity, with respect to compliance with the standards in sections 164.502(e) and 164.504(e) of such title, except that in applying such section 164.504(e)(1)(ii) each reference to the business associate, with respect to a contract, shall be treated as a reference to the Covered Entity involved in the agreement.
- (B) Application of civil and criminal penalties. If the business associate violates any provision of subsection (a) or (b), Section 13404 of the HITECH act, the provisions of sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6), the provisions shall apply to the Business Associate with respect to such violation in the same manner as such provisions apply to a person who violates a provision of part C of title XI of such Act.

18.14 Prohibition on Sale of Electronic Health Records or Protected Health Information.

- (A) In general: Except as provided in section 18.14(B), the business associate shall not directly or indirectly receive remuneration in exchange for any protected health information of an individual unless the Covered Entity has obtained from the individual, in accordance with section 164.508 of title 45, Code of Federal Regulations, a valid authorization that includes, in accordance with such section, a specification of whether the protected health information can be further exchanged for remuneration by the entity receiving protected health information of that individual.

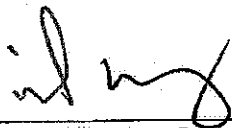
- (B) Exceptions: Section 18.14(A) shall not apply in the following cases:
- (i) The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).
 - (ii) The purpose of the exchange is for research (as described in sections 164.501 and 164.512(i) of title 45, Code of Federal Regulations) and the price charged reflects the costs of preparation and transmittal of the data for such purpose.
 - (iii) The purpose of the exchange is for the treatment of the individual, subject to any regulation that the Secretary may promulgate to prevent protected health information from inappropriate access, use, or disclosure.
 - (iv) The purpose of the exchange is the health care operation specifically described in subparagraph (iv) of paragraph (6) of the definition of healthcare operations in section 164.501 of title 45, Code of Federal Regulations.
 - (v) The purpose of the exchange is for remuneration that is provided by the Covered Entity to the business associate for activities involving the exchange of protected health information that the business associate undertakes on behalf of and at the specific request of the Covered Entity pursuant to the business associate agreement.
 - (vi) The purpose of the exchange is to provide an individual with a copy of the individual's protected health information pursuant to section 164.524 of title 45, Code of Federal Regulations.
 - (vii) The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate as the exceptions provided in subparagraphs (i) through (vi).

IN WITNESS WHEREOF, the County and Contractor have executed this Contract as of the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

THUNDER ENTERPRISES, INC.

David M. Unruh, Chairman
First District



Mike Murphy, Owner

Date: _____

Date: 11-10-11

ATTEST:

Kelly B. Arnold, County Clerk

APPROVED AS TO FORM:



Bill H. Raymond
Assistant County Counselor