



Western Reserve

Area Agency on Aging

WESTERN RESERVE AREA AGENCY ON AGING

CONTRACT

WITH

Applicant

PROGRAM: ALZHEIMER'S RESPITE

CONTRACT PERIOD: March 1, 2018 THROUGH June 30, 2019

CONTRACT AMOUNT: Contract Amount

PURCHASE OF SERVICE

AGREEMENT

STATE FISCAL YEAR 2019 ALZHEIMER'S RESPITE FUNDS

THIS AGREEMENT (hereinafter "Contract Agreement" or "Agreement") is entered into by and between the Western Reserve Area Agency on Aging, an Ohio Nonprofit Corporation serving the counties of Cuyahoga, Geauga, Lake, Lorain and Medina, Ohio (Agency), and **Applicant** as the implementing authority (Contractor) for the purpose of providing Alzheimer's Respite service(s) to persons within the foregoing counties ("Consumers").

The Agency and Contractor hereby agree as follows:

ARTICLE I: SCOPE OF CONTRACT

- 1.1 The agency shall enter into agreements with the Contractor to develop and implement a comprehensive and coordinated system of services for consumers and their caregivers. The Agency is ultimately responsible to the Ohio Department of Aging (ODA) for ensuring that all state and federal funds received from ODA are used in a manner that complies with this chapter and the uniform administrative requirements, cost principles and audit requirements for federal awards under 45 C.F.R. Part 75.
- 1.2 The Contractor agrees to provide the Alzheimer's Respite service(s) contained on the Contract Services page(s), attached, for a four month period commencing March 1, 2019, through and including June 30, 2019 ("Term"). The Alzheimer's Respite funds have been allocated by county. The Contractor is prohibited from changing or requesting a modification to change the allocated funds between counties.
- 1.3 The parties to this Agreement acknowledge that all funds awarded herein shall be used solely for the purpose of providing services that assist Ohio family caregivers of people with Alzheimer's disease or related dementia residing in the geographic regions of the State of Ohio in which the Western Reserve Area Agency on Aging operate.
- 1.4 The Contractor shall provide such service(s) according to the procedures described in the Contractor's program summary(s) for Alzheimer's Respite funds, as amended and approved by the Agency, and said program summary(s) is/are fully incorporated herein.
- 1.5 The Contractor shall meet the Agency's specific objectives for giving priority to specific consumer groups (including those described in this section), and shall satisfy the service needs of older persons with the greatest economic and social needs. To the maximum

- extent feasible, the Contractor shall give particular attention to providing services to older persons who are low-income, who are low-income minorities, who have limited proficiency in the English language, who reside in rural areas, or who are at risk for institutional placement (frail) in accordance with their need for such services.
- 1.6 The Contractor warrants and covenants that during the Term of this Agreement it will have the capability to and agrees to provide such service(s) as referred to above in accordance with the Ohio Department of Aging (ODA) taxonomy of services and Agency clarifications to said taxonomy. This includes the requirement to comply with the Ohio Department of Aging revised Alzheimer's Respite Policy 316.00 (effective July 1, 2018), the criminal records check specified in Section 173.38 and 173.381 of the Ohio Revised Code and Rule 173-9-01 and 173-9 of the Ohio Administrative Code.
 - 1.7 The Contractor shall comply with applicable Administrative Rules. Those Rules are posted on ODA's website and are part of the Ohio Administrative Code:
<https://aging.ohio.gov/Rules>.
 - 1.8 If the service provided is not specified in Rules 173-3-06.1, 173-3-06.4 or 173-3-06.5, the Contractor shall comply with a written specification of the service (e.g., a description of the service and any conditions for providing the service).
 - 1.9 The Agency shall not reimburse the Contractor for any service unless a valid Agreement is in place at the time the service is provided. No Agreement is valid unless and until the Agreement is signed by authorized representatives from both the Agency and the Contractor.
 - 1.10 The Contractor shall designate its primary contact for purposes of this Agreement. Such primary contact shall participate in provider orientation sessions at the Agency as a condition to performance of this Agreement.

