COLERAIN
1794 225TH ANNIVERSARY 2019

Regular Meeting of the Board of Trustees - October 8

October 8, 2019

1. **Opening of Meeting**
2. **Executive Session** 6:00 PM
3. **Pledge of Allegiance** 7:00 PM
4. **Meditation (Moment of Silence)**
5. **Fiscal Office** – Approval of Minutes from September 24, 2019
6. **Presentations**
    a. Presentation on the Northwest Local School District Levy by NWLSD Superintendent Todd Bowling and NWLSD Treasurer Amy Wells
    b. Senior Center Bus Presentation
    c. Retirement Proclamation – Division Chief Danny M. Reenan
    d. Service Tenure Recognition for Matt Drennan and Grant Burns
7. **Citizens Address**
8. **Administrative Reports**
9. **Trustees' Report**
10. **New Business**

Public Safety

Public Services

a. Motion to Accept $35 Donation in Memory of Sandy Gettle for the Megaland Replacement Project

Planning & Zoning

a. Resolution Declaring Nuisance and Ordering Abatement
b. Motion To Authorize Township Administrator To Execute All Necessary Documents To Purchase Property Located At 6700 Schuster Court For An Amount Not To Exceed $1,500.00.
c. Motion to set Public Hearing on November 12, 2019 - Zone Map Amendment (ZA2019-06)
d. Motion to set Public Hearing on November 12, 2019 - Zone Map Amendment (ZA2019-07)

Administration

a. Motion To Authorize The Township Administrator To Execute An Employment Agreement With Jeff McElravy To Fill The Position Of Finance Director

b. Resolution Authorizing the Payment of the Statutorily Required Contribution to OPERS for the Assistant Township Administrator

c. Motion to Establish 2019 Halloween Trick or Treat Hours

11. Consent Items

a. Contract with Council on Aging for Senior Services

12. Fiscal Office Report

13. Executive Session – if needed

14. Adjournment

PRESENTATIONS

Department: Administration

Department Head:

Presentation on the Northwest Local School District Levy by NWLSD Superintendent Todd Bowling and NWLSD Treasurer Amy Wells

Rationale:

PRESENTATIONS

Department: Administration

Department Head:

Senior Center Bus Presentation

Rationale:

PRESENTATIONS

Department: Fire

Department Head: Frank Cook, Fire Chief

Retirement Proclamation – Division Chief Danny M. Reenan

Rationale:

Recognize retired Division Chief Danny M. Reenan for his over 42 years of dedicated service to the community.

PRESENTATIONS

Department: Fire

Department Head: Frank Cook, Fire Chief

Service Tenure Recognition for Matt Drennan and Grant Burns

Rationale:

Recognize Captain Grant Burns and Firefighter Paramedic Matthew Drennan for their 35 years of dedicated service to the community.

PUBLIC SERVICES

Department: Administration

Department Head:

Motion to Accept $35 Donation in Memory of Sandy Gettle for the Megaland Replacement Project

Recommend adoption of a motion to accept donations totaling $35 in Memory of Sandy Gettle for the Megaland Replacement Project.

Rationale:

Two donations were made in memory of Sandy Gettle. One in the amount of $10 and one in the amount of $25.

The Board of Trustees of Colerain Township, County of Hamilton, State of Ohio, met in regular session at p.m., on the eighth day of October 2019, at the Colerain Township Administration Building, 4200 Springdale Road, Cincinnati, Ohio 45251, with the following members present:

Greg Insco, Raj Rajagopal, Dan Unger

Mr. _____ introduced the following resolution and moved its adoption:

RESOLUTION NO. _____

RESOLUTION DECLARING NUISANCE AND ORDERING ABATEMENT

WHEREAS Uncontrolled vegetation and/or refuse and debris were reported at the properties listed below:

