**OPERATING AND USE AGREEMENT**

This Operating and Use Agreement (the “Agreement”) dated this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ is between [Local Government], herein referred to as “Local Government” and [Service Provider], herein referred to as “Service Provider,” (together referred to as the “Parties”).

Service Provider has agreed to provide services to the Local Government on the terms and conditions set out in this Agreement, while Local Government is of the opinion that Service Provider has the proper and necessary qualifications, experience and abilities to provide services to Local Government.

Therefore in consideration of the matters described above, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties agree as follows:

**1. Governing Law**

The goal of Title III of the Older Americans Act (“OAA”) is to reduce hunger and food insecurity and promote socialization and health among vulnerable older Americans to include but not limited to, providing meals, health screenings, education and community support, and transportation services (“Services”). Both state and federal law mandate that the Aging and Long Term Services Department (“ALTSD”) provide health and welfare-related services to older adults in New Mexico. ALTSD, through its partner agencies, specifically the Area Agency on Aging (“AAA”) network, contract with area service providers to provide Services to older adults as mandated by the OAA.

**2. Scope of Work—Premises**

The Local Government shall allow the Service Provider shall use the Local Government-owned\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Premises”) to provide the Local Government with the following Services: [Be Specific]

Check which Party is responsible for the following:

☐ Local Government ☐ Service Provider - **Air Conditioning**

☐ Local Government ☐ Service Provider - **Cable**

☐ Local Government ☐ Service Provider - **Electricity**

☐ Local Government ☐ Service Provider - **Gas**

☐ Local Government ☐ Service Provider - **Heat**

☐ Local Government ☐ Service Provider - **Internet**

☐ Local Government ☐ Service Provider - **Oil**

☐ Local Government ☐ Service Provider - **Sewer**

☐ Local Government ☐ Service Provider - **Water**

☐ Local Government ☐ Service Provider - **Insurance**

☐ Local Government ☐ Service Provider – **Maintenance and Repairs**

☐ Local Government ☐ Service Provider – **Other:**

1. **Compensation**

In lieu of compensation to the Service Provider for its provision of Services, the Local Government will provide use of the Local Government-owned facility, as set forth in Section 2 of this Agreement, provided the Local Government only uses the Local Government-owned facility for the provision of Services.

**3. Scope of Work—Use of Property**

The Local Government shall allow the Service Provider to use the Local Government-owned \_\_\_\_\_\_\_\_\_\_\_\_\_ (“Property”) in exchange for the provisions of Services identified in Exhibit A [List of Agreed Upon Services], attached hereto and incorporated by reference. At all relevant times, the Local Government shall retain ownership of the Property and the Service Provider may use the Property only for the Services identified in Exhibit A [List of Agreed Upon Services].

If the Property is a vehicle or other equipment identified by a VIN or some type of government inventory number, please include that number in the space provided, above.

Check which Party is responsible for the following:

☐ Local Government ☐ Service Provider – **Maintenance and Repairs**

☐ Local Government ☐ Service Provider - **Insurance**

☐ Local Government ☐ Service Provider - **Fuel**

☐ Local Government ☐ Service Provider – **Other**

1. **Compensation**

In lieu of compensation to the Local Government for its use of the Property, the Service Provider shall provide the Services identified in Exhibit A [List of Agreed Upon Services] to older adults deemed eligible by AAA to receive said Services. The minimum value of the Services provided by the Service Provider annually under this Agreement shall be the equivalent of the fair market lease value for a similar vehicle or equipment based on the current Leased Cars, and Truck Index, Consumer Price Index—Urban, or other appropriate economic indicator as agreed to by the Parties.

1. **Reporting**

The Service Provider shall report quarterly on April 15, July 15, October 15 and January 15 the Services provided in the immediately preceding quarterly on form attached Exhibit B [Reporting Form for Services Provided], attached hereto and incorporated by reference.