ARTICLE II: GRANT

- 2.1 The Agency agrees to pay the Contractor with Alzheimer's Respite program funds for the service(s) detailed in the attached Contract Services page(s) and delivered in accordance with Article 1 up to the amount(s) in Section B, Line 1 on the said page(s). The maximum amount of funds to be paid under this Agreement is: **Contract Amount**.
- 2.2 The Contractor may request modification(s) to this Agreement no more than twice

between March 1, 2019, and June 30, 2019, unless the Agency initiates additional modifications. Modification shall be at the sole discretion of the Agency, and request for modification shall be made in writing and reasonably in advance of need for modification or as soon as practicable. The grounds for modifying this Agreement are: emergency, unforeseen changes in Consumer needs or in Contractor's ability to meet Consumer needs, and changes in funding or funding levels. The process for modifying this Agreement is: Contractor shall in writing set forth the modification requested and the grounds for the modification sought. The Agency shall respond in writing promptly or as soon as practicable.

- 2.3 The Contractor understands that the funds allocated to this contract are subject to increase or decrease or may be eliminated at any time prior to the final payment to the Contractor under this Agreement by the Agency based on its notification of grant awards from the ODA, and that such a change may affect the amount or the scope of the services provided by Contractor under this Agreement. The funding source for this Contract Agreement is State of Ohio Alzheimer's Respite funds provided through the Ohio Department of Aging (ODA).
- 2.4 Contractor should attempt to pace service delivery at 1/10 of their annual contracted units per month. Agency will inform Contractors of reimbursement restrictions if they become necessary.

ARTICLE III: METHOD OF PAYMENT

- 3.1 Payment for services rendered under this Agreement shall be made within thirty (30) calendar days after timely receipt by the Agency of an accurate and complete "Alzheimer's Respite Funds Provider Monthly *Request for Payment*" from the Contractor, if the reports required in Article 4 of this Agreement have also been submitted to the Agency by their due dates. The Agency shall then pay Contractor at the Alzheimer's Respite unit rate specified in Section B Line 6 of the attached Contract Service page(s) for each eligible Alzheimer's Respite unit of service delivered by the Contractor and reported to the Agency.
- 3.2 If any such reports are submitted after their due date, then no payment shall be made until thirty (30) days after these late reports are received by the Agency. If any such reports are deemed by the Agency not to be complete and accurate, then no payment

- shall be made until thirty (30) days after a report deemed by the Agency to be complete and accurate is received. Reports may be deemed inaccurate, for instance, if the SAMS Agency *Summary Report* is not included with the *Request for Payment*, or if the units shown on the SAMS Agency *Summary Report* do not match the units on the *Request for Payment*, as described in Article 4.
- 3.3 Updated unit, client cost-share, program income and other funds spent shall be reported on the *Request for Payment* no later than July 31, 2019.
- 3.4 If any Reports required in Article 4 of this Agreement are received by the Agency after July 31, 2019, the outstanding funds shall not be paid to the Contractor.
- 3.5 If any of the services under this Agreement, for any of the four (4) quarters of the Term of this Agreement, are not performed by the Contractor, the Agency shall reduce the Contractor's Alzheimer's Respite award for such service by a prorated one-fourth of the annual award for said service. Any Contractor not providing at least 65% of the units detailed in the attached Contract Services pages, Section A line 5 on said page by March 31, 2019, shall relinquish unused funds so that those funds may be distributed by the Agency. At the Agency's discretion, exceptions to the consistent pace of service may be granted.
- 3.6 All expenses must be incurred on or before the last day of the award period. No expense incurred after June 30, 2019, may be charged to the SFY 2019 Alzheimer's Respite. Contract amounts which are not earned by the Contractor will not accrue or carry forward to a future contract period.

ARTICLE IV: MONTHLY AND OTHER FINANCIAL AND SAMS REPORTING REQUIREMENTS

- 4.1 Contractor agrees to submit an Alzheimer's Respite Funds Monthly *Request for Payment* form that is accurate and complete as to units of service, client cost-share, program income and other funds spent on or before the tenth (10th) calendar day of each month from October 2018 through July 2019 for services performed in the preceding month. If the tenth (10th) falls on a Saturday, Sunday, or holiday, the report shall be due the following business day.
- 4.2 Contractor, to the extent determined by assigned cluster activities and as required by ODA, must use the Social Assistance Management System (SAMS) program to report required consumer information (including demographics) and account for units of

service delivered. Such data must be entered into SAMS on or before the tenth (10th) calendar day of each month from October 2018 through July 2019 for services performed in the preceding month. If the tenth (10th) falls on a Saturday, Sunday, or holiday, the data shall be entered into SAMS no later than the following business day. The Agency will provide the Contractor with a subscription and license to access the SAMS Program during the Term of this Agreement, and all other provisions of the RFP for this Agreement which relate to the use of the SAMS system are incorporated herein by reference.

