

**FY2016 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 16<sup>th</sup> day of December, 2015 by and between Sedgwick County, Kansas, (hereinafter referred to as the "County") and American Cab, 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, 2016 (the "Effective Date"). This contract terminates on December 31, 2016. Notwithstanding the foregoing, the term of this Contract may continue on a month to month basis for a reasonable time after December 31, 2016 if: (A) both parties mutually agree to continue operating under the terms of this Contract while actively negotiating a contract for 2017; and (B) funds are available for the 2017 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 2016.

- 3.2 General Conditions.

- (A) Contractor agrees that all rides must have prior authorization by SCT. Rides scheduled directly with the Contractor and do not qualify as having been 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 backup system is in place and rides are managed in such a way that no SCT passenger is left without a ride.
- (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 is required to maintain proof on file of Kansas Bureau of Investigation (KBI) criminal background check and Kansas Department of Motor Vehicle driving record check on each driver.
- (H) Contractor agrees that the Federal Transit Administration (FTA) requires by law that in order to receive FTA Section 5311 and or 5307 reimbursement for general public transportation, the Contractor must have a contract with TMHC Services, Inc. or other recognized drug and alcohol agency, and all safety-sensitive employees per FTA regulations are in FTA's drug and alcohol testing pool and that measures are performed by TMHC standards or recognized drug and alcohol agency guidelines. Contractor must provide proof in driver's personnel file of annual United States Department of Transportation (DOT) driver physical performed by a physician that can administer this type of driver's physical if they meet the definition for required DOT physicals. For a new driver, a pre-employment drug screening is required prior to administration

of a driver's physical. Noncompliance with participation in a drug and alcohol testing pool will result in nonpayment of 5311 or 5307 funded transportation services.

- (I) A new Contractor is required to attend a one-time train-the-trainer session on customer service and passenger assistance provided by SCT.
- (J) Contractor agrees to provide a Certificate of Insurance to SCT as proof of insurance coverage at levels described in Article 15.
- (K) Contractor agrees to perform preventive maintenance on all vehicles and to have a vehicle inspection by an ASE certified (or equivalent) mechanic or Kansas Department of Transportation (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 October, 2013 shall be completed and submitted; if inspected by a KDOT inspector, KDOT's completed form shall be submitted.
- (L) Contractor agrees to label vehicle(s) and identify with Contractor name and phone number on exterior of vehicle with lettering and numbers at least 4" high.

#### 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. These fees include all of the Contractor's time, labor and equipment for any and all services performed under 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 eighth (8<sup>th</sup>) 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. County has 30 days to process payment from the date a billing statement is received.

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)	0 – 2 miles:	\$4.00 one-way
	2.1 – 4 miles:	\$8.00 one-way
	4.1 – 6 miles:	\$10.00 one-way
	6.1 – 8 miles:	\$13.00 one-way
	8.1 – 10 miles:	\$16.00 one-way
	10.1 – 12 miles:	\$19.00 one-way
	12.1 – 14 miles:	\$22.00 one-way

14.1 – 16 miles:	\$25.00 one-way
16.1 – 18 miles:	\$28.00 one-way
18.1 – 20 miles:	\$31.00 one-way
20.1 – 22 miles:	\$34.00 one-way
22.1 – 24 miles:	\$37.00 one-way
24.1 – 26 miles:	\$40.00 one-way
26.1 – 28 miles:	\$43.00 one-way
28.1 – 30 miles:	\$46.00 one-way
30.1 – 33 miles:	\$50.00 one-way
33.1 – 37 miles:	\$56.00 one-way
37.1 – 40 miles:	\$60.00 one-way
40.1 – 43 miles:	\$64.00 one-way
43.1 – 47 miles:	\$68.00 one-way
47.1 – 50 miles:	\$72.00 one-way
50.1 – 55 miles:	\$76.00 one-way
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 eighth (8<sup>th</sup>) 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 the County 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 the County or any of its 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.*

### **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.
- (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.

12.6 Drug Free Work Place Act of 1988(49 CFR Part 32). Contractor is required to provide a drug-free workplace and comply with the Drug Free Work Place Act of 1988 as prescribed in 49 CFR Part 32. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the Act.

### 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.

#### 13.5 Debarment/Suspension.

- (A) Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from SAM and any federal funding received or to be received by Sedgwick County in relation to this Agreement prohibits Sedgwick County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under SAM, the Contractor shall notify Sedgwick County in writing of such determination within five (5) business days as set forth in the Notice provision in this Agreement. Sedgwick County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under SAM and to notify County within the same five (5) business days, and with the County reserving the same right to terminate for breach as set forth herein.

### 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 agrees to maintain the following minimum limits of insurance coverage throughout the term of this agreement:

<b>Worker's Compensation:</b> Applicable State Statutory Employer's Liability	
<b>Employer's Liability Insurance:</b>	\$100,000.00
<b>Professional Liability Insurance:</b>	\$500,000.00
<b>Contractor's Liability Insurance:</b> Form of insurance shall be by a Commercial General Liability and Include Automobile comprehensive/liability	
<b>Bodily Injury:</b> Each Occurrence	\$500,000.00
Aggregate	\$500,000.00
<b>Property Damage:</b> Each Occurrence	\$500,000.00
Aggregate	\$500,000.00
<b>Personal Injury:</b> Each Person Occurrence	\$500,000.00
General Aggregate	\$500,000.00
<b>Automobile Liability B owned, Non-Owned, and Hired</b> Bodily Injury Each Person	\$500,000.00
Bodily Injury Each Occurrence	\$500,000.00

Liability insurance coverage indicated above must be considered as primary and not as excess insurance. Contractor has furnished a certificate evidencing liability insurance coverage, with County listed as an additional insured. Said certificate shall remain in force during the duration of the project/services and will not be canceled, reduced, modified, limited or restricted until thirty (30) days after County receives written notice of such change. All insurance must be with an insurance company with a minimum Best rating of A-VIII and licensed to do business in the state of Kansas. It is the responsibility of Contractor to require that any and all approved subcontractors meet the minimum insurance requirements. Contractor shall obtain the above referenced certificate(s) of insurance, and in accordance with the Agreement, provide copies of such certificates to the County.

## 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:



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

If to Contractor:  
American Cab, Inc.  
400 S. Greenwood  
Wichita, KS 67211  
(316) 264-4222

and

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

and

Sedgwick County Purchasing  
Attn: Purchasing Director  
525 N. Main, Suite 823  
Wichita, KS 67203

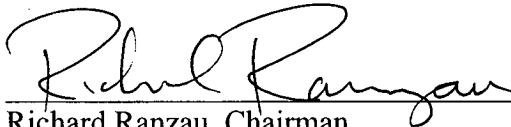
## ARTICLE 17: MISCELLANEOUS

- 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 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.

- 17.6 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.
- 17.7 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.
- 17.8 Phraseology. In this Contract, the singular includes the plural, the plural includes the singular and any gender includes the other gender.
- 17.9 Incorporation of Appendices. Any appendices attached hereto, including but not limited to Appendix A – General Contract Provisions, are incorporated by reference as a part of this Contract to the same extent as if fully set forth herein.
- 17.10 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.
- 17.11 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.
- 17.12 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.

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

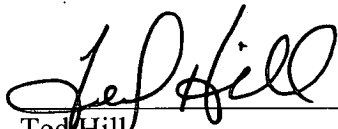
BOARD OF COUNTY COMMISSIONERS  
OF SEDGWICK COUNTY, KANSAS



Richard Ranzau, Chairman  
Fourth District

Date: 12-16-2015

AMERICAN CAB, INC.



Ted Hill,  
President

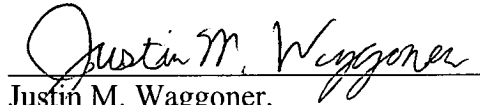
Date: Nov 10-15

ATTEST:

  
Kelly B. Arnold, County Clerk



APPROVED AS TO FORM:

  
Justin M. Waggoner,  
Assistant County Counselor

## **HIPAA RULES**

### **BUSINESS ASSOCIATE ADDENDUM**

#### **DEFINITIONS**

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

#### **Specific definitions:**

(a) **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103.

(b) **Covered Entity.** "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Sedgwick County.

(c) **HIPAA Rules.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

#### **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

##### **Business Associate agrees to:**

2.1 not Use or Disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law;

2.2 Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement;

2.3 report to covered entity any Use or Disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware, as further provided for in Par. 12.1, *et seq.*;

2.4 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;

2.5 in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on

behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

2.6 make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

2.7 make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

2.8 make its internal practices, books, and records available to the Covered Entity or the Secretary for purposes of determining compliance with the HIPAA Rules; and

2.9 maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528.

#### **PERMITTED USES AND DISCLOSURES BY ASSOCIATE**

3.1 Except as otherwise limited in this Agreement, Business Associate may only 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.

#### **SPECIFIC USE AND DISCLOSURE PROVISIONS**

4.1 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.

4.2 Business Associate may Use or Disclose Protected Health Information as Required By Law.

4.3 Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.

4.4 Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and Used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

4.5 Business Associate may provide Data Aggregation services relating to the Health Care Operations of the covered entity.

4.6 Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

#### **OBLIGATIONS OF COVERED ENTITY**

5.1 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.

5.2 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.

5.3 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.

#### **PERMISSIBLE REQUESTS BY COVERED ENTITY**

6.1 Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity. If necessary in order to meet the Business Associate's obligations under the Agreement, the Business Associate may Use or Disclose Protected Health Information for Data Aggregation, management and administrative activities, or contractual or legal responsibilities of Business Associate.

#### **TERM**

7.1 *Term.* The 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 Agreement.

## **MISCELLANEOUS**

8.1 A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

8.2 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 HIPAA Rules.

8.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

8.4 In addition to any implied indemnity or express indemnity provision in the Agreement, 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 HIPAA Rules, 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 failure to perform, Breach or other action under this Agreement.

## **SECURITY RULE REQUIREMENTS**

9.1 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.

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.

## **TERMINATION**

10.1 Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.

## **EFFECT OF TERMINATION**

11.1 Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.

Provided however, Business Associate may retain Protected Health Information if necessary for management and administration purposes or to carry out its legal responsibilities after termination of the Agreement.

Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

- return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;

- continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

- not Use or Disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at in this Agreement which applied prior to termination; and

- return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

The obligations of Business Associate under this Agreement shall survive the termination of this Agreement.



## **NOTIFICATION OF BREACH**

12.1 To the extent Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, Uses, or Discloses Unsecured Protected Health Information, it 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, Used, 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(c) at the time of the required notification to the Covered Entity, or as promptly thereafter as the information is available.

12.2 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 Business 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 Business Associate (or person) to have occurred by the exercise of reasonable diligence.

12.3 Subject to section 12.4, 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 12.2. The Business Associate involved in the case of a notification required under section 12.2, shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

12.4 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:

- (a) 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
- (b) 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.

**PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION.**

13.1 Except as provided in section 13.2, 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.

13.2. Section 13.1 shall not apply in the following cases:

- (a) The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 Agreement.
- (f) 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.
- (g) 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 (a) through (f).

**FY2016 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 16<sup>th</sup> day of December, 2015 by and between Sedgwick County, Kansas, (hereinafter referred to as the "County") and Wisdom Travels, LLC, a Kansas limited liability company (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, 2016 (the "Effective Date"). This contract terminates on December 31, 2016. Notwithstanding the foregoing, the term of this Contract may continue on a month to month basis for a reasonable time after December 31, 2016 if: (A) both parties mutually agree to continue operating under the terms of this Contract while actively negotiating a contract for 2017; and (B) funds are available for the 2017 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 2016.
- 3.2 General Conditions.
- (A) Contractor agrees that all rides must have prior authorization by SCT. Rides scheduled directly with the Contractor and do not qualify as having been 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 backup system is in place and rides are managed in such a way that no SCT passenger is left without a ride.
  - (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 is required to maintain proof on file of Kansas Bureau of Investigation (KBI) criminal background check and Kansas Department of Motor Vehicle driving record check on each driver.
  - (H) Contractor agrees that the Federal Transit Administration (FTA) requires by law that in order to receive FTA Section 5311 and or 5307 reimbursement for general public transportation, the Contractor must have a contract with TMHC Services, Inc. or other recognized drug and alcohol agency, and all safety-sensitive employees per FTA regulations are in FTA's drug and alcohol testing pool and that measures are performed by TMHC standards or recognized drug and alcohol agency guidelines. Contractor must provide proof in driver's personnel file of annual United States Department of Transportation (DOT) driver physical performed by a physician that can administer this type of driver's physical if they meet the definition for required DOT

physicals. For a new driver, a pre-employment drug screening is required prior to administration of a driver's physical. Noncompliance with participation in a drug and alcohol testing pool will result in nonpayment of 5311 or 5307 funded transportation services.

- (I) A new Contractor is required to attend a one-time train-the-trainer session on customer service and passenger assistance provided by SCT.
- (J) Contractor agrees to provide a Certificate of Insurance to SCT as proof of insurance coverage at levels described in Article 15.
- (K) Contractor agrees to perform preventive maintenance on all vehicles and to have a vehicle inspection by an ASE certified (or equivalent) mechanic or Kansas Department of Transportation (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 October, 2013 shall be completed and submitted; if inspected by a KDOT inspector, KDOT's completed form shall be submitted.
- (L) Contractor agrees to label vehicle(s) and identify with Contractor name and phone number on exterior of vehicle with lettering and numbers at least 4" high.