**4. Term of Agreement**

**a. For Use of Premises**

This Agreement will begin on [DD/MM/YYYY] (the “Effective Date”) and will remain in full force and effect until the completion of the Services. This Agreement may be extended by mutual written agreement of the Parties on an annual basis. Performance of this Agreement (including any extension) is contingent upon sufficient authority and appropriation granted by the New Mexico State Legislature.

During the term of the Agreement, the Local Government shall retain the following rights:

* To enter and inspect the Premises; and
* To use the Premises for other activities at times that do not conflict with the Service Provider’s provision of Services. The Parties shall work together to coordinate and schedule such activities.

**b. For Use of Property**

This Agreement will begin on the Effective Date and will remain in full force and effect for two years. This Agreement may be extended by mutual written agreement of the Parties on an annual basis. This Agreement shall not exceed eight years from the Effective Date, including its initial term and any renewal term. Performance of this Agreement (including any extension) is contingent upon sufficient authority and appropriation granted by the New Mexico State Legislature.

**5. Termination**

In the event either Party seeks termination of this Agreement at the end of any annual renewal period, such terminating Party must provide a 30-day written notice to the other Party.

In addition, **for use of Property**, upon termination of this Agreement, the possession of the Property shall revert back to the Local Government, which shall either use the Property or dispose of it pursuant to the requirements set forth in the New Mexico Procurement Code. Under no circumstances may the Service Provider or its designee continue to use the Property after the termination of this Agreement or benefit from its sale or disposition in any way.

**6. Independent Contractor**

The Service Provider is acting as an independent contractor in providing the Services under this Agreement, not as an employee. The Parties agree that this Agreement does not create a joint venture or a partnership between them.

**7. Modification of Agreement**

Any modifications or amendments to this Agreement will be binding if evidenced in writing signed by each Party.

**8. Notice**

All notices or demands required or permitted by the terms of this Agreement shall be given in writing and delivered to the Parties.

**9. Time is of the Essence**

No extension or variation of this Agreement will operate as a waiver of this provision. Time is of the essence in this Agreement.

**10. Integration**

This Agreement contains the entire agreement and understanding by and between the Parties and no representations, promises, agreements or understandings, written or oral, not herein contained shall be of any force or effect.

**11. Severability**

The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the other provisions hereof.

**12. Supersede**

This Agreement, together with the list any documents (including lease agreement) between the Parties dated      date other agreement was executed by both parties, which is incorporated herein by reference, constitute the sole and entire agreement of the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between the terms of this Agreement and any of the other documents specified in this Section 12, the terms of this Agreement shall govern.

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on this:

\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Local Government Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Local Government Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Service Provider Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Service Provider Signature

**Exhibit A**

**List of Agreed Upon Services**

The Local Government and the Service Provider agree that all units of service provided and reported by the Service Provider under this Agreement are to be credited net of partial or full compensation/reimbursement received for those units of service.

|  |  |  |  |
| --- | --- | --- | --- |
| ***Services that may be provided by the Service Provider in lieu of cash*** | ***Description of Service*** | ***Agreed upon unit value of service to be used in lieu of cash*** | ***Basis for unit value of service*** |
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**Exhibit B**

**Reporting Form for Services Provided**

|  |  |  |  |
| --- | --- | --- | --- |
| ***Quarterly Reporting Period:*** | ***Start Date:******Name:*** | ***End Date:*** |  |
| ***Person responsible for completing report on behalf of the Service Provider:*** | ***Title:******Telephone #:*** |  |  |
| ***Services:*** | ***Unit Value of Service:*** | ***Number of Service Units Provided During the Reporting Period:*** | ***Value of Services Provided During the Reporting Period:*** |
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|  |  |  |  |
| ***Total Value of Services Provided During the Reporting Period*** |  |  |  |
| ***Net of any partial or full compensation/ reimbursement to be received by the Service Provider for those units of service*** |  |  |  |
| ***Total Services Provided in Lieu of Cash for the Period Net of Compensated/ Reimbursed Services:*** |  |  |  |