- 4.3 To the extent Contractor uses the SAMS Program to report information, Contractor shall submit a printed SAMS *Agency Summary Report* with its Request for Payment. The units on the Agency Summary Report must match the monthly *Request for Payment*.
- 4.4 If an error is made on a monthly *Request for Payment*, the error must be corrected within three months using the *Unit Adjustment Form*. The Contractor must provide a written explanation of the correction and request an adjustment on a subsequent *Request for Payment*. The error must be corrected in SAMS also. The request is subject to approval by the Agency.

ARTICLE V: MATCH, PROGRAM INCOME AND COST-SHARING

- 5.1 Contractor may, but is not required, to provide cash or in-kind resources equal to a percentage of the funds provided by the Agency for each service as specified on the Contract Services page(s) attached to this Agreement. This amount is the “match”. Contractor covenants, warrants and certifies that the match required for each service will be a cost reasonably expected to be incurred in the delivery of the service.
- 5.2 The Contractor is allowed and encouraged to receive voluntary contributions for services reimbursed with Alzheimer’s Respite funds, and to record these as Program Income.
 - The Contractor further agrees as follows:
 - A. The terms "charge" and "fee" must not be used when presenting this opportunity to contribute.
 - B. No person may be denied service under this agreement because of that person's ability or decision to contribute or not to contribute to the service.
- 5.3 The Contractor is encouraged, but is not required, to implement a consumer cost-sharing policy for Adult Day services, Personal Care services, Homemaking services

and Respite Reimbursement. If Consumer cost-sharing is performed, the procedures must comply with Rule 173-3-07 of the Administrative Code.

- 5.4 Program Income and Cost-Sharing funds shall be used exclusively to pay for the cost of the service from which they were generated.

ARTICLE VI: MONITORING

- 6.1 The Agency, ODA or the Administration on Aging may conduct on-site monitoring of a service(s) for which funds are being reimbursed under this Agreement at any time during the normal working hours of the Contractor with no prior notification necessary, and the Contractor agrees that representatives of the Agency, ODA or the Administration on Aging shall be given full access to the premises upon which such service(s) is being provided.

ARTICLE VII: RECORD MAINTENANCE, ACCESSIBILITY AND RETENTION

- 7.1 To the extent authorized by law, the Contractor shall allow representatives of the Agency, ODA and the Administration on Aging access to all programmatic, fiscal, and other records related to the service(s) for planning, review, auditing, and monitoring purposes at any time during the normal working hours of the Contractor with no prior notification necessary, except that prior notice of at least 24 hours shall be given where access is sought to the confidential complaint files of the Contractor.
- 7.2 The Contractor shall keep Consumer information including but not limited to: name, address, telephone number, date of birth, gender, minority status, disability and poverty status, emergency contact person's name and telephone number, and functional abilities of Consumers, relevant to service(s) delivered.
- 7.3 The Contractor shall document that service(s) were delivered in accord with the ODA taxonomy of services and Agency clarifications to said taxonomy, as well as the ODA Conditions of Participation and Service Specifications in the applicable Administrative Rules.
- 7.4 The Contractor shall retain records relating to costs, work performed, supporting documentation for payment of work performed, and all deliverables for monitoring by the Agency and ODA and for auditing by the state auditor, the inspector general, duly-authorized law enforcement officials, and agencies of the United States government for a minimum of three years after the end of the Term of this Agreement. If a record is monitored or audited, the Contractor shall retain it until the monitoring or auditing is

concluded and all issues are resolved, even if doing so requires the Contractor to retain the record for more than three years.

- 7.5 The Office of the State Long Term Care Ombudsman of ODA shall have access to the complaint files of the Contractor. The Agency agrees that all information contained in said records will be treated in accord with all applicable legislation guaranteeing privacy.
- 7.6 The Contractor shall have the audit, review and monitoring rights to the extent provided by the Ohio Public Records Act.