#### 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. These fees include all of the Contractor's time, labor and equipment for any and all services performed under 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 eighth (8<sup>th</sup>) 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. County has 30 days to process payment from the date a billing statement is received.

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)	0 – 2 miles:	\$4.00 one-way
	2.1 – 4 miles:	\$8.00 one-way
	4.1 – 6 miles:	\$10.00 one-way
	6.1 – 8 miles:	\$13.00 one-way
	8.1 – 10 miles:	\$16.00 one-way
	10.1 – 12 miles:	\$19.00 one-way

12.1 – 14 miles:	\$22.00 one-way
14.1 – 16 miles:	\$25.00 one-way
16.1 – 18 miles:	\$28.00 one-way
18.1 – 20 miles:	\$31.00 one-way
20.1 – 22 miles:	\$34.00 one-way
22.1 – 24 miles:	\$37.00 one-way
24.1 – 26 miles:	\$40.00 one-way
26.1 – 28 miles:	\$43.00 one-way
28.1 – 30 miles:	\$46.00 one-way
30.1 – 33 miles:	\$50.00 one-way
33.1 – 37 miles:	\$56.00 one-way
37.1 – 40 miles:	\$60.00 one-way
40.1 – 43 miles:	\$64.00 one-way
43.1 – 47 miles:	\$68.00 one-way
47.1 – 50 miles:	\$72.00 one-way
50.1 – 55 miles:	\$76.00 one-way
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 eighth (8<sup>th</sup>) 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 the County 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 the County or any of its 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.*

### **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.
- (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.
- 12.6 Drug Free Work Place Act of 1988(49 CFR Part 32). Contractor is required to provide a drug-free workplace and comply with the Drug Free Work Place Act of 1988 as prescribed in 49 CFR Part 32. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the Act.

## 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.

13.5 Debarment/Suspension.

- (A) Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from SAM and any federal funding received or to be received by Sedgwick County in relation to this Agreement prohibits Sedgwick County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under SAM, the Contractor shall notify Sedgwick County in writing of such determination within five (5) business days as set forth in the Notice provision in this Agreement. Sedgwick County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under SAM and to notify County within the same five (5) business days, and with the County reserving the same right to terminate for breach as set forth herein.

## 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 agrees to maintain the following minimum limits of insurance coverage throughout the term of this agreement:

<b>Worker's Compensation:</b> Applicable State Statutory Employer's Liability	
<b>Employer's Liability Insurance:</b>	\$100,000.00
<b>Professional Liability Insurance:</b>	\$500,000.00
<b>Contractor's Liability Insurance:</b> Form of insurance shall be by a Commercial General Liability and Include Automobile comprehensive/liability	
<b>Bodily Injury:</b> Each Occurrence	\$500,000.00
Aggregate	\$500,000.00
<b>Property Damage:</b> Each Occurrence	\$500,000.00
Aggregate	\$500,000.00
<b>Personal Injury:</b> Each Person Occurrence	\$500,000.00
General Aggregate	\$500,000.00
<b>Automobile Liability B owned, Non-Owned, and Hired</b> Bodily Injury Each Person	\$500,000.00
Bodily Injury Each Occurrence	\$500,000.00

Liability insurance coverage indicated above must be considered as primary and not as excess insurance. Contractor has furnished a certificate evidencing liability insurance coverage, with County listed as an additional insured. Said certificate shall remain in force during the duration of the project/services and will not be canceled, reduced, modified, limited or restricted until thirty (30) days after County receives written notice of such change. All insurance must be with an insurance company with a minimum Best rating of A-VIII and licensed to do business in the state of Kansas. It is the responsibility of Contractor to require that any and all approved subcontractors meet the minimum insurance requirements. Contractor shall obtain the above referenced certificate(s) of insurance, and in accordance with the Agreement, provide copies of such certificates to the County.

## 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:

If to the County:

If to Contractor:

Sedgwick County Department on Aging  
Attn: Director  
West River Plaza  
2622 W. Central, Suite 500  
Wichita, KS 67203  
FAX (316) 660-1936

Wisdom Travels, LLC  
P.O. Box 781147  
Wichita, KS 67278  
(316) 708-1950

3335 N. Gouverneur Cir  
Wichita, KS 67226.

and

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

and

Sedgwick County Purchasing  
Attn: Purchasing Director  
525 N. Main, Suite 823  
Wichita, KS 67203

## 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 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.
- 17.6 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.

- 17.7 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.
- 17.8 Phraseology. In this Contract, the singular includes the plural, the plural includes the singular and any gender includes the other gender.
- 17.9 Incorporation of Appendices. Any appendices attached hereto, including but not limited to Appendix A – General Contract Provisions, are incorporated by reference as a part of this Contract to the same extent as if fully set forth herein.
- 17.10 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.
- 17.11 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.
- 17.12 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.<sup>3</sup>

## **ARTICLE 18: HIPAA PRIVACY AND SECURITY REQUIREMENTS**

- 18.1 HIPAA Rules Business Associate Addendum. The attached HIPPA Rules Business Associate Addendum is incorporated into the terms of this contract. For the purposes of the HIPPA Rules Business Associate Addendum, County shall be considered the "Covered Entity" and the Contractor shall be considered the "Business Associate".




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

  
Richard Ranzau, Chairman  
Fourth District

Date: 12-16-15

WISDOM TRAVELS, LLC

  
Sanjaya Perera, Owner

Date: 11-9-15

ATTEST:

  
Kelly B. Arnold, County Clerk



APPROVED AS TO FORM:

  
Justin M. Waggoner  
Assistant County Counselor

## **HIPAA RULES**

### **BUSINESS ASSOCIATE ADDENDUM**

#### **DEFINITIONS**

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

#### **Specific definitions:**

(a) **Business Associate**. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103.

(b) **Covered Entity**. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Sedgwick County.

(c) **HIPAA Rules**. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

#### **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

##### **Business Associate agrees to:**

2.1 not Use or Disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law;

2.2 Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement;

2.3 report to covered entity any Use or Disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware, as further provided for in Par. 12.1, *et seq.*;

2.4 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;

2.5 in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on

behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

2.6 make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

2.7 make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

2.8 make its internal practices, books, and records available to the Covered Entity or the Secretary for purposes of determining compliance with the HIPAA Rules; and

2.9 maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528.

#### **PERMITTED USES AND DISCLOSURES BY ASSOCIATE**

3.1 Except as otherwise limited in this Agreement, Business Associate may only 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.

#### **SPECIFIC USE AND DISCLOSURE PROVISIONS**

4.1 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.

4.2 Business Associate may Use or Disclose Protected Health Information as Required By Law.

4.3 Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.

4.4 Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and Used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

4.5 Business Associate may provide Data Aggregation services relating to the Health Care Operations of the covered entity.

4.6 Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

#### **OBLIGATIONS OF COVERED ENTITY**

5.1 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.

5.2 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.

5.3 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.

#### **PERMISSIBLE REQUESTS BY COVERED ENTITY**

6.1 Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity. If necessary in order to meet the Business Associate's obligations under the Agreement, the Business Associate may Use or Disclose Protected Health Information for Data Aggregation, management and administrative activities, or contractual or legal responsibilities of Business Associate.

#### **TERM**

7.1 **Term.** The 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 Agreement.

## **MISCELLANEOUS**

8.1 A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

8.2 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 HIPAA Rules.

8.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

8.4 In addition to any implied indemnity or express indemnity provision in the Agreement, 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 HIPAA Rules, 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 failure to perform, Breach or other action under this Agreement.

## **SECURITY RULE REQUIREMENTS**

9.1 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.

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.

## **TERMINATION**

10.1 Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.

## **EFFECT OF TERMINATION**

11.1 Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.

Provided however, Business Associate may retain Protected Health Information if necessary for management and administration purposes or to carry out its legal responsibilities after termination of the Agreement.

Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

- return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;

- continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

- not Use or Disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at in this Agreement which applied prior to termination; and

- return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

The obligations of Business Associate under this Agreement shall survive the termination of this Agreement.

## **NOTIFICATION OF BREACH**

12.1 To the extent Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, Uses, or Discloses Unsecured Protected Health Information, it 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, Used, 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(c) at the time of the required notification to the Covered Entity, or as promptly thereafter as the information is available.

12.2 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 Business 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 Business Associate (or person) to have occurred by the exercise of reasonable diligence.

12.3 Subject to section 12.4, 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 12.2. The Business Associate involved in the case of a notification required under section 12.2, shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

12.4 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:

- (a) 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
- (b) 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.

**PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION.**

13.1 Except as provided in section 13.2, 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.

13.2. Section 13.1 shall not apply in the following cases:

- (a) The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 Agreement.
- (f) 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.
- (g) 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 (a) through (f).



**FY2016 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 16<sup>th</sup> day of December, 2015 by and between Sedgwick County, Kansas, (hereinafter referred to as the "County") and Rita's Rides LLC, a Kansas limited liability company (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, 2016 (the "Effective Date"). This contract terminates on December 31, 2016. Notwithstanding the foregoing, the term of this Contract may continue on a month to month basis for a reasonable time after December 31, 2016 if: (A) both parties mutually agree to continue operating under the terms of this Contract while actively negotiating a contract for 2017; and (B) funds are available for the 2017 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 2016.
- 3.2 General Conditions.
- (A) Contractor agrees that all rides must have prior authorization by SCT. Rides scheduled directly with the Contractor and do not qualify as having been 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 backup system is in place and rides are managed in such a way that no SCT passenger is left without a ride.
- (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 is required to maintain proof on file of Kansas Bureau of Investigation (KBI) criminal background check and Kansas Department of Motor Vehicle driving record check on each driver.
- (H) Contractor agrees that the Federal Transit Administration (FTA) requires by law that in order to receive FTA Section 5311 and or 5307 reimbursement for general public transportation, the Contractor must have a contract with TMHC Services, Inc. or other recognized drug and alcohol agency, and all safety-sensitive employees per FTA regulations are in FTA's drug and alcohol testing pool and that measures are performed by TMHC standards or recognized drug and alcohol agency guidelines. Contractor must provide proof in driver's personnel file of annual United States Department of Transportation (DOT) driver physical performed by a physician that can administer this type of driver's physical if they meet the definition for required DOT physicals. For a new driver, a pre-employment drug screening is required prior to administration of a driver's physical. Noncompliance with participation in a drug and alcohol testing pool will result in nonpayment of 5311 or 5307 funded transportation services.
- (I) A new Contractor is required to attend a one-time train-the-trainer session on customer service and passenger assistance provided by SCT.
- (J) Contractor agrees to provide a Certificate of Insurance to SCT as proof of insurance coverage at levels described in Article 15.
- (K) Contractor agrees to perform preventive maintenance on all vehicles and to have a vehicle inspection by an ASE certified (or equivalent) mechanic or Kansas Department of Transportation (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 October, 2013 shall be completed and submitted; if inspected by a KDOT inspector, KDOT's completed form shall be submitted.
- (L) Contractor agrees to label vehicle(s) and identify with Contractor name and phone number on exterior of vehicle with lettering and numbers at least 4" high.

#### **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. These fees include all of the Contractor's time, labor and equipment for any and all services performed under 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 eighth (8<sup>th</sup>) 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. County has 30 days to process payment from the date a billing statement is received.

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

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.
  - (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.

- 12.6 Drug Free Work Place Act of 1988(49 CFR Part 32). Contractor is required to provide a drug-free workplace and comply with the Drug Free Work Place Act of 1988 as prescribed in 49 CFR Part 32.

Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the Act.

## **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.

13.5 Debarment/Suspension.

- (A) Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from SAM and any federal funding received or to be received by Sedgwick County in relation to this Agreement prohibits Sedgwick County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under SAM, the Contractor shall notify Sedgwick County in writing of such determination within five (5) business days as set forth in the Notice provision in this Agreement. Sedgwick County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under SAM and to notify County within the same five (5) business days, and with the County reserving the same right to terminate for breach as set forth herein.

## 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 agrees to maintain the following minimum limits of insurance coverage throughout the term of this agreement:

<b>Worker's Compensation:</b> Applicable State Statutory Employer's Liability	
<b>Employer's Liability Insurance:</b>	\$100,000.00
<b>Professional Liability Insurance:</b>	\$500,000.00
<b>Contractor's Liability Insurance:</b> Form of insurance shall be by a Commercial General Liability and Include Automobile comprehensive/liability	
<b>Bodily Injury:</b> Each Occurrence	\$500,000.00
Aggregate	\$500,000.00
<b>Property Damage:</b> Each Occurrence	\$500,000.00
Aggregate	\$500,000.00
<b>Personal Injury:</b> Each Person Occurrence	\$500,000.00
General Aggregate	\$500,000.00
<b>Automobile Liability B owned, Non-Owned, and Hired</b> Bodily Injury Each Person	\$500,000.00
Bodily Injury Each Occurrence	\$500,000.00

Liability insurance coverage indicated above must be considered as primary and not as excess insurance.

