

State of Kansas
Kansas Department for Aging
and Disability Services
AND
Kansas Department of Health
and Environment
AND
Sedgwick County Developmental Disability Organization

SECOND AMENDMENT TO
COMMUNITY DEVELOPMENT DISABILITY ORGANIZATION

This SECOND Amendment to the Community Developmental Disability Organization (CDDO) agreement (the "Amendment") is made effective this 1st day of July, 2017 by and between the Secretary for the Department for Aging and Disability Services ("KDADS"), the Secretary for the Department of Health and Environment ("KDHE") and Sedgwick County Developmental Disability Organization ("CDDO") all of whom may hereafter be collectively referred to as the "Parties".

RECITALS

WHEREAS, the Parties entered into the Original Agreement effective the 1st day of July, 2015;

WHEREAS, the Parties wish to modify certain terms and provisions of the Original Agreement pursuant to the terms and conditions contained herein;

NOW, THEREFORE, for and in consideration of the mutual promises of the Parties contained in this Amendment, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. ADDITIONAL COMPENSATION - NO COST EXTENSION.

☐ No additional cost to the State and/or KDADS; **or**

☒ The total amount payable under this Amendment shall not exceed \$ 2,590,258.00. The CDDO shall be reimbursed according to the terms and conditions and as outlined in the Original Agreement dated July 1, 2015.

II. AMENDED PARAGRAPH:

The Original Agreement is amended to read as follows:

KDADS and Sedgwick County Developmental Disability Organization agree to amend Section III. D. of the Original Agreement in that the Allocation Period means July 1, 2017 through June 30, 2018.

III. AMENDED PARAGRAPH:

The Original Agreement is amended to read as follows:

KDADS and Sedgwick County Developmental Disability Organization agree to amend Section XIII. Paragraph A. of the Original Agreement in that the term of the agreement shall be extended from July 1, 2017 through June 30, 2018.

IV. REAFFIRMATION OF UNMODIFIED TERMS AND PROVISIONS.

With the exception of the amendments and additions contained herein, and the attachment of an updated DA-146a (Rev 6/12) herein, all of the rest and remainder of the terms and provisions of the Original Agreement shall remain in full force and effect.

V. SIGNATURES.

This Amendment (and any modifications, or waivers in respect hereof) may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document. Facsimile signatures or signatures emailed in portable document format (PDF) shall be acceptable and deemed binding on the Parties hereto as if they were originals.

VI. ELECTRONIC SIGNATURES.

The Parties, and any non-party approver, agree that by typing in the name of the "Authorized Signatory" for the CDDO, any other party or non-party approver and marking the box "approved", that this not only constitutes the irrevocable acceptance of all terms contained in the agreement, but also that the signing party is authorized to bind the CDDO to such agreement and that any objection to foundation, its authenticity or admission into evidence, if necessary, is hereby waived.

IN WITNESS WHEREOF, the Parties have executed this Amendment by their duly authorized representatives on the dates noted by the signatures below.

**KANSAS DEPARTMENT FOR AGING
AND DISABILITY SERVICES**

**SEDGWICK COUNTY DEVELOPMENTAL
DISABILITY ORGANIZATION**

By: _____

Timothy E. Keck, Secretary

By: _____

CDDO Authorized Signature

Date: _____, 2017

Date: _____, 2017

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Approved As To Form
Nysha C. Jacob-Warren

By: _____

Susan Mosier, MD, MBA, FACS
Secretary and State Health Officer

Date: _____, 2017

State of Kansas
Kansas Department for Aging
and Disability Services
AND
Kansas Department of Health
and Environment
AND
Sedgwick County Developmental Disability Organization

AGREEMENT FOR:
Sedgwick County Developmental Disability Organization, a
Community Developmental Disability Organization
(FY 2018)

APPENDIX A

Kansas Department of Administration Form DA-146a (Rev. 6/12)

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/CDDO's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 1st day of July 2017.

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 contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to CDDO at least 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 in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. CDDO shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the CDDO all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to CDDO at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the CDDO.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any CDDO or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The CDDO 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 or 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 CDDO 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 contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the CDDO has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

CDDO agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a CDDO who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the CDDO thereby represents that such person is duly authorized by the CDDO to execute this contract on behalf of the CDDO and that the CDDO agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a CDDO for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them 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.), the CDDO shall bear the risk of any loss or damage to any property in which the CDDO holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.