ARTICLE VIII: ACCOUNTING RECORDS

- 8.1 The Contractor agrees to maintain its accounts and documents so as to readily permit the determination of the status of the cost of services rendered under this Agreement at any time and to have such information readily available for examination by Contractor auditors or Agency representatives.
- 8.2 The Contractor agrees to maintain supporting documents so as to permit the determination of the status of cash, accrual and in-kind transactions which are used as a match for the Contractor's Alzheimer's Respite funds.
- 8.3 If the Contractor receives funds to administer activities not covered under this Agreement, the Contractor agrees to develop and maintain documentation describing the method used to allocate any line-item costs that are shared by the Alzheimer's Respite service(s) and other such activity and to have such information readily available for examination by Contractor auditors or Agency representatives.
- 8.4 The Contractor agrees to comply with Federal (45 CFR, Sec 92.25), State Administrative Rules and Agency policy for the procedures relating to and the accounting for program income.

ARTICLE IX: CONDITIONS OF THE GRANT

- 9.1 If the Contractor is found to be in violation of state and/or local health, fire, safety, zoning and/or sanitation codes, the Contractor must notify the Agency immediately. The Agency may suspend the grant without advance notice, including any payments in whole or in part due under this Agreement, for the Contractor's failure to comply with state and local health, fire, safety, zoning and/or sanitation codes. The Agency will give written notice of the specific reasons for the suspension to the Contractor.

The Contractor must provide evidence that the violations have been corrected before the suspension will be lifted.

ARTICLE X: PROBLEMS IN PROVISION OF SERVICES

- 10.1 The Agency may begin the process to suspend and/or terminate this Agreement or the grant and/or any payments in whole or in part due under this Agreement for any one of the following causes:
- A. Failure to provide Reports required by this Agreement in accordance with due dates established by the Agency.
 - B. Failure to permit on-site monitoring and/or review of all pertinent records.
 - C. Failure to comply with the accounting records and/or audit requirements of this Agreement.
 - D. Failure to provide and/or document the service(s) in accordance with ODA Service Specifications and Administrative Rules as required by this Agreement.
 - E. Failure to conform to any of the legal requirements of Articles 18 and 19.
 - F. Failure to perform fully all of the Contractor's other duties and responsibilities in accordance with this Agreement.
- 10.2 The Agency will inform the Contractor in writing of any problems it notes in the provision of the service(s). If the health, safety or well-being of a Consumer is at immediate risk the Contractor shall respond to the Agency as soon as possible but not later than forty-eight (48) hours after receiving such notice, informing the Agency of the corrective action it has taken or it will take in regard to each such problem, and if the corrective action has not yet been taken stating when such corrective action will be effective. If the health, safety or well-being of a Consumer is not at immediate risk, the Contractor shall respond in writing to the Agency within ten (10) calendar days after receiving such notice, informing the Agency of the corrective action it will take in regard to each such problem, and stating when such corrective action will be effective.
- 10.3 If the Contractor does not respond in writing as required by the foregoing provision, or if the Agency does not approve such corrective action and/or the date proposed for its implementation, the Agency shall so inform the Contractor in writing and specify a time by which corrective action acceptable to the Agency shall be proposed and/or implemented. If such corrective action is not proposed and/or implemented by the

Contractor by that time, then the Agency may suspend payments to Contractor, or may terminate this Agreement.

- 10.4 If this Agreement has not been terminated pursuant to the foregoing provision, and payments are merely suspended, reimbursement of the funds may resume when the Contractor has taken all required corrective action and the Agency receives and approves a written report documenting the corrective action.

ARTICLE XI: CONDITIONAL CONTRACTOR STATUS

- 11.1 In accordance with Agency Policy on Conditional Contractor Status, the Agency may designate an Alzheimer's Respite service provider with problematic programs as described in said policy as a *Conditional Contractor* and subject it to a period of probationary status. In event of said designation, the terms of the probation shall become an addendum to this Agreement.

ARTICLE XII: RECOVERY OF FUNDS

- 12.1 The Contractor shall return any funds received for providing services if the Agency ascertains that the Contractor was paid for any unit or units of service it did not provide, or for units provided to ineligible Consumers, or for units that it provided that did not comply with the Administrative Code, the Revised Code, or any other law that regulates the Contractor or the services provided, and/or did not comply with the requirements set forth in the Agency's Request for Proposal and/or the Contractor's approved Proposal, and/or in the event the Contractor failed to document the provision of any unit or units of service as required under this Agreement.
- 12.2 The Agency may recover its payment made for any such unit or units from the Contractor by withholding funds due to the Contractor under this Agreement or any other Agreement the Contractor enters into with the Agency, irrespective of whether that Agreement is currently in effect or at any time after the termination of this Agreement. Recovery may also be sought by legal action. The maximum amount of funds to be paid under this Agreement may, in the discretion of the Agency, be reduced by the amount of the funds recovered.