Contractor has furnished a certificate evidencing liability insurance coverage, with County listed as an additional insured. Said certificate shall remain in force during the duration of the project/services and will not be canceled, reduced, modified, limited or restricted until thirty (30) days after County receives written notice of such change. All insurance must be with an insurance company with a minimum Best rating of A-VIII and licensed to do business in the state of Kansas. It is the responsibility of Contractor to require that any and all approved subcontractors meet the minimum insurance requirements. Contractor shall obtain the above referenced certificate(s) of insurance, and in accordance with the Agreement, provide copies of such certificates to the County.

## 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:

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

If to Contractor:

Rita's Rides LLC  
1358 S. Wichita  
Wichita, KS 67213  
(316) 204-3235

and

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

and

Sedgwick County Purchasing  
Attn: Purchasing Director  
525 N. Main, Suite 359  
Wichita, KS 67203

## **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 *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.
- 17.6 *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.
- 17.7 *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.
- 17.8 *Phraseology*. In this Contract, the singular includes the plural, the plural includes the singular and any gender includes the other gender.
- 17.9 *Incorporation of Appendices*. Any appendices attached hereto, including but not limited to Appendix A – General Contract Provisions, are incorporated by reference as a part of this Contract to the same extent as if fully set forth herein.
- 17.10 *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.
- 17.11 *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.
- 17.12 *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.

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

Richard Ranzau  
Richard Ranzau, Chairman  
Fourth District

Date: 12-16-2015

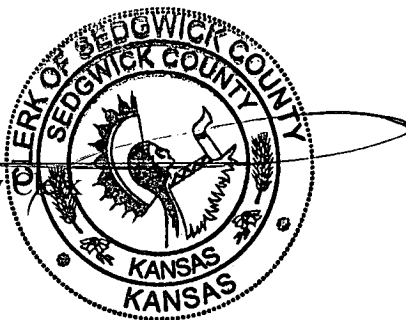
RITA'S RIDES LLC

Rita Minton  
Rita Minton, Owner

Date: 11-9-15

ATTEST:

Kelly B. Arnold  
Kelly B. Arnold, County Clerk



APPROVED AS TO FORM:

Justin M. Waggoner  
Justin M. Waggoner,  
Assistant County Counselor

## **HIPAA RULES**

### **BUSINESS ASSOCIATE ADDENDUM**

#### **DEFINITIONS**

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

#### **Specific definitions:**

(a) **Business Associate**. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103.

(b) **Covered Entity**. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Sedgwick County.

(c) **HIPAA Rules**. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

#### **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

##### **Business Associate agrees to:**

2.1 not Use or Disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law;

2.2 Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement;

2.3 report to covered entity any Use or Disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware, as further provided for in Par. 12.1, *et seq.*;

2.4 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;

2.5 in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on

behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

2.6 make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

2.7 make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

2.8 make its internal practices, books, and records available to the Covered Entity or the Secretary for purposes of determining compliance with the HIPAA Rules; and

2.9 maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528.

#### **PERMITTED USES AND DISCLOSURES BY ASSOCIATE**

3.1 Except as otherwise limited in this Agreement, Business Associate may only 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.

#### **SPECIFIC USE AND DISCLOSURE PROVISIONS**

4.1 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.

4.2 Business Associate may Use or Disclose Protected Health Information as Required By Law.

4.3 Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.

4.4 Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and Used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

4.5 Business Associate may provide Data Aggregation services relating to the Health Care Operations of the covered entity.

4.6 Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

#### **OBLIGATIONS OF COVERED ENTITY**

5.1 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.

5.2 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.

5.3 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.

#### **PERMISSIBLE REQUESTS BY COVERED ENTITY**

6.1 Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity. If necessary in order to meet the Business Associate's obligations under the Agreement, the Business Associate may Use or Disclose Protected Health Information for Data Aggregation, management and administrative activities, or contractual or legal responsibilities of Business Associate.

#### **TERM**

7.1 **Term.** The 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 Agreement.

## **MISCELLANEOUS**

8.1 A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

8.2 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 HIPAA Rules.

8.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

8.4 In addition to any implied indemnity or express indemnity provision in the Agreement, 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 HIPAA Rules, 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 failure to perform, Breach or other action under this Agreement.

## **SECURITY RULE REQUIREMENTS**

9.1 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.

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.

## **TERMINATION**

10.1 Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.

## **EFFECT OF TERMINATION**

11.1 Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.

Provided however, Business Associate may retain Protected Health Information if necessary for management and administration purposes or to carry out its legal responsibilities after termination of the Agreement.

Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

- return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;

- continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

- not Use or Disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at in this Agreement which applied prior to termination; and

- return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

The obligations of Business Associate under this Agreement shall survive the termination of this Agreement.

## **NOTIFICATION OF BREACH**

12.1 To the extent Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, Uses, or Discloses Unsecured Protected Health Information, it 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, Used, 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(c) at the time of the required notification to the Covered Entity, or as promptly thereafter as the information is available.

12.2 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 Business 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 Business Associate (or person) to have occurred by the exercise of reasonable diligence.

12.3 Subject to section 12.4, 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 12.2. The Business Associate involved in the case of a notification required under section 12.2, shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

12.4 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:

- (a) 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
- (b) 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.



**PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION.**

13.1 Except as provided in section 13.2, 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.

13.2. Section 13.1 shall not apply in the following cases:

- (a) The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 Agreement.
- (f) 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.
- (g) 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 (a) through (f).

# VOLUNTEER TRANSPORTATION SERVICES AGREEMENT

by and between:

SEDGWICK COUNTY, KANSAS  
and  
CITY OF BENTLEY, KANSAS

This Agreement made and entered into this 21<sup>st</sup> day of June, 2016, by and between Sedgwick County, Kansas ("County") and the City of Bentley, Kansas ("Contractor").

WITNESSETH:

**WHEREAS**, County, by and through its Department on Aging, desires to make available coordination of volunteer transportation services to those residents of Sedgwick County; and

**WHEREAS**, Contractor warrants that it is fully capable of providing said coordination of volunteer transportation services; and

**WHEREAS**, County desires to engage Contractor to provide said coordination of volunteer transportation services; and

**WHEREAS**, County and Contractor desire to state the terms and conditions under which Contractor will provide said services.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree as follows:

1. **Purpose and Scope of Work.** Contractor shall provide coordination of volunteer transportation services for those residents of Sedgwick County in conjunction with the County's RSVP Volunteer Program. Contractor understands and agrees that it will be responsible for coordinating needed transportation services that will then be carried out by the County's RSVP volunteers. The parties agree that time is of the essence in Contractor's performance of this Agreement.

2. **Term.** The initial term of this Agreement shall be for one (1) year, commencing July 1, 2016, and ending June 30, 2017. This Agreement may continue for a reasonable time after June 30, 2017, on a month-to-month basis, if both parties agree to continue operating under the terms and conditions of this Agreement while they are actively developing an agreement for 2017, assuming funds for a new agreement are available.

3. **Prohibition on Rides Provided.** County will not authorize compensation to Contractor for coordinated rides for RSVP volunteer's relatives being transported in the same vehicle. For purposes of this Agreement, the term "relative" includes spouses/partners, siblings, brothers or sisters-in-law, children or stepchildren, grandchildren, great-grandchildren, and any individual, related or not, residing at the same address of the RSVP volunteer.

4. **Incorporation of Documents.** Sedgwick County Mandatory Contractual Provisions Attachment is attached hereto and is made a part hereof as if fully set forth herein.

**SCANNED**

**JUN 21 2016**

## General Terms and Conditions

1. **Contractual Relationship.** It is agreed that the legal relationship between Contractor and County is of a contractual nature. Both parties assert and believe that Contractor is acting as an independent contractor in providing the goods and services and performing the duties required by County hereunder. Contractor is at all times acting as an independent contractor and not as an officer, agent, or employee of County. As an independent contractor, Contractor, or employees of Contractor, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Contractor, or employees of Contractor, be entitled to any current or future benefits provided to employees of County. Further, County shall not be responsible for the withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by County to Contractor.

2. **Authority to Contract.** Contractor assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Contractor to act in connection with the application and to provide such additional information as may be required.

3. **Compensation.** Contractor understands and agrees that any and all compensation provided under this Agreement is on a fee-for-service basis, which is seven dollars (\$7.00) per coordinated ride. For purposes of this Agreement, the term "coordinated ride" means a single round trip ride for one single rider or for multiple riders who have the same origin and destination. These fees include all of Contractor's time, labor and equipment, travel, and all other expenses associated with the provision of goods, equipment and/or services, and shall be the sole compensation rendered to Contractor hereunder. Under no circumstances will the compensation paid under this Agreement exceed TWO THOUSAND NINE HUNDRED SEVENTY-FIVE DOLLARS (\$2,975.00) or 425 coordinated rides.

4. **Invoicing and Billing.** Contractor shall submit all coordination pages to the County's RSVP Volunteer Program Coordinator no later than the sixth day of each month.

Pages must include the following information:

- a. Date of trip(s) coordinated
- b. Volunteer driver assigned
- c. Origin address
- d. Destination address
- e. Purpose/description of the ride
- f. Name of passenger(s)
- g. Total number of miles driven per trip
- h. Total amount of road driven time (in hours and minutes) (not to include non-road time with passenger(s))
- i. Total amount of non-road time (escorted) with passenger(s) (in hours and minutes)

Properly submitted coordinated statements will be paid within thirty (30) calendar days of receipt by County.

Contractor understands and acknowledges that statements for rides coordinated in the last month of this Agreement must not carry over into the new funding year (beginning July 1, 2017). Accordingly, all statements for services rendered under this Agreement must be submitted to the County no later than July 6, 2017.

**5. Warranties and Representation.** Goods or equipment delivered and/or services rendered hereunder must be made according to the terms of this Agreement both as to time and quantities, with County reserving the right to cancel, reject or refuse any delivery made and/or service rendered prior to or subsequent to the times specified. In the event no quality is specified on the face hereof, the goods or equipment delivered and/or services rendered hereunder must be of the best quality. If delivery of goods or equipment and/or rendering of services cannot be maintained, Contractor must notify County immediately. Upon Contractor's failure to maintain delivery or otherwise perform hereunder, County reserves the right to procure such goods or equipment and/or services elsewhere, in whole or in part, and assess Contractor with any additional costs incurred, unless Contractor's default arises from causes beyond its control and without fault or negligence. This remedy is in addition to any other remedy which County may have pursuant to this Agreement or otherwise and/or any warranty that may be implied or imposed by operation of law.

**6. Notification.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

**County:** Sedgwick County Department on Aging  
Attn: Contract Notification  
2622 W. Central, Suite 500  
Wichita, Kansas 67203

and

Sedgwick County Counselor=s Office  
Attn: Contract Notification  
Sedgwick County Courthouse  
525 N. Main, Suite 359  
Wichita, Kansas 67203-3790

**Contractor:** City of Bentley, Kansas  
Attn: Rex Satterthwaite, Mayor  
150 S. Wichita Avenue  
Bentley, Kansas 67016

**7. Termination.**

A. Termination for Cause. In the event of any breach of the terms or conditions of this Agreement by Contractor, or in the event of any proceedings by or against Contractor in bankruptcy or insolvency or for appointment of receiver or trustee or any general assignment for the benefit of creditors, County may, in addition to any other remedy provided it by law or in equity or other right reserved to it elsewhere in this Agreement, without any liability to Contractor on account thereof, by written notice, terminate immediately all or any part of this Agreement, procure the goods, equipment and/or services provided for herein elsewhere, on such terms and under such conditions as are reasonable in the sole

discretion of County, and Contractor shall be liable to pay to County any excess cost or other damages caused by Contractor as a result thereof.

B. **Termination for Convenience.** County shall have the right to terminate this Agreement for convenience in whole, or from time to time, in part, upon thirty (30) days' written notice. Upon receipt of such termination notice, Contractor shall not incur any new obligations and shall cancel as many outstanding obligations as reasonably possible. In such event, County's maximum liability shall be limited to payment for goods or equipment delivered and accepted and/or services rendered.

C. **Reduction in Funds.** It is understood that funding may cease or be reduced at any time. In the event that adequate funds are not available to meet the obligations hereunder, either party reserves the right to terminate this Agreement upon thirty (30) days' written notice.

8. **Hold Harmless.** Contractor shall indemnify County, and its elected and appointed officials, officers, managers, members, employees and agents, against any and all loss or damage to the extent such loss and/or damage arises out of Contractor's negligence and/or willful, wanton or reckless conduct in the provision of goods and equipment or performance of services under this Agreement. This indemnification shall not be affected by other portions of the Agreement relating to insurance requirements.

9. **Entire Agreement.** This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor shall it be of any force or effect.

10. **Assignment.** Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by either party without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.

11. **Amendments.** Neither this Agreement nor any rights or obligations created by it shall be amended by either party without the prior written consent of the other. Any attempted amendment without such consent shall be null and void.

12. **Subcontracting.** None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of County. In the event subcontracting is approved by County, Contractor shall remain totally responsible for all actions and work performed by its subcontractors. All approved subcontracts must conform to applicable requirements set forth in this Agreement and in its appendices, exhibits and amendments, if any.

13. **Severability Clause.** In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.

14. **Waiver.** Waiver of any breach of any provision in this Agreement shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by County shall not constitute a waiver.

15. **Force Majeure.** Contractor shall not be held liable if the failure to perform under this Agreement arises out of causes beyond the control of Contractor. Causes may include, but are not limited to,

acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.

**16. Order of Preference.** Any conflict to the provisions of this Agreement and the documents incorporated by reference shall be determined by the following priority order:

- a. Sedgwick County Contractual Provisions Attachment
- b. Written modifications and addenda to the executed Agreement
- c. This Agreement document
- d. Contractor's written response to the RFP (if applicable)
- e. The RFP (if applicable)

**17. Environmental Protection.** Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rules or regulations may result in termination of this Agreement for cause.

**18. Nondiscrimination and Workplace Safety.** Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violation of applicable laws, rules or regulations may result in termination of this Agreement for cause.

**19. Retention of Records.** Unless otherwise specified in this Agreement, Contractor agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this Agreement for a period of five (5) years from the date of expiration or termination of this Agreement.

Matters involving litigation shall be kept for one (1) year following termination of litigation, including all appeals, if the litigation exceeds five (5) years.

**20. Ownership of Data.** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by Contractor in relation to this Agreement shall be owned by County and shall be handed over and/or returned to County upon the expiration or termination of this Agreement. Contractor shall not release any such materials without written approval of the County.

**21. Intellectual Property Rights.** As applicable, all original software, software code, and/or intellectual property developed or created by County in relation to this Agreement shall remain the sole property of the County. Contractor shall surrender all original written materials, including, but not limited to any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material, and any and all intellectual property to County upon the expiration or termination of this Agreement.

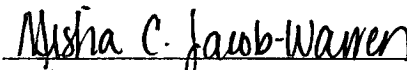
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

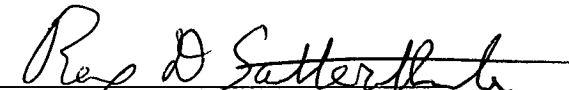
SEDGWICK COUNTY, KANSAS

  
~~Joseph Thomas~~ **Mike Scholes**  
~~Purchasing Director~~ **County Manager**

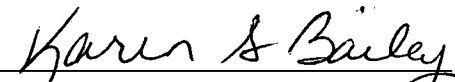
APPROVED AS TO FORM ONLY:

  
Misha C. Jacob-Warren  
Assistant County Counselor

CITY OF BENTLEY, KANSAS

  
Rex Satterthwaite  
Mayor

ATTESTED TO:

  
*for* Kelly B. Arnold  
County Clerk



## SEDGWICK COUNTY MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in the Sedgwick County Contractual Mandatory Provisions Attachment, which is attached hereto, are hereby incorporated in this Agreement and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the Agreement to which it is attached and made a part thereof, said contract being the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the Chief Financial Officer, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, County may terminate this Agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to County under the Agreement. County will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon termination of the Agreement by County, title to any such equipment shall revert to Contractor at the end of County's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the County or the Contractor.
4. **Disclaimer of Liability:** County shall not hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has consented to a jury trial to resolve any disputes that may arise hereunder. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any Agreement and/or this Contractual Provisions Attachment will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. County is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, County shall provide to the Contractor a certificate of tax exemption.  
  
County makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** County shall not be required to purchase any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the County to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest:** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the County and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the County. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any County employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the County.
11. **Confidentiality:** Contractor may have access to private or confidential data maintained by County to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the County promptly at the request of County in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by County, shall destroy or render such data or material unreadable.
12. **Cash Basis and Budget Laws:** The right of the County to enter into this Agreement 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 all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.



13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the County cumulatively total \$5,000 or less during the County's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the County in relation to this Agreement prohibits the County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the County in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify County within the same five (5) business days, with the County reserving the same right to terminate for breach as set forth herein.
15. **HIPAA Compliance.** Contractor agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); the Genetic Information Nondiscrimination Act of 2008 ("GINA"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended (collectively referred to as "HIPAA"), to the extent that the Contractor uses, discloses or has access to protected health information as defined by HIPAA. Under the final Omnibus Rule effective March 2013, Contractor may be required to enter into a Business Associate Agreement pursuant to HIPAA.
16. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

# VOLUNTEER TRANSPORTATION SERVICES AGREEMENT

by and between:

**SEDGWICK COUNTY, KANSAS**  
and  
**CITY OF CLEARWATER, KANSAS**

This Agreement made and entered into this 21<sup>st</sup> day of June, 2016, by and between Sedgwick County, Kansas ("County") and the City of Clearwater, Kansas ("Contractor").

WITNESSETH:

**WHEREAS**, County, by and through its Department on Aging, desires to make available coordination of volunteer transportation services to those rural residents of Sedgwick County; and

**WHEREAS**, Contractor warrants that it is fully capable of providing said coordination of volunteer transportation services; and

**WHEREAS**, County desires to engage Contractor to provide said coordination of volunteer transportation services; and

**WHEREAS**, County and Contractor desire to state the terms and conditions under which Contractor will provide said services.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree as follows:

**1. Purpose and Scope of Work.** Contractor shall provide coordination of volunteer transportation services for those rural residents of Sedgwick County in conjunction with the County's RSVP Volunteer Program. Contractor understands and agrees that it will be responsible for coordinating needed transportation services that will then be carried out by the County's RSVP volunteers. The parties agree that time is of the essence in Contractor's performance of this Agreement.

**2. Term.** The initial term of this Agreement shall be for one (1) year, commencing July 1, 2016, and ending June 30, 2017. This Agreement may continue for a reasonable time after June 30, 2017, on a month-to-month basis, if both parties agree to continue operating under the terms and conditions of this Agreement while they are actively developing an agreement for 2017, assuming funds for a new agreement are available.

**3. Prohibition on Rides Provided.** County will not authorize compensation to Contractor for coordinated rides for RSVP volunteer's relatives being transported in the same vehicle. For purposes of this Agreement, the term "relative" includes spouses/partners, siblings, brothers or sisters-in-law, children or stepchildren, grandchildren, great-grandchildren, and any individual, related or not, residing at the same address of the RSVP volunteer.

**4. Incorporation of Documents.** Sedgwick County Mandatory Contractual Provisions Attachment is attached hereto and is made a part hereof as if fully set forth herein.

**SCANNED**

**JUN 21 2016**

## General Terms and Conditions

1. **Contractual Relationship.** It is agreed that the legal relationship between Contractor and County is of a contractual nature. Both parties assert and believe that Contractor is acting as an independent contractor in providing the goods and services and performing the duties required by County hereunder. Contractor is at all times acting as an independent contractor and not as an officer, agent, or employee of County. As an independent contractor, Contractor, or employees of Contractor, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Contractor, or employees of Contractor, be entitled to any current or future benefits provided to employees of County. Further, County shall not be responsible for the withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by County to Contractor.

2. **Authority to Contract.** Contractor assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Contractor to act in connection with the application and to provide such additional information as may be required.

3. **Compensation.** Contractor understands and agrees that any and all compensation provided under this Agreement is on a fee-for-service basis, which is seven dollars (\$7.00) per coordinated ride. For purposes of this Agreement, the term "coordinated ride" means a single round trip ride for one single rider or for multiple riders who have the same origin and destination. These fees include all of Contractor's time, labor and equipment, travel, and all other expenses associated with the provision of goods, equipment and/or services, and shall be the sole compensation rendered to Contractor hereunder. Under no circumstances will the compensation paid under this Agreement exceed TWO THOUSAND NINE HUNDRED SEVENTY-FIVE DOLLARS (\$2,975.00) or 425 coordinated rides.

4. **Invoicing and Billing.** Contractor shall submit all coordination pages to the County's RSVP Volunteer Program Coordinator no later than the sixth day of each month.

Pages must include the following information:

- a. Date of trip(s) coordinated
- b. Volunteer driver assigned
- c. Origin address
- d. Destination address
- e. Purpose/description of the ride
- f. Name of passenger(s)
- g. Total number of miles driven per trip
- h. Total amount of road driven time (in hours and minutes) (not to include non-road time with passenger(s))
- i. Total amount of non-road (escorted) time with passenger(s) (in hours and minutes)

Properly submitted coordinated statements will be paid within thirty (30) calendar days of receipt by County.

Contractor understands and acknowledges that statements for rides coordinated in the last month of this Agreement must not carry over into the new funding year (beginning July 1, 2017). Accordingly, all statements for services rendered under this Agreement must be submitted to the County no later than July 6, 2017.

**5. Warranties and Representation.** Goods or equipment delivered and/or services rendered hereunder must be made according to the terms of this Agreement both as to time and quantities, with County reserving the right to cancel, reject or refuse any delivery made and/or service rendered prior to or subsequent to the times specified. In the event no quality is specified on the face hereof, the goods or equipment delivered and/or services rendered hereunder must be of the best quality. If delivery of goods or equipment and/or rendering of services cannot be maintained, Contractor must notify County immediately. Upon Contractor's failure to maintain delivery or otherwise perform hereunder, County reserves the right to procure such goods or equipment and/or services elsewhere, in whole or in part, and assess Contractor with any additional costs incurred, unless Contractor's default arises from causes beyond its control and without fault or negligence. This remedy is in addition to any other remedy which County may have pursuant to this Agreement or otherwise and/or any warranty that may be implied or imposed by operation of law.

**6. Notification.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

**County:** Sedgwick County Department on Aging  
Attn: Contract Notification  
2622 W. Central, Suite 500  
Wichita, Kansas 67203

and

Sedgwick County Counselor=s Office  
Attn: Contract Notification  
Sedgwick County Courthouse  
525 N. Main, Suite 359  
Wichita, Kansas 67203-3790

**Contractor:** City of Clearwater, Kansas  
Attn: Burt Ussery, Mayor  
129 E. Ross Avenue  
Clearwater, Kansas 67026

**7. Termination.**

A. Termination for Cause. In the event of any breach of the terms or conditions of this Agreement by Contractor, or in the event of any proceedings by or against Contractor in bankruptcy or insolvency or for appointment of receiver or trustee or any general assignment for the benefit of creditors, County may, in addition to any other remedy provided it by law or in equity or other right reserved to it elsewhere in this Agreement, without any liability to Contractor on account thereof, by written notice, terminate immediately all or any part of this Agreement, procure the goods, equipment and/or services provided for herein elsewhere, on such terms and under such conditions as are reasonable in the sole

discretion of County, and Contractor shall be liable to pay to County any excess cost or other damages caused by Contractor as a result thereof.

B. **Termination for Convenience.** County shall have the right to terminate this Agreement for convenience in whole, or from time to time, in part, upon thirty (30) days' written notice. Upon receipt of such termination notice, Contractor shall not incur any new obligations and shall cancel as many outstanding obligations as reasonably possible. In such event, County's maximum liability shall be limited to payment for goods or equipment delivered and accepted and/or services rendered.

C. **Reduction in Funds.** It is understood that funding may cease or be reduced at any time. In the event that adequate funds are not available to meet the obligations hereunder, either party reserves the right to terminate this Agreement upon thirty (30) days' written notice.

8. **Hold Harmless.** Contractor shall indemnify County, and its elected and appointed officials, officers, managers, members, employees and agents, against any and all loss or damage to the extent such loss and/or damage arises out of Contractor's negligence and/or willful, wanton or reckless conduct in the provision of goods and equipment or performance of services under this Agreement. This indemnification shall not be affected by other portions of the Agreement relating to insurance requirements.

9. **Entire Agreement.** This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor shall it be of any force or effect.

10. **Assignment.** Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by either party without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.

11. **Amendments.** Neither this Agreement nor any rights or obligations created by it shall be amended by either party without the prior written consent of the other. Any attempted amendment without such consent shall be null and void.

12. **Subcontracting.** None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of County. In the event subcontracting is approved by County, Contractor shall remain totally responsible for all actions and work performed by its subcontractors. All approved subcontracts must conform to applicable requirements set forth in this Agreement and in its appendices, exhibits and amendments, if any.

13. **Severability Clause.** In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.

14. **Waiver.** Waiver of any breach of any provision in this Agreement shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by County shall not constitute a waiver.

15. **Force Majeure.** Contractor shall not be held liable if the failure to perform under this Agreement arises out of causes beyond the control of Contractor. Causes may include, but are not limited to,

acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.

**16. Order of Preference.** Any conflict to the provisions of this Agreement and the documents incorporated by reference shall be determined by the following priority order:

- a. Sedgwick County Contractual Provisions Attachment
- b. Written modifications and addenda to the executed Agreement
- c. This Agreement document
- d. Contractor's written response to the RFP (if applicable)
- e. The RFP (if applicable)

**17. Environmental Protection.** Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rules or regulations may result in termination of this Agreement for cause.

**18. Nondiscrimination and Workplace Safety.** Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violation of applicable laws, rules or regulations may result in termination of this Agreement for cause.

**19. Retention of Records.** Unless otherwise specified in this Agreement, Contractor agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this Agreement for a period of five (5) years from the date of expiration or termination of this Agreement.

Matters involving litigation shall be kept for one (1) year following termination of litigation, including all appeals, if the litigation exceeds five (5) years.


**20. Ownership of Data.** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by Contractor in relation to this Agreement shall be owned by County and shall be handed over and/or returned to County upon the expiration or termination of this Agreement. Contractor shall not release any such materials without written approval of the County.