ARTICLE XIII: CONTRACTOR AUDITS

- 13.1 If the Contractor is subject to OMB circular A-133 requirements the Contractor shall

- obtain an independent audit by a certified public accountant which encompasses the grant period and funds under this Agreement within nine months after the end of the Term of this Agreement and shall provide the Agency with a copy of such audit within ten (10) calendar days after an audit report is received by the Contractor.
- 13.2 If the Contractor is not subject to OMB circular A-133 requirements, but nonetheless obtains an annual agency audit which covers any part of the grant period or funds under this Agreement, the Contractor shall submit a copy of such audit to the agency within ten (10) calendar days after an audit report is received by the Contractor.
- 13.3 The Contractor agrees that such audit will be engaged and performed in accord with all State and Federal regulations governing audits of the funds paid under this Agreement.
- 13.4 In the event an audit discloses a discrepancy the Contractor shall respond in writing to the Agency, within ten (10) calendar days of a written receipt of any audit findings pertaining to the Contractor's Alzheimer's Respite Service(s), with a plan to resolve said findings. If said response is not received by the Agency within the said ten (10) calendar days, the Agency may suspend payments to Contractor until corrective action acceptable to the Agency is implemented or the Agency may take other action.
- 13.5 The Contractor agrees to reimburse the Agency any funds paid under this Agreement which are found in the course of an audit to have been improperly or illegally used.

ARTICLE XIV: CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

- 14.1 The contractor shall not use any information, systems, or records made available to contractor for any purpose other than to fulfill the obligations specified herein. In the performance of any work authorized or funded under this Agreement, the Contractor specifically agrees to be bound by the same standards of confidentiality that apply to the employees of ODA and the State of Ohio. The terms of this agreement shall be included in any subcontracts or lower-tiered grant agreements executed by the Contractor for work under this Agreement. The contractor specifically agrees to comply with all state and federal confidentiality laws and regulations applicable to the programs under which this Agreement is funded. The Contractor is responsible for obtaining copies of all applicable rules governing confidentiality, and for assuring compliance with the rules by its employees, contractors, or lower-tiered sub-recipients. To the extent the federal requirements apply to this Agreement, the Contractor agrees to current and on-going compliance with the federal Health Insurance Portability and Accountability Act of

1996 (HIPPA), as amended, including 45 CFR 164.502 and 164.50, regarding the disclosure of protected health information.

- 14.2 The Contractor shall store Consumer records in a designated, locked storage space.
- 14.3 The Contractor shall not use or disclose any information concerning a Consumer for any purpose directly associated with the provision of services, unless the Contractor has documentation of the Consumer's consent to do so.
- 14.4 The Contractor is prohibited from using or disclosing any information concerning a Consumer for any purpose not directly associated with the provision of services, even if the Consumer consents to doing so.
- 14.5 Any Contractor who is a mandatory reporter shall immediately notify the county department of job and family services, or the agency the county department of job and family services designates to provide adult protective services, once the Contractor has reasonable cause to believe a Consumer is the victim of abuse, neglect, or exploitation.

ARTICLE XV: CONTRACTOR ROLE IN CASE OF DISASTER

- 15.1 The Contractor is required to cooperate with the Agency and ODA to assess the extent of the disaster impact upon persons aged sixty years and over, and to coordinate the public and private resources in the field of aging in order to assist older disaster victims whenever the President of the United States declares that the Contractor's service area is a disaster area.

ARTICLE XVI: INSURANCE

- 16.1 The Contractor shall secure and maintain at least the following minimum amounts of insurance for the period of this agreement:
 - A. General commercial liability insurance, both public and automobile, against claims for injury and/or death in the amount of \$1,000,000 aggregate and per occurrence.
 - B. Automobile (if transportation is part of the Alzheimer's Respite service under this Agreement) and other property damage insurance in an amount not less than \$50,000 for property damages (including damage or theft or loss involving the property of a Consumer) in any one accident or occurrence.
 - C. Fidelity bond or employee theft coverage on persons handling

Alzheimer's Respite program funds in the amount of no less than \$10,000 or 10% of the amount set forth in Section 2.1 of this Agreement, whichever is greater.