**21. Intellectual Property Rights.** As applicable, all original software, software code, and/or intellectual property developed or created by County in relation to this Agreement shall remain the sole property of the County. Contractor shall surrender all original written materials, including, but not limited to any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material, and any and all intellectual property to County upon the expiration or termination of this Agreement.


**[remainder of this page intentionally left blank]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

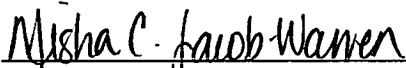
SEDGWICK COUNTY, KANSAS

  
\_\_\_\_\_  
~~Joseph Thomas~~ Mike Scholes  
~~Purchasing Director~~ County Manager

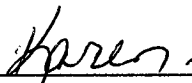
CITY OF CLEARWATER, KANSAS

  
\_\_\_\_\_  
Burt Ussery  
Mayor

APPROVED AS TO FORM ONLY:

  
\_\_\_\_\_  
Misha C. Jacob-Warren  
Assistant County Counselor

ATTESTED TO:

  
\_\_\_\_\_  
for Kelly B. Arnold  
County Clerk



## SEDGWICK COUNTY MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in the Sedgwick County Contractual Mandatory Provisions Attachment, which is attached hereto, are hereby incorporated in this Agreement and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the Agreement to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the Chief Financial Officer, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, County may terminate this Agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to County under the Agreement. County will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon termination of the Agreement by County, title to any such equipment shall revert to Contractor at the end of County's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the County or the Contractor.
4. **Disclaimer of Liability:** County shall not hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has consented to a jury trial to resolve any disputes that may arise hereunder. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any Agreement and/or this Contractual Provisions Attachment will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. County is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, County shall provide to the Contractor a certificate of tax exemption.

County makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance:** County shall not be required to purchase any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the County to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest:** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the County and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the County. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any County employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the County.
11. **Confidentiality:** Contractor may have access to private or confidential data maintained by County to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the County promptly at the request of County in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by County, shall destroy or render such data or material unreadable.
12. **Cash Basis and Budget Laws:** The right of the County to enter into this Agreement 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 all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.



13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the County cumulatively total \$5,000 or less during the County's fiscal year.

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**VOLUNTEER TRANSPORTATION SERVICES AGREEMENT**

by and between:

**SEDGWICK COUNTY, KANSAS**

and

**MOUNT HOPE COMMUNITY DEVELOPMENT, INC.**

This Agreement made and entered into this 21<sup>st</sup> day of June, 2016, by and between Sedgwick County, Kansas ("County") and Mount Hope Community Development, Inc., a Kansas not for profit corporation ("Contractor").

WITNESSETH:

**WHEREAS**, County, by and through its Department on Aging, desires to make available coordination of transportation services to those residents of Sedgwick County; and

**WHEREAS**, Contractor warrants that it is fully capable of providing said coordination of volunteer transportation services; and

**WHEREAS**, County desires to engage Contractor to provide said coordination of transportation volunteer services; and

**WHEREAS**, County and Contractor desire to state the terms and conditions under which Contractor will provide said services.

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**3. Prohibition on Rides Provided.** County will not authorize compensation to Contractor for coordinated rides for RSVP volunteer's relatives being transported in the same vehicle. For purposes of this Agreement, the term "relative" includes spouses/partners, siblings, brothers or sisters-in-law, children or stepchildren, grandchildren, great-grandchildren, and any individual, related or not, residing at the same address of the RSVP volunteer.

**SCANNED**

**JUN 21 2016**

4. **Incorporation of Documents.** Sedgwick County Mandatory Contractual Provisions Attachment is attached hereto and is made a part hereof as if fully set forth herein.

**[remainder of this page intentionally left blank]**

## **General Terms and Conditions**

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**4. Invoicing and Billing.** Contractor shall submit all coordination pages to the County's RSVP Volunteer Program Coordinator no later than the sixth day of each month.

Pages must include the following information:

- a. Date of trip(s) coordinated
- b. Volunteer driver assigned
- c. Origin address
- d. Destination address
- e. Purpose/description of the ride
- f. Name of passenger(s)
- g. Total number of miles driven per trip
- h. Total amount of road driven time (in hours and minutes) (not to include non-road time with passenger(s))
- i. Total amount of non-road (escorted) time with passenger(s) (in hours and minutes)

Properly submitted coordinated statements will be paid within thirty (30) calendar days of receipt by County.

Contractor understands and acknowledges that statements for rides coordinated in the last month of this Agreement must not carry over into the new funding year (beginning July 1, 2017). Accordingly, all statements for services rendered under this Agreement must be submitted to the County no later than July 6, 2017.

**5. Warranties and Representation.** Goods or equipment delivered and/or services rendered hereunder must be made according to the terms of this Agreement both as to time and quantities, with County reserving the right to cancel, reject or refuse any delivery made and/or service rendered prior to or subsequent to the times specified. In the event no quality is specified on the face hereof, the goods or equipment delivered and/or services rendered hereunder must be of the best quality. If delivery of goods or equipment and/or rendering of services cannot be maintained, Contractor must notify County immediately. Upon Contractor's failure to maintain delivery or otherwise perform hereunder, County reserves the right to procure such goods or equipment and/or services elsewhere, in whole or in part, and assess Contractor with any additional costs incurred, unless Contractor's default arises from causes beyond its control and without fault or negligence. This remedy is in addition to any other remedy which County may have pursuant to this Agreement or otherwise and/or any warranty that may be implied or imposed by operation of law.

**6. Notification.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

**County:** Sedgwick County Department on Aging  
Attn: Contract Notification  
2622 W. Central, Suite 500  
Wichita, Kansas 67203

and

Sedgwick County Counselor=s Office  
Attn: Contract Notification  
Sedgwick County Courthouse  
525 N. Main, Suite 359  
Wichita, Kansas 67203-3790

**Contractor:** Mount Hope Community Development, Inc.  
Attn: Gina Terry, Director  
105 South Ohio  
Mount Hope, Kansas 67108

**7. Termination.**

A. Termination for Cause. In the event of any breach of the terms or conditions of this Agreement by Contractor, or in the event of any proceedings by or against Contractor in bankruptcy or insolvency or for appointment of receiver or trustee or any general assignment for the benefit of creditors, County may, in addition to any other remedy provided it by law or in equity or other right reserved to it elsewhere in this Agreement, without any liability to Contractor on account thereof, by written notice, terminate immediately all or any part of this Agreement, procure the goods, equipment and/or services provided for herein elsewhere, on such terms and under such conditions as are reasonable in the sole

discretion of County, and Contractor shall be liable to pay to County any excess cost or other damages caused by Contractor as a result thereof.

B. **Termination for Convenience.** County shall have the right to terminate this Agreement for convenience in whole, or from time to time, in part, upon thirty (30) days' written notice. Upon receipt of such termination notice, Contractor shall not incur any new obligations and shall cancel as many outstanding obligations as reasonably possible. In such event, County's maximum liability shall be limited to payment for goods or equipment delivered and accepted and/or services rendered.

C. **Reduction in Funds.** It is understood that funding may cease or be reduced at any time. In the event that adequate funds are not available to meet the obligations hereunder, either party reserves the right to terminate this Agreement upon thirty (30) days' written notice.

8. **Hold Harmless.** Contractor shall indemnify County, and its elected and appointed officials, officers, managers, members, employees and agents, against any and all loss or damage to the extent such loss and/or damage arises out of Contractor's negligence and/or willful, wanton or reckless conduct in the provision of goods and equipment or performance of services under this Agreement. This indemnification shall not be affected by other portions of the Agreement relating to insurance requirements.

9. **Entire Agreement.** This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor shall it be of any force or effect.

10. **Assignment.** Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by either party without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.

11. **Amendments.** Neither this Agreement nor any rights or obligations created by it shall be amended by either party without the prior written consent of the other. Any attempted amendment without such consent shall be null and void.

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13. **Severability Clause.** In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.

14. **Waiver.** Waiver of any breach of any provision in this Agreement shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by County shall not constitute a waiver.

15. **Force Majeure.** Contractor shall not be held liable if the failure to perform under this Agreement arises out of causes beyond the control of Contractor. Causes may include, but are not limited to,

acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.

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- a. Sedgwick County Contractual Provisions Attachment
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- d. Contractor's written response to the RFP (if applicable)
- e. The RFP (if applicable)

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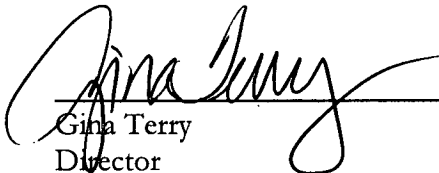
**[remainder of this page intentionally left blank]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SEDGWICK COUNTY, KANSAS

MOUNT HOPE COMMUNITY  
DEVELOPMENT, INC.

  
~~Joseph Thomas~~ Mike Scholes  
~~Purchasing Director~~ County Manager

  
Gina Terry  
Director

APPROVED AS TO FORM ONLY:

ATTESTED TO:

Misha C. Jacob-Warren  
Misha C. Jacob-Warren  
Assistant County Counselor

Karen B. Arnold  
*for* Kelly B. Arnold  
County Clerk





## SEDGWICK COUNTY MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in the Sedgwick County Contractual Mandatory Provisions Attachment, which is attached hereto, are hereby incorporated in this Agreement and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the Agreement to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the Chief Financial Officer, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, County may terminate this Agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to County under the Agreement. County will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon termination of the Agreement by County, title to any such equipment shall revert to Contractor at the end of County's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the County or the Contractor.
4. **Disclaimer of Liability:** County shall not hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has consented to a jury trial to resolve any disputes that may arise hereunder. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any Agreement and/or this Contractual Provisions Attachment will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. County is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, County shall provide to the Contractor a certificate of tax exemption.  
  
County makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** County shall not be required to purchase any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the County to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest:** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the County and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the County. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any County employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the County.
11. **Confidentiality:** Contractor may have access to private or confidential data maintained by County to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the County promptly at the request of County in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by County, shall destroy or render such data or material unreadable.
12. **Cash Basis and Budget Laws:** The right of the County to enter into this Agreement 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 all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the County cumulatively total \$5,000 or less during the County's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the County in relation to this Agreement prohibits the County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the County in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify County within the same five (5) business days, with the County reserving the same right to terminate for breach as set forth herein.
15. **HIPAA Compliance.** Contractor agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); the Genetic Information Nondiscrimination Act of 2008 ("GINA"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended (collectively referred to as "HIPAA"), to the extent that the Contractor uses, discloses or has access to protected health information as defined by HIPAA. Under the final Omnibus Rule effective March 2013, Contractor may be required to enter into a Business Associate Agreement pursuant to HIPAA.
16. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

# VOLUNTEER TRANSPORTATION SERVICES AGREEMENT

by and between:

**SEDGWICK COUNTY, KANSAS**  
**and**  
**CITY OF MULVANE, KANSAS**

This Agreement made and entered into this 21<sup>st</sup> day of June, 2016, by and between Sedgwick County, Kansas ("County") and the City of Mulvane, Kansas ("Contractor").

WITNESSETH:

**WHEREAS**, County, by and through its Department of Aging, desires to make available coordination of volunteer transportation services to those residents of Sedgwick County who are age 60 and older; and

**WHEREAS**, Contractor warrants that it is fully capable of providing said coordination of volunteer transportation services; and

**WHEREAS**, County desires to engage Contractor to provide said coordination of volunteer transportation services; and

**WHEREAS**, County and Contractor desire to state the terms and conditions under which Contractor will provide said services.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree as follows:

**1. Purpose and Scope of Work.** Contractor shall provide coordination of volunteer transportation services for those residents of Sedgwick County who are age 60 and older in conjunction with the County's RSVP Volunteer Program. Contractor understands and agrees that it will be responsible for coordinating needed transportation services that will then be carried out by the County's RSVP volunteers. Contractor will conduct all coordination services under this Agreement from the Mulvane Senior Center. The parties agree that time is of the essence in Contractor's performance of this Agreement.

**2. Term.** The initial term of this Agreement shall be for one (1) year, commencing July 1, 2016, and ending June 30, 2017. This Agreement may continue for a reasonable time after June 30, 2017, on a month-to-month basis, if both parties agree to continue operating under the terms and conditions of this Agreement while they are actively developing an agreement for 2017, assuming funds for a new agreement are available.

**3. Prohibition on Rides Provided.** County will not authorize compensation to Contractor for coordinated rides for RSVP volunteer's relatives being transported in the same vehicle. For purposes of this Agreement, the term "relative" includes spouses/partners, siblings, brothers or sisters-in-law, children or stepchildren, grandchildren, great-grandchildren, and any individual, related or not, residing at the same address of the RSVP volunteer.

**SCANNED**

**JUN 21 2016**

4. **Incorporation of Documents.** Sedgwick County Mandatory Contractual Provisions Attachment is attached hereto and is made a part hereof as if fully set forth herein.

**[remainder of this page intentionally left blank]**

## General Terms and Conditions

**1. Contractual Relationship.** It is agreed that the legal relationship between Contractor and County is of a contractual nature. Both parties assert and believe that Contractor is acting as an independent contractor in providing the goods and services and performing the duties required by County hereunder. Contractor is at all times acting as an independent contractor and not as an officer, agent, or employee of County. As an independent contractor, Contractor, or employees of Contractor, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Contractor, or employees of Contractor, be entitled to any current or future benefits provided to employees of County. Further, County shall not be responsible for the withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by County to Contractor.

**2. Authority to Contract.** Contractor assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Contractor to act in connection with the application and to provide such additional information as may be required.

**3. Compensation.** Contractor understands and agrees that any and all compensation provided under this Agreement is on a fee-for-service basis, which is seven dollars (\$7.00) per coordinated ride. For purposes of this Agreement, the term "coordinated ride" means a single round trip ride for one single rider or for multiple riders who have the same origin and destination. These fees include all of Contractor's time, labor and equipment, travel, and all other expenses associated with the provision of goods, equipment and/or services, and shall be the sole compensation rendered to Contractor hereunder. Under no circumstances will the compensation paid under this Agreement exceed TWO THOUSAND NINE HUNDRED SEVENTY-FIVE DOLLARS (\$2,975.00) or 425 coordinated rides.

**4. Invoicing and Billing.** Contractor shall submit all coordination pages to the County's RSVP Volunteer Program Coordinator no later than the sixth day of each month.

Pages must include the following information:

- a. Date of trip(s) coordinated
- b. Volunteer driver assigned
- c. Origin address
- d. Destination address
- e. Purpose/description of the ride
- f. Name of passenger(s)
- g. Total number of miles driven per trip
- h. Total amount of road driven time (in hours and minutes) (not to include time with passenger(s))
- i. Total amount of non-road time (escorted) with passenger(s) (in hours and minutes)

Properly submitted coordinated statements will be paid within thirty (30) calendar days of receipt by County.

Contractor understands and acknowledges that statements for rides coordinated in the last month of this Agreement must not carry over into the new funding year (beginning July 1, 2017). Accordingly, all statements for services rendered under this Agreement must be submitted to the County no later than July 6, 2017.

**5. Warranties and Representation.** Goods or equipment delivered and/or services rendered hereunder must be made according to the terms of this Agreement both as to time and quantities, with County reserving the right to cancel, reject or refuse any delivery made and/or service rendered prior to or subsequent to the times specified. In the event no quality is specified on the face hereof, the goods or equipment delivered and/or services rendered hereunder must be of the best quality. If delivery of goods or equipment and/or rendering of services cannot be maintained, Contractor must notify County immediately. Upon Contractor's failure to maintain delivery or otherwise perform hereunder, County reserves the right to procure such goods or equipment and/or services elsewhere, in whole or in part, and assess Contractor with any additional costs incurred, unless Contractor's default arises from causes beyond its control and without fault or negligence. This remedy is in addition to any other remedy which County may have pursuant to this Agreement or otherwise and/or any warranty that may be implied or imposed by operation of law.

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Wichita, Kansas 67203-3790

**Contractor:** City of Mulvane, Kansas  
Attn: Dr. Shelly Steadman, Mayor  
211 N. 2<sup>nd</sup> Avenue  
Mulvane, Kansas 67110

**7. Termination.**

A. Termination for Cause. In the event of any breach of the terms or conditions of this Agreement by Contractor, or in the event of any proceedings by or against Contractor in bankruptcy or insolvency or for appointment of receiver or trustee or any general assignment for the benefit of creditors, County may, in addition to any other remedy provided it by law or in equity or other right reserved to it elsewhere in this Agreement, without any liability to Contractor on account thereof, by written notice, terminate immediately all or any part of this Agreement, procure the goods, equipment and/or services provided for herein elsewhere, on such terms and under such conditions as are reasonable in the sole

discretion of County, and Contractor shall be liable to pay to County any excess cost or other damages caused by Contractor as a result thereof.

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**[remainder of this page intentionally left blank]**

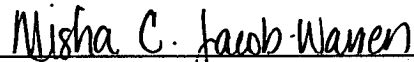


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

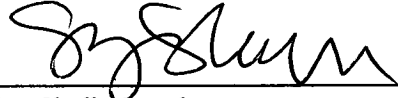
SEDGWICK COUNTY, KANSAS

  
~~Joseph Thomas~~ Mike Scholes  
~~Purchasing Director~~ County Manager


APPROVED AS TO FORM ONLY:

  
Misha C. Jacob-Warren  
Assistant County Counselor

CITY OF MULVANE, KANSAS

  
Dr. Shelly Steadman  
Mayor

ATTESTED TO:

  
for Kelly B. Arnold  
County Clerk



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The parties agree that the following provisions are hereby incorporated into the Agreement to which it is attached and made a part thereof, said contract being the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the Chief Financial Officer, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, County may terminate this Agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to County under the Agreement. County will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon termination of the Agreement by County, title to any such equipment shall revert to Contractor at the end of County's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the County or the Contractor.
4. **Disclaimer of Liability:** County shall not hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has consented to a jury trial to resolve any disputes that may arise hereunder. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any Agreement and/or this Contractual Provisions Attachment will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. County is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, County shall provide to the Contractor a certificate of tax exemption.

County makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance:** County shall not be required to purchase any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the County to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest:** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the County and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the County. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any County employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the County.
11. **Confidentiality:** Contractor may have access to private or confidential data maintained by County to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the County promptly at the request of County in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by County, shall destroy or render such data or material unreadable.
12. **Cash Basis and Budget Laws:** The right of the County to enter into this Agreement 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 all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the County cumulatively total \$5,000 or less during the County's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the County in relation to this Agreement prohibits the County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the County in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify County within the same five (5) business days, with the County reserving the same right to terminate for breach as set forth herein.
15. **HIPAA Compliance.** Contractor agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); the Genetic Information Nondiscrimination Act of 2008 ("GINA"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended (collectively referred to as "HIPAA"), to the extent that the Contractor uses, discloses or has access to protected health information as defined by HIPAA. Under the final Omnibus Rule effective March 2013, Contractor may be required to enter into a Business Associate Agreement pursuant to HIPAA.
16. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

# TRANSPORTATION SERVICES AGREEMENT

by and between:

**SEDGWICK COUNTY, KANSAS**

and

**CITY OF PARK CITY, KANSAS**

This Agreement made and entered into this 21<sup>st</sup> day of June, 2016, by and between Sedgwick County, Kansas ("County") and the City of Park City, Kansas ("Contractor").

WITNESSETH:

**WHEREAS**, County, by and through its Department on Aging, desires to make available coordination of volunteer transportation services to those residents of Sedgwick County who are age 60 and older; and

**WHEREAS**, Contractor warrants that it is fully capable of providing said coordination of volunteer transportation services; and

**WHEREAS**, County desires to engage Contractor to provide said coordination of volunteer transportation services; and

**WHEREAS**, County and Contractor desire to state the terms and conditions under which Contractor will provide said services.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto agree as follows:

**1. Purpose and Scope of Work.** Contractor shall provide coordination of volunteer transportation services for those residents of Sedgwick County who are age 60 and older in conjunction with the County's RSVP Volunteer Program. Contractor understands and agrees that it will be responsible for coordinating needed transportation services that will then be carried out by the County's RSVP volunteers. Contractor will conduct all coordination services under this Agreement from the Park City Senior Center. The parties agree that time is of the essence in Contractor's performance of this Agreement.

**2. Term.** The initial term of this Agreement shall be for one (1) year, commencing July 1, 2016, and ending June 30, 2017. This Agreement may continue for a reasonable time after June 30, 2017, on a month-to-month basis, if both parties agree to continue operating under the terms and conditions of this Agreement while they are actively developing an agreement for 2017, assuming funds for a new agreement are available.

**3. Prohibition on Rides Provided.** County will not authorize compensation to Contractor for coordinated rides for RSVP volunteer's relatives being transported in the same vehicle. For purposes of this Agreement, the term "relative" includes spouses/partners, siblings, brothers or sisters-in-law, children or stepchildren, grandchildren, great-grandchildren, and any individual, related or not, residing at the same address of the RSVP volunteer.

**SCANNED**

**JUN 21 2016**

**4. Incorporation of Documents.** Sedgwick County Mandatory Contractual Provisions Attachment is attached hereto and is made a part hereof as if fully set forth herein.

**[remainder of this page intentionally left blank]**

## General Terms and Conditions

1. **Contractual Relationship.** It is agreed that the legal relationship between Contractor and County is of a contractual nature. Both parties assert and believe that Contractor is acting as an independent contractor in providing the goods and services and performing the duties required by County hereunder. Contractor is at all times acting as an independent contractor and not as an officer, agent, or employee of County. As an independent contractor, Contractor, or employees of Contractor, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Contractor, or employees of Contractor, be entitled to any current or future benefits provided to employees of County. Further, County shall not be responsible for the withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by County to Contractor.

2. **Authority to Contract.** Contractor assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Contractor to act in connection with the application and to provide such additional information as may be required.

3. **Compensation.** Contractor understands and agrees that any and all compensation provided under this Agreement is on a fee-for-service basis, which shall be seven dollars (\$7.00) per coordinated ride. For purposes of this Agreement, the term "coordinated ride" means a single round trip ride for one single rider or for multiple riders who have the same origin and destination. These fees include all of Contractor's time, labor and equipment, travel, and all other expenses associated with the provision of goods, equipment and/or services, and shall be the sole compensation rendered to Contractor hereunder. Under no circumstances will the compensation paid under this Agreement exceed TWO THOUSAND NINE HUNDRED SEVENTY-FIVE DOLLARS (\$2,975.00).

4. **Invoicing and Billing.** Contractor shall submit all coordination pages to the County's RSVP Volunteer Program Coordinator no later than the sixth day of each month.

Pages must include the following information:

- a. Date of trip(s) coordinated
- b. Volunteer driver assigned
- c. Origin address
- d. Destination address
- e. Purpose/description of the ride
- f. Name of passenger(s)
- g. Total number of miles driven per trip
- h. Total amount of road driven time (in hours and minutes) (not to include non-road time with passenger(s))
- i. Total amount of non-road time (escorted) with passenger(s) (in hours and minutes)

Properly submitted coordinated statements will be paid within thirty (30) calendar days of receipt by County.

Contractor understands and acknowledges that statements for rides coordinated in the last month of this Agreement must not carry over into the new funding year (beginning July 1, 2017). Accordingly, all statements for services rendered under this Agreement must be submitted to the County no later than July 6, 2017.

**5. Warranties and Representation.** Goods or equipment delivered and/or services rendered hereunder must be made according to the terms of this Agreement both as to time and quantities, with County reserving the right to cancel, reject or refuse any delivery made and/or service rendered prior to or subsequent to the times specified. In the event no quality is specified on the face hereof, the goods or equipment delivered and/or services rendered hereunder must be of the best quality. If delivery of goods or equipment and/or rendering of services cannot be maintained, Contractor must notify County immediately. Upon Contractor's failure to maintain delivery or otherwise perform hereunder, County reserves the right to procure such goods or equipment and/or services elsewhere, in whole or in part, and assess Contractor with any additional costs incurred, unless Contractor's default arises from causes beyond its control and without fault or negligence. This remedy is in addition to any other remedy which County may have pursuant to this Agreement or otherwise and/or any warranty that may be implied or imposed by operation of law.

**6. Notification.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

**County:** Sedgwick County Department on Aging  
Attn: Contract Notification  
2622 W. Central, Suite 500  
Wichita, Kansas 67203

and

Sedgwick County Counselor=s Office  
Attn: Contract Notification  
Sedgwick County Courthouse  
525 N. Main, Suite 359  
Wichita, Kansas 67203-3790

**Contractor:** City of Park City, Kansas  
Attn: Ray Mann, Mayor  
6110 N. Hydraulic  
Park City, Kansas 67219

**7. Termination.**

A. Termination for Cause. In the event of any breach of the terms or conditions of this Agreement by Contractor, or in the event of any proceedings by or against Contractor in bankruptcy or insolvency or for appointment of receiver or trustee or any general assignment for the benefit of creditors, County may, in addition to any other remedy provided it by law or in equity or other right reserved to it elsewhere in this Agreement, without any liability to Contractor on account thereof, by written notice, terminate immediately all or any part of this Agreement, procure the goods, equipment and/or services provided for herein elsewhere, on such terms and under such conditions as are reasonable in the sole

discretion of County, and Contractor shall be liable to pay to County any excess cost or other damages caused by Contractor as a result thereof.

B. **Termination for Convenience.** County shall have the right to terminate this Agreement for convenience in whole, or from time to time, in part, upon thirty (30) days' written notice. Upon receipt of such termination notice, Contractor shall not incur any new obligations and shall cancel as many outstanding obligations as reasonably possible. In such event, County's maximum liability shall be limited to payment for goods or equipment delivered and accepted and/or services rendered.

C. **Reduction in Funds.** It is understood that funding may cease or be reduced at any time. In the event that adequate funds are not available to meet the obligations hereunder, either party reserves the right to terminate this Agreement upon thirty (30) days' written notice.

8. **Hold Harmless.** Contractor shall indemnify County, and its elected and appointed officials, officers, managers, members, employees and agents, against any and all loss or damage to the extent such loss and/or damage arises out of Contractor's negligence and/or willful, wanton or reckless conduct in the provision of goods and equipment or performance of services under this Agreement. This indemnification shall not be affected by other portions of the Agreement relating to insurance requirements.