- D. Full replacement value property insurance on equipment or capital improvements funded at least in part by Agency grant funds or Alzheimer's Respite program income.
- E. The insurance required under this contract shall cover the acts and/or omissions of both paid employees and volunteers working for the Contractor.

ARTICLE XVII: INDEMNIFICATION

17.1 To the extent authorized by law, the Contractor agrees to indemnify and hold the Agency and ODA harmless from any and all claims, demands, damages, suits, judgments, awards, costs and expenses, including but not limited to attorney's fees, arising from, resulting from or attributable to the performance of services under this Agreement by the Contractor and/or its volunteers, excepting only those matters or occurrences caused by the negligence of the Agency.

ARTICLE XVIII: LEGAL OBLIGATIONS

18.1 The Contractor shall conform to the requirements of all applicable federal, state and local laws, regulations, federal circulars, and established guidelines incorporated by reference herein, including, but not limited to:

- A. Older Americans Act of 1965, as amended;
- B. Civil Rights Act of 1964, as amended;
- C. Section 504 of the Rehabilitation Act of 1973, as amended;
- D. Age Discrimination Act of 1975, as amended;
- E. Fair Labor Standards Act of 1938, as amended;
- F. Age Discrimination in Employment Act of 1967, as amended;
- G. State and local health, fire, safety, zoning and sanitation codes;
- H. Federal, State and local financial and payroll reporting requirements;
- I. Federal and State lobbying restrictions and reporting requirements;
- J. The Americans with Disabilities Act of 1990; and
- K. ODA and Agency Policies and Procedures.

L. Health Insurance Portability and Accountability Act

- 18.2 The Contractor agrees that neither the Contractor nor any subcontractor, nor any person acting on behalf of Contractor or any subcontractor will, in the employment of any person qualified and available to perform the work to which this Agreement relates, discriminate by reason of race, color, religion, sex, military status, national origin, disability, ancestry, age, or any other legally protected classification. Contractor further agrees that neither Contractor nor any sub-contractor, nor any person acting on behalf of Contractor or any of its sub-contractors, shall in any manner discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the Agreement on account of race, color, religion, sex, military status, national origin, disability, age, ancestry, or any other legally protected classification.
- 18.3 The contractor certifies that it understands Ohio's ethics and conflict of interest laws, and will do nothing inconsistent with them.
- 18.4 If Contractor is approved by the Agency for and enters into a subcontracting relationship for Alzheimer's Respite services, the Contractor shall require that the language of Articles 18 and 19 of this Agreement be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- 18.5 If Contractor is approved by the Agency for and enters into a subcontracting relationship for Alzheimer's Respite services, the Contractor remains responsible for ensuring that all provisions of this Agreement are met by the subcontractor.

ARTICLE XIX: AFFIRMATIVE ACTION

- 19.1 For the period of this Agreement, the Contractor agrees to have executed a written Equal Employment Opportunity Affirmative Action Plan in accordance with Title VI and Title VII of the 1964 Civil Rights Act, as amended. The Contractor further agrees that the following posters and notices will be prominently displayed at the Contractor's main office: (A) EEO policy statement (B) EEO posters (C) Job vacancies (D) Training session's available (E) Discrimination complaint procedures.

ARTICLE XX: EXECUTIVE ORDER REQUIREMENTS

- 20.1 Contractor affirms that it has read and understands Executive Order 2011-12K issued

by Ohio Governor John Kasich, that it shall abide by those requirements in the performance of the Agreement, and that it shall perform no services required to implement the project or program subject to the Agreement outside of the United States for which grant funds will be used to pay or reimburse the cost of such services or for which the cost of such services will be counted as match or cost share specifically required as a condition to the disbursement of the grant funds. For purposes of this Addendum and the Agreement in which its terms are incorporated, “services under the Agreement” and “services performed under the Agreement” means services required to implement the grant-supported project or program and for which grant funds will be used to pay or reimburse the cost of such services or for which the cost of such services will be counted as match or cost share specifically required as a condition to the disbursement of the grant funds. The Executive Order is provided as Attachment B and available at the following website: <http://www.governor.ohio.gov/portals/0/pdf/executiveorders/EO%202011-12K.pdf>

- 20.2 Contractor also affirms, understands, and agrees to immediately notify the Agency of any change or shift in the location(s) of services performed under the Agreement by Contractor or its lower-tiered sub-grantees or sub-contractors, and no services performed under the Agreement shall be changed or shifted to a location(s) outside of the United States.
- 20.3 Notwithstanding any other provision of this Agreement, this Agreement shall not become effective unless and until the Contractor has completed and signed this addendum, and submitted it to the Agency.