9. **Entire Agreement.** This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor shall it be of any force or effect.

10. **Assignment.** Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by either party without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.

11. **Amendments.** Neither this Agreement nor any rights or obligations created by it shall be amended by either party without the prior written consent of the other. Any attempted amendment without such consent shall be null and void.

12. **Subcontracting.** None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of County. In the event subcontracting is approved by County, Contractor shall remain totally responsible for all actions and work performed by its subcontractors. All approved subcontracts must conform to applicable requirements set forth in this Agreement and in its appendices, exhibits and amendments, if any.

13. **Severability Clause.** In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.

14. **Waiver.** Waiver of any breach of any provision in this Agreement shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by County shall not constitute a waiver.

15. **Force Majeure.** Contractor shall not be held liable if the failure to perform under this Agreement arises out of causes beyond the control of Contractor. Causes may include, but are not limited to,



acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.

**16. Order of Preference.** Any conflict to the provisions of this Agreement and the documents incorporated by reference shall be determined by the following priority order:

- a. Sedgwick County Contractual Provisions Attachment
- b. Written modifications and addenda to the executed Agreement
- c. This Agreement document
- d. Contractor's written response to the RFP (if applicable)
- e. The RFP (if applicable)

**17. Environmental Protection.** Contractor shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment. Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws, rules or regulations may result in termination of this Agreement for cause.

**18. Nondiscrimination and Workplace Safety.** Contractor agrees to abide by all federal, state and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violation of applicable laws, rules or regulations may result in termination of this Agreement for cause.

**19. Retention of Records.** Unless otherwise specified in this Agreement, Contractor agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this Agreement for a period of five (5) years from the date of expiration or termination of this Agreement.

Matters involving litigation shall be kept for one (1) year following termination of litigation, including all appeals, if the litigation exceeds five (5) years.

**20. Ownership of Data.** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by Contractor in relation to this Agreement shall be owned by County and shall be handed over and/or returned to County upon the expiration or termination of this Agreement. Contractor shall not release any such materials without written approval of the County.

**21. Intellectual Property Rights.** As applicable, all original software, software code, and/or intellectual property developed or created by County in relation to this Agreement shall remain the sole property of the County. Contractor shall surrender all original written materials, including, but not limited to any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material, and any and all intellectual property to County upon the expiration or termination of this Agreement.

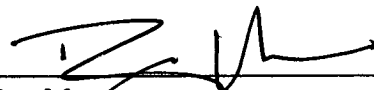
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

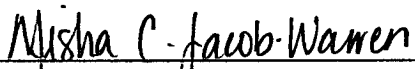
SEDGWICK COUNTY, KANSAS

  
~~Joseph Thomas~~ **Mike Scholes**  
~~Purchasing Director~~ **County Manager**

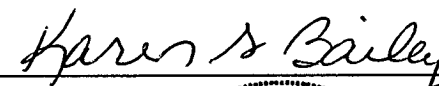
CITY OF PARK CITY, KANSAS

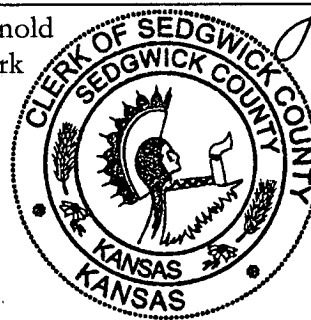
  
Ray Mann  
Mayor

APPROVED AS TO FORM ONLY:

  
Misha C. Jacoby Warren  
Assistant County Counselor

ATTESTED TO:

  
*for* Kelly B. Arnold  
County Clerk



## SEDGWICK COUNTY MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in the Sedgwick County Contractual Mandatory Provisions Attachment, which is attached hereto, are hereby incorporated in this Agreement and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the Agreement to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the Chief Financial Officer, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, County may terminate this Agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to County under the Agreement. County will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon termination of the Agreement by County, title to any such equipment shall revert to Contractor at the end of County's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the County or the Contractor.
4. **Disclaimer of Liability:** County shall not hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has consented to a jury trial to resolve any disputes that may arise hereunder. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any Agreement and/or this Contractual Provisions Attachment will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. County is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, County shall provide to the Contractor a certificate of tax exemption.  
  
County makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
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10. **Conflict of Interest:** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the County and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the County. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any County employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the County.
11. **Confidentiality:** Contractor may have access to private or confidential data maintained by County to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the County promptly at the request of County in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by County, shall destroy or render such data or material unreadable.
12. **Cash Basis and Budget Laws:** The right of the County to enter into this Agreement 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 all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the County cumulatively total \$5,000 or less during the County's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the County in relation to this Agreement prohibits the County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the County in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify County within the same five (5) business days, with the County reserving the same right to terminate for breach as set forth herein.
15. **HIPAA Compliance.** Contractor agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); the Genetic Information Nondiscrimination Act of 2008 ("GINA"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended (collectively referred to as "HIPAA"), to the extent that the Contractor uses, discloses or has access to protected health information as defined by HIPAA. Under the final Omnibus Rule effective March 2013, Contractor may be required to enter into a Business Associate Agreement pursuant to HIPAA.
16. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.

**FY2016 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 16<sup>th</sup> day of December, 2015 by and between Sedgwick County, Kansas, (hereinafter referred to as the "County") and ABC Taxi Cab Company, 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, 2016 (the "Effective Date"). This contract terminates on December 31, 2016. Notwithstanding the foregoing, the term of this Contract may continue on a month to month basis for a reasonable time after December 31, 2016 if: (A) both parties mutually agree to continue operating under the terms of this Contract while actively negotiating a contract for 2017; and (B) funds are available for the 2017 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 2016.
- 3.2 General Conditions.
- (A) Contractor agrees that all rides must have prior authorization by SCT. Rides scheduled directly with the Contractor and do not qualify as having been 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 backup system is in place and rides are managed in such a way that no SCT passenger is left without a ride.
- (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 is required to maintain proof on file of Kansas Bureau of Investigation (KBI) criminal background check and Kansas Department of Motor Vehicle driving record check on each driver.
- (H) Contractor agrees that the Federal Transit Administration (FTA) requires by law that in order to receive FTA Section 5311 and or 5307 reimbursement for general public transportation, the Contractor must have a contract with TMHC Services, Inc. or other recognized drug and alcohol agency, and all safety-sensitive employees per FTA regulations are in FTA's drug and alcohol testing pool and that measures are performed by TMHC standards or recognized drug and alcohol agency guidelines. Contractor must provide proof in driver's personnel file of annual United States Department of Transportation (DOT) driver physical performed by a physician that can administer this type of driver's physical if they meet the definition for required DOT physicals. For a new driver, a pre-employment drug screening is required prior to administration.

of a driver's physical. Noncompliance with participation in a drug and alcohol testing pool will result in nonpayment of 5311 or 5307 funded transportation services.

- (I) A new Contractor is required to attend a one-time train-the-trainer session on customer service and passenger assistance provided by SCT.
- (J) Contractor agrees to provide a Certificate of Insurance to SCT as proof of insurance coverage at levels described in Article 15.
- (K) Contractor agrees to perform preventive maintenance on all vehicles and to have a vehicle inspection by an ASE certified (or equivalent) mechanic or Kansas Department of Transportation (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 October, 2013 shall be completed and submitted; if inspected by a KDOT inspector, KDOT's completed form shall be submitted.
- (L) Contractor agrees to label vehicle(s) and identify with Contractor name and phone number on exterior of vehicle with lettering and numbers at least 4" high.

#### 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. These fees include all of the Contractor's time, labor and equipment for any and all services performed under 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 eighth (8<sup>th</sup>) 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. County has 30 days to process payment from the date a billing statement is received.

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)	0 – 2 miles:	\$4.00 one-way
	2.1 – 4 miles:	\$8.00 one-way
	4.1 – 6 miles:	\$10.00 one-way
	6.1 – 8 miles:	\$13.00 one-way
	8.1 – 10 miles:	\$16.00 one-way
	10.1 – 12 miles:	\$19.00 one-way
	12.1 – 14 miles:	\$22.00 one-way

<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>
<u>55.1 – 60 miles:</u>	<u>\$80.00 one-way</u>

- (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 eighth (8<sup>th</sup>) 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 the County 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 the County or any of its 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.*

### **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.
- (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.

12.6 Drug Free Work Place Act of 1988(49 CFR Part 32). Contractor is required to provide a drug-free workplace and comply with the Drug Free Work Place Act of 1988 as prescribed in 49 CFR Part 32. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the Act.

### 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.

13.5 Debarment/Suspension.

- (A) Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from SAM and any federal funding received or to be received by Sedgwick County in relation to this Agreement prohibits Sedgwick County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under SAM, the Contractor shall notify Sedgwick County in writing of such determination within five (5) business days as set forth in the Notice provision in this Agreement. Sedgwick County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under SAM and to notify County within the same five (5) business days, and with the County reserving the same right to terminate for breach as set forth herein.

## 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 agrees to maintain the following minimum limits of insurance coverage throughout the term of this agreement:

<b>Worker's Compensation:</b> Applicable State Statutory Employer's Liability	
<b>Employer's Liability Insurance:</b>	\$100,000.00
<b>Professional Liability Insurance:</b>	\$500,000.00
<b>Contractor's Liability Insurance:</b> Form of insurance shall be by a Commercial General Liability and Include Automobile comprehensive/liability	
<b>Bodily Injury:</b> Each Occurrence	\$500,000.00
Aggregate	\$500,000.00
<b>Property Damage:</b> Each Occurrence	\$500,000.00
Aggregate	\$500,000.00
<b>Personal Injury:</b> Each Person Occurrence	\$500,000.00
General Aggregate	\$500,000.00
<b>Automobile Liability B owned, Non-Owned, and Hired</b> Bodily Injury Each Person	\$500,000.00
Bodily Injury Each Occurrence	\$500,000.00

Liability insurance coverage indicated above must be considered as primary and not as excess insurance. Contractor has furnished a certificate evidencing liability insurance coverage, with County listed as an additional insured. Said certificate shall remain in force during the duration of the project/services and will not be canceled, reduced, modified, limited or restricted until thirty (30) days after County receives written notice of such change. All insurance must be with an insurance company with a minimum Best rating of A-VIII and licensed to do business in the state of Kansas. It is the responsibility of Contractor to require that any and all approved subcontractors meet the minimum insurance requirements. Contractor shall obtain the above referenced certificate(s) of insurance, and in accordance with the Agreement, provide copies of such certificates to the County.

## 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:

If to the County:

If to Contractor:



Sedgwick County Department on Aging  
Attn: Director  
West River Plaza  
2622 W. Central, Suite 500  
Wichita, KS 67203  
FAX (316) 660-1936

ABC Taxi Cab Company, Inc.  
400 S. Greenwood  
Wichita, KS 67211  
(316) 264-4222

and

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

and

Sedgwick County Purchasing  
Attn: Purchasing Director  
525 N. Main, Suite 823  
Wichita, KS 67203

#### 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 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.
- 17.6 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.

- 17.7 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.
- 17.8 Phraseology. In this Contract, the singular includes the plural, the plural includes the singular and any gender includes the other gender.
- 17.9 Incorporation of Appendices. Any appendices attached hereto, including but not limited to Appendix A – General Contract Provisions, are incorporated by reference as a part of this Contract to the same extent as if fully set forth herein.
- 17.10 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.
- 17.11 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.
- 17.12 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.

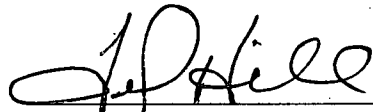
IN WITNESS WHEREOF, the County and Contractor have executed this Contract as of the day and year first above written.

BOARD OF COUNTY COMMISSIONERS  
OF SEDGWICK COUNTY, KANSAS

  
Richard Ranzau, Chairman  
Fourth District

Date: 12-16-15

ABC TAXI CAB COMPANY, INC.

  
Ted Hill,  
President

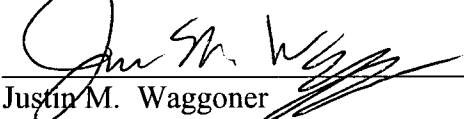
Date: Nov 10-15

ATTEST:

  
Kelly B. Arnold, County Clerk



APPROVED AS TO FORM:

  
Justin M. Waggoner  
Assistant County Counselor

## **HIPAA RULES**

### **BUSINESS ASSOCIATE ADDENDUM**

#### **DEFINITIONS**

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

#### **Specific definitions:**

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103.

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Sedgwick County.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

#### **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

##### **Business Associate agrees to:**

2.1 not Use or Disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law;

2.2 Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement;

2.3 report to covered entity any Use or Disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware, as further provided for in Par. 12.1, *et seq.*;

2.4 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;

2.5 in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on

behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

2.6 make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

2.7 make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

2.8 make its internal practices, books, and records available to the Covered Entity or the Secretary for purposes of determining compliance with the HIPAA Rules; and

2.9 maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528.

#### **PERMITTED USES AND DISCLOSURES BY ASSOCIATE**

3.1 Except as otherwise limited in this Agreement, Business Associate may only 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.

#### **SPECIFIC USE AND DISCLOSURE PROVISIONS**

4.1 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.

4.2 Business Associate may Use or Disclose Protected Health Information as Required By Law.

4.3 Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.

4.4 Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and Used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

4.5 Business Associate may provide Data Aggregation services relating to the Health Care Operations of the covered entity.

4.6 Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

#### **OBLIGATIONS OF COVERED ENTITY**

5.1 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.

5.2 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.

5.3 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.

#### **PERMISSIBLE REQUESTS BY COVERED ENTITY**

6.1 Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity. If necessary in order to meet the Business Associate's obligations under the Agreement, the Business Associate may Use or Disclose Protected Health Information for Data Aggregation, management and administrative activities, or contractual or legal responsibilities of Business Associate.

#### **TERM**

7.1 *Term.* The 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 Agreement.

## **MISCELLANEOUS**

8.1 A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

8.2 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 HIPAA Rules.

8.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

8.4 In addition to any implied indemnity or express indemnity provision in the Agreement, 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 HIPAA Rules, 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 failure to perform, Breach or other action under this Agreement.

## **SECURITY RULE REQUIREMENTS**

9.1 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.

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.

## **TERMINATION**

10.1 Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.

## **EFFECT OF TERMINATION**

11.1 Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.

Provided however, Business Associate may retain Protected Health Information if necessary for management and administration purposes or to carry out its legal responsibilities after termination of the Agreement.

Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

- return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;

- continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

- not Use or Disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at in this Agreement which applied prior to termination; and

- return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

The obligations of Business Associate under this Agreement shall survive the termination of this Agreement.



## **NOTIFICATION OF BREACH**

12.1 To the extent Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, Uses, or Discloses Unsecured Protected Health Information, it 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, Used, 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(c) at the time of the required notification to the Covered Entity, or as promptly thereafter as the information is available.

12.2 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 Business 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 Business Associate (or person) to have occurred by the exercise of reasonable diligence.

12.3 Subject to section 12.4, 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 12.2. The Business Associate involved in the case of a notification required under section 12.2, shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

12.4 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:

- (a) 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
- (b) 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.

**PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION.**

13.1 Except as provided in section 13.2, 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.

13.2. Section 13.1 shall not apply in the following cases:

- (a) The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 Agreement.
- (f) 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.
- (g) 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 (a) through (f).

**FY2016 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 16<sup>th</sup> day of December, 2015 by and between Sedgwick County, Kansas, (hereinafter referred to as the "County") and Cerebral Palsy Research Foundation of Kansas, Inc., a Kansas not for profit 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, 2016 (the "Effective Date"). This contract terminates on December 31, 2016. Notwithstanding the foregoing, the term of this Contract may continue on a month to month basis for a reasonable time after December 31, 2016 if: (A) both parties mutually agree to continue operating under the terms of this Contract while actively negotiating a contract for 2017; and (B) funds are available for the 2017 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 2016.
- 3.2 General Conditions.
- (A) Contractor agrees that all rides must have prior authorization by SCT. Rides scheduled directly with the Contractor and do not qualify as having been 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 backup system is in place and rides are managed in such a way that no SCT passenger is left without a ride.
- (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 is required to maintain proof on file of Kansas Bureau of Investigation (KBI) criminal background check and Kansas Department of Motor Vehicle driving record check on each driver.
- (H) Contractor agrees that the Federal Transit Administration (FTA) requires by law that in order to receive FTA Section 5311 and or 5307 reimbursement for general public transportation, the Contractor must have a contract with TMHC Services, Inc. or other recognized drug and alcohol agency, and all safety-sensitive employees per FTA regulations are in FTA's drug and alcohol testing pool and that measures are performed by TMHC standards or recognized drug and alcohol agency guidelines. Contractor must provide proof in driver's personnel file of annual United States Department of Transportation (DOT) driver physical performed by a physician that can administer this type of driver's physical if they meet the definition for required DOT physicals. For a new driver, a pre-employment drug screening is required prior to administration

of a driver's physical. Noncompliance with participation in a drug and alcohol testing pool will result in nonpayment of 5311 or 5307 funded transportation services.

- (I) A new Contractor is required to attend a one-time train-the-trainer session on customer service and passenger assistance provided by SCT.
- (J) Contractor agrees to provide a Certificate of Insurance to SCT as proof of insurance coverage at levels described in Article 15.
- (K) Contractor agrees to perform preventive maintenance on all vehicles and to have a vehicle inspection by an ASE certified (or equivalent) mechanic or Kansas Department of Transportation (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 October, 2013 shall be completed and submitted; if inspected by a KDOT inspector, KDOT's completed form shall be submitted.
- (L) Contractor agrees to label vehicle(s) and identify with Contractor name and phone number on exterior of vehicle with lettering and numbers at least 4" high.

#### 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. These fees include all of the Contractor's time, labor and equipment for any and all services performed under 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 eighth (8<sup>th</sup>) 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. County has 30 days to process payment from the date a billing statement is received.

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)	0 – 2 miles:	\$4.00 one-way
	2.1 – 4 miles:	\$8.00 one-way
	4.1 – 6 miles:	\$10.00 one-way
	6.1 – 8 miles:	\$13.00 one-way
	8.1 – 10 miles:	\$16.00 one-way
	10.1 – 12 miles:	\$19.00 one-way
	12.1 – 14 miles:	\$22.00 one-way

14.1 – 16 miles:	\$25.00 one-way
16.1 – 18 miles:	\$28.00 one-way
18.1 – 20 miles:	\$31.00 one-way
20.1 – 22 miles:	\$34.00 one-way
22.1 – 24 miles:	\$37.00 one-way
24.1 – 26 miles:	\$40.00 one-way
26.1 – 28 miles:	\$43.00 one-way
28.1 – 30 miles:	\$46.00 one-way
30.1 – 33 miles:	\$50.00 one-way
33.1 – 37 miles:	\$56.00 one-way
37.1 – 40 miles:	\$60.00 one-way
40.1 – 43 miles:	\$64.00 one-way
43.1 – 47 miles:	\$68.00 one-way
47.1 – 50 miles:	\$72.00 one-way
50.1 – 55 miles:	\$76.00 one-way
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 eighth (8<sup>th</sup>) 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 the County 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 the County or any of its 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.*

### 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.
- (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.
- 12.6 Drug Free Work Place Act of 1988(49 CFR Part 32). Contractor is required to provide a drug-free workplace and comply with the Drug Free Work Place Act of 1988 as prescribed in 49 CFR Part 32. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the Act.

### 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.

13.5 Debarment/Suspension.

- (A) Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from SAM and any federal funding received or to be received by Sedgwick County in relation to this Agreement prohibits Sedgwick County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under SAM, the Contractor shall notify Sedgwick County in writing of such determination within five (5) business days as set forth in the Notice provision in this Agreement. Sedgwick County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under SAM and to notify County within the same five (5) business days, and with the County reserving the same right to terminate for breach as set forth herein.

## 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 agrees to maintain the following minimum limits of insurance coverage throughout the term of this agreement:

<b>Worker's Compensation:</b> Applicable State Statutory Employer's Liability	
<b>Employer's Liability Insurance:</b>	\$100,000.00
<b>Professional Liability Insurance:</b>	\$500,000.00
<b>Contractor's Liability Insurance:</b> Form of insurance shall be by a Commercial General Liability and Include Automobile comprehensive/liability	
<b>Bodily Injury:</b> Each Occurrence	\$500,000.00
Aggregate	\$500,000.00
<b>Property Damage:</b> Each Occurrence	\$500,000.00
Aggregate	\$500,000.00
<b>Personal Injury:</b> Each Person Occurrence	\$500,000.00
General Aggregate	\$500,000.00
<b>Automobile Liability B owned, Non-Owned, and Hired</b> Bodily Injury Each Person	\$500,000.00
Bodily Injury Each Occurrence	\$500,000.00

Liability insurance coverage indicated above must be considered as primary and not as excess insurance. Contractor has furnished a certificate evidencing liability insurance coverage, with County listed as an additional insured. Said certificate shall remain in force during the duration of the project/services and will not be canceled, reduced, modified, limited or restricted until thirty (30) days after County receives written notice of such change. All insurance must be with an insurance company with a minimum Best rating of A-VIII and licensed to do business in the state of Kansas. It is the responsibility of Contractor to require that any and all approved subcontractors meet the minimum insurance requirements. Contractor shall obtain the above referenced certificate(s) of insurance, and in accordance with the Agreement, provide copies of such certificates to the County.

## 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.

## 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:

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

If to Contractor:

CPRF of Kansas, Inc.

5111 E. 21st

Wichita, KS 67208

(316) 688-1888

AND

Sedgwick County Counselor's Office

Contract Notification

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 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.

- 17.6 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.
- 17.7 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.
- 17.8 Phraseology. In this Contract, the singular includes the plural, the plural includes the singular and any gender includes the other gender.
- 17.9 Incorporation of Appendices. Any appendices attached hereto, including but not limited to Appendix A – General Contract Provisions, are incorporated by reference as a part of this Contract to the same extent as if fully set forth herein.
- 17.10 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.
- 17.11 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.
- 17.12 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 HIPAA Rules Business Associate Addendum. The attached HIPPA Rules Business Associate Addendum is incorporated into the terms of this contract. For the purposes of the HIPPA Rules Business Associate Addendum, County shall be considered the "Covered Entity" and the Contractor shall be considered the "Business Associate".




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

  
Richard Ranzau, Chairman  
Fourth District

Date: 12-16-15

CEREBRAL PALSY RESEARCH  
FOUNDATION OF KANSAS, INC.

  
Pat Jonas  
President and CEO

Date: 10-30-15

ATTEST:

  
Kelly B. Arnold, County Clerk



APPROVED AS TO FORM:

  
Justin M. Waggoner,  
Assistant County Counselor

## **HIPAA RULES**

### **BUSINESS ASSOCIATE ADDENDUM**

#### **DEFINITIONS**

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

#### **Specific definitions:**

(a) **Business Associate**. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103.

(b) **Covered Entity**. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Sedgwick County.

(c) **HIPAA Rules**. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

#### **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

##### **Business Associate agrees to:**

2.1 not Use or Disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law;

2.2 Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this Agreement;

2.3 report to covered entity any Use or Disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware, as further provided for in Par. 12.1, *et seq.*;

2.4 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;

2.5 in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on

behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;

2.6 make available Protected Health Information in a Designated Record Set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

2.7 make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526 or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

2.8 make its internal practices, books, and records available to the Covered Entity or the Secretary for purposes of determining compliance with the HIPAA Rules; and

2.9 maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528.

#### **PERMITTED USES AND DISCLOSURES BY ASSOCIATE**

3.1 Except as otherwise limited in this Agreement, Business Associate may only 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.

#### **SPECIFIC USE AND DISCLOSURE PROVISIONS**

4.1 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.

4.2 Business Associate may Use or Disclose Protected Health Information as Required By Law.

4.3 Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.

4.4 Business Associate may Disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the Disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and Used or further Disclosed only as Required By Law or for the purposes for which it was Disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

4.5 Business Associate may provide Data Aggregation services relating to the Health Care Operations of the covered entity.

4.6 Business Associate may Use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

#### **OBLIGATIONS OF COVERED ENTITY**

5.1 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.

5.2 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.

5.3 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.

#### **PERMISSIBLE REQUESTS BY COVERED ENTITY**

6.1 Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity. If necessary in order to meet the Business Associate's obligations under the Agreement, the Business Associate may Use or Disclose Protected Health Information for Data Aggregation, management and administrative activities, or contractual or legal responsibilities of Business Associate.

#### **TERM**

7.1 **Term.** The 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 Agreement.

## **MISCELLANEOUS**

8.1 A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

8.2 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 HIPAA Rules.

8.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

8.4 In addition to any implied indemnity or express indemnity provision in the Agreement, 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 HIPAA Rules, 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 failure to perform, Breach or other action under this Agreement.

## **SECURITY RULE REQUIREMENTS**

9.1 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.

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.

## **TERMINATION**

10.1 Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Covered Entity.

## **EFFECT OF TERMINATION**

11.1 Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.

Provided however, Business Associate may retain Protected Health Information if necessary for management and administration purposes or to carry out its legal responsibilities after termination of the Agreement.

Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

- return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;

- continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent Use or Disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

- not Use or Disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at in this Agreement which applied prior to termination; and

- return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

The obligations of Business Associate under this Agreement shall survive the termination of this Agreement.

## **NOTIFICATION OF BREACH**

12.1 To the extent Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, Uses, or Discloses Unsecured Protected Health Information, it 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, Used, 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(c) at the time of the required notification to the Covered Entity, or as promptly thereafter as the information is available.

12.2 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 Business 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 Business Associate (or person) to have occurred by the exercise of reasonable diligence.

12.3 Subject to section 12.4, 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 12.2. The Business Associate involved in the case of a notification required under section 12.2, shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

12.4 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:

- (a) 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
- (b) 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.

**PROHIBITION ON SALE OF ELECTRONIC HEALTH RECORDS OR PROTECTED HEALTH INFORMATION.**

13.1 Except as provided in section 13.2, 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.

13.2. Section 13.1 shall not apply in the following cases:

- (a) The purpose of the exchange is for public health activities (as described in section 164.512(b) of title 45, Code of Federal Regulations).
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 Agreement.
- (f) 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.
- (g) 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 (a) through (f).