ARTICLE XXI: TERMINATION, SANCTION, DAMAGES

- 21.1 If Contractor or any of its lower-tiered sub-grantees or sub-contractors performs services under the Agreement outside of the United States, the performance of such services shall be treated as a material breach of the Agreement. The Agency is not obligated to pay and shall not pay for such services. If Contractor or any of its lower-tiered sub-grantees or sub-contractors perform any such services, Contractor shall immediately return to the Agency all grant funds disbursed as payment or reimbursement for those services or on the basis of the cost of such services having been counted as match or cost share specifically required as a condition for disbursement of grant funds.

- 21.2 The Agency may, at any time after the breach, terminate the Agreement, upon written notice to Contractor. The Agency may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement. If the Agency determines that actual and direct damages are uncertain or difficult to ascertain, the Agency in its sole discretion may recover a payment of liquidated damages in the amount of twenty-five percent (25%) of the value of the Agreement (not to exceed the amount of grant funds disbursed prior to any termination of the Agreement).
- 21.3 The Agency, in its sole discretion, may provide written notice to the Contractor of a breach and permit Contractor to cure the breach. Such cure period shall be not longer than 21 calendar days. Notwithstanding the Agency permitting a period of time to cure the breach or Contractor's cure of the breach, the Agency does not waive any of the rights and remedies provided the Agency in the Agreement, including, but not limited to, the recovery of grant funds paid for services provided by the Contractor, its lower tiered sub-grantees or sub-contractors performed outside of the United States, cost associated with corrective action, or liquidated damages.

ARTICLE XXII: ASSIGNMENT / DELEGATION

- 22.1 Contractor shall not assign any of its rights, nor delegate any of its duties and responsibilities under the Agreement without prior written consent of the Agency. Any assignment or delegation not consented to may be deemed void by the Agency.

ARTICLE XXIII: DRUG-FREE WORKPLACE:

- 23.1 The parties agree to comply with all applicable federal, state, and local laws regarding smoke-free and drug-free work places, and shall make a good faith effort to ensure that none of its employees will purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way, when they are engaged in the work being performed hereunder.
- 23.2 Public Law 103-227, Part C – Environmental Tobacco Smoke, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, or by Federal grant,

contract, loan or loan guarantee. The law does not apply to children's service provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

- 23.3 By signing and submitting this document, the contractor certifies that it will comply with the requirements of the Act. The contractor further agrees that it will require the language of this certification to be included in any sub-awards, which sub-grantee shall certify accordingly.

ARTICLE XXIV: ENTIRE AGREEMENT

- 24.1 This agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussion, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof. No other terms and conditions shall be considered a part of this Agreement unless expressly agreed upon in writing and signed by both parties or unless otherwise required by law.

ARTICLE XXV: SEVERABILITY

- 25.1 Whenever possible, each provision of this Agreement shall be interpreted in such matter as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this agreement.

ARTICLE XXVI: DEBARMENT:

- 26.1 By signing this agreement, Contractor verifies to ODA and WRAAA, that the Grantee is not currently debarred, proposed for debarment, declare ineligible, or voluntarily excluded from participation in transactions by any agency of the United States government under 2 CFR Part 376. Notwithstanding any other provision of this Agreement, this Agreement will not become effective unless, and until signed.
- 26.2 The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- B. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- D. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

26.3 Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ARTICLE XXVII: LOBBYING

27.1 The contractor is subject to the restrictions on lobbying set forth in 45 CFR Part 93. (See 45CFR 75.214). By signing this agreement, the Contractor certifies, to the best of its knowledge and belief that:

- A. No federal appropriate funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal amendment or modification of any federal

contract, grant, loan, or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The contractor shall require that the language of this paragraph be included in the award documents for all lower-tiered sub-contracts and that all lower-tiered sub-contractors shall certify and disclose accordingly.

27.2 The certification is a material representation of fact upon which reliance will be placed when the agreement is entered into by ODA and WRAAA. This certification is a prerequisite for making or entering into this Agreement, and is imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ARTICLE XXVIII: FOCAL POINTS

28.1 Focal points are posted on the WRAAA website at www.psa10a.org.

ARTICLE XXIX: PUBLICITY

29.1 The Contractor agrees that all public notices and publicity regarding this program shall state that: "This program is made possible by a grant from the Ohio Department of Aging through the Western Reserve Area Agency on Aging."

ARTICLE XXX: MODIFICATION

30.1 Any amendment to laws, rules or regulations cited in this Contract Agreement will result in a correlative modification to this Contract Agreement without the necessity of executing a written amendment. However, this Agreement (which incorporates Contractor approved proposal and all amendments attached hereto) may otherwise be modified only in writing signed by both parties.

ARTICLE XXXI: TERMINATION BY CONTRACTOR

31.1 If the Contractor decides that it no longer wishes to provide services under this

Agreement, the Contractor may not terminate services until the first day of the third month after the Agency has received written notice of termination from the Contractor.

ARTICLE XXXII: TERMINATION BY AGENCY

32.1 The Agency may terminate this Agreement without obligation if ODA determines, through the appeals process or through monitoring, that the Agreement was entered into inappropriately, or if funding is decreased or eliminated at any time.

ARTICLE XXXIII: APPEALS

33.1 The Contractor has the right to appeal adverse action by the WRAAA in accordance with the following process and Rule 173-3-09 of the Administrative Code. The Contractor may appeal an adverse action decision made by WRAAA as follows:

1. An appealing Contractor must submit a letter, signed by the official authorized to sign the appeal, to the Chief Executive Officer of the WRAAA with a copy sent to the President of the Board of Trustees of the WRAAA, within two (2) working days of receipt of written notice of an adverse action taken by WRAAA. The ground for appeal must be specified in the appeal letter.
2. If the Appeals Committee approves the appeal request and determines that the appeal is within the above-established criteria, a meeting of the Appeals Committee will be scheduled within five (5) working days, with an appearance by the appealing Contractor, to review the adverse decision and recommend final action by the Board of Trustees. An appealing Contractor will be notified of the date and time of the meeting. The Appeals Committee will render a final recommendation, in writing, within five (5) working days after the meeting, which shall become the final decision of the WRAAA unless appealed to the Board of Trustees.
3. An appealing Contractor may by letter appeal the final recommendation of the Appeals Committee to the Board of Trustees, with a copy to the Chief Executive Officer of the WRAAA, within two (2) working days of receipt of written notice of the final recommendation of the Appeals Committee. The ground for appeal must be specified in the appeal letter.

4. The Board of Trustees, or in its absence the Executive Committee, will review the appeal and the final recommendation of the Appeals Committee at its next meeting, adopt a final course of action and notify the appealing Contractor about its final decision in writing within five (5) working days. The decision of the Board, or its Executive Committee, shall be the final decision of the WRAAA, which may be appealed by the Contractor to ODA.
5. An appealing Contractor may request a hearing by the Ohio Department of Aging. ODA shall only honor a request for an appeal hearing before ODA if the provider has fully complied with the written process for appealing an adverse action by WRAAA and WRAAA has rendered its final decision on the appeal.

To request a hearing before ODA, the provider shall submit a written request to ODA's director via certified mail no later than fifteen (15) business days after the date that WRAAA renders its final decision.

ODA shall hold a hearing and render its final decision on the appeal no later than thirty (30) business days after the date of the hearing. The appeal process will comply with Rule 173-3-09.

ARTICLE XXXIV: NOTICES

- 34.1 Notices under this Agreement shall be in writing and may be delivered in person, by certified mail (return receipt requested), by overnight mail (proof of delivery required), or by facsimile (to the Contractor, only).

ARTICLE XXXV: APPLICABLE LAW AND FORUM

- 35.1 This Agreement shall be construed in accordance with Ohio law and specific applicable Federal statutes, rules and regulations. Any litigation to enforce this Agreement shall be brought in the Cuyahoga County Court of Common Pleas or in the United States District Court for the Northern District of Ohio, in Cleveland, Ohio.

IN WITNESS WHEREOF, the duly authorized representatives of the Agency and the Contractor have executed this Agreement on the dates written below their signatures.

WESTERN RESERVE AREA AGENCY ON AGING

APPLICANT

E. Douglas Beach, Ph.D., Chief Executive Officer

Contractor/DULY AUTHORIZED SIGNATORY

DATE

TYPED or PRINTED NAME & TITLE OF SIGNATORY

DATE

SAMPLE