Address	Book-Page-Parcel No.
9859 ARBORWOOD	510-0112-0107-00
2716 BRAMPTON	510-0043-0239-00
7108 BROADMORE	510-0350-0096-00
7119 BROADMORE	510-0350-0105-00
3419 COLEEN	510-0102-0242-00
11578 COLERAIN	510-0270-0026-00
10224 HAWKHURST	510-0043-0271-00
8652 LIVINGSTON	510-0202-0034-00
9818 LORALINDA	510-0041-0022-00
6913 MEMORY	510-0074-0255-00
2715 NIAGARA	510-0052-0032-00
3402 NIAGARA	510-0102-0042-00
9870 PINEDALE	510-0044-0265-00
3539 REDSKIN	510-0111-0118-00
9428 RIDGEMOOR	510-0051-0471-00
2780 RUMFORD	510-0041-0292-00
6700 SCHUSTER	510-0074-0350-00
3214 SOVEREIGN	510-0064-0130-00

WHEREAS Ohio Revised Code Section 505.87 provides that, at least seven days prior to providing for the abatement, control or removal of any vegetation, garbage, refuse or debris, the Board of Trustees shall notify the owner of the land and any holders of liens of record upon the land; and

WHEREAS Ohio Revised Code Section 505.87 provides that, if the Board of Trustees determines within twelve consecutive months after a prior nuisance determination that the same owner's maintenance of vegetation, garbage refuse, or other debris on the same land in the Township constitutes a nuisance, at least four days prior to providing for the abatement, control or removal of the nuisance, the Board must send notice of the subsequent nuisance determination to the landowner and to any lienholders of record by first class mail; and

WHEREAS In accordance with Ohio Revised Code Section 505.87, the Township Trustees have the authority to contract to abate the nuisances and have the costs incurred assessed to the property tax bills.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of Colerain Township, Hamilton County, Ohio, as follows:

1. That this Board specifically finds and hereby determines that the uncontrolled growth of vegetation and/or the refuse and debris on each of the said properties listed above constitute a nuisance within the meaning of Ohio Revised Code Section 505.87, and the Board directs that notice of this action be given to owners of the said property and lienholders in the manner required by Ohio Revised Code Section 505.87; and

2. That this Board hereby orders the owners of said property to remove and abate the nuisances within seven days after notice of this order is given to the owners and lienholders of record, and within four days after notice of this order is given to the owners and lienholders of record for properties previously determined to be a nuisance. If said nuisances are not removed and abated by the said owners, or if no agreement for removal and abatement is reached between the Township and the owners and lienholders of record within four or seven days after notice is given, the Zoning Inspector shall cause the nuisances to be removed, and the Township shall notify the County Auditor to assess such cost plus administrative expense to the property tax bills for the said parcel, as provided in Ohio Revised Code Section 505.87; and

3. That it is hereby found and determined that all formal actions of this Board concerning and relating to the passage of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board and any of its committees that resulted in such formal action were taken in meetings open to the public, in compliance with all legal requirements including §121.22 of the Ohio Revised Code; and

4. That the Board by a majority vote hereby dispenses with the requirement that this Resolution be read on two separate days and hereby authorizes the adoption of the Resolution upon its first reading; and

5. That this Resolution shall be effective at the earliest date allowed by law.

Mr._____ seconded the Resolution, and the roll being called upon the question of its adoption, the vote resulted as follows:

Vote Record: Mr. Insco_____, Mr. Rajagopal_____, Mr. Unger_____

ADOPTED this eighth day of October, 2019.

BOARD OF TRUSTEES:

_____
Greg Insco, Trustee

_____
Raj Rajagopal, Trustee

_____
Dan Unger, Trustee

ATTEST:

_____
Heather E. Harlow,
Colerain Township Fiscal Officer

Resolution prepared by and approved as to form:

_____
Lawrence E. Barbiere (0027106)
5300 Socialville Foster Rd., Suite 200
Mason, OH 45040 (513) 583-4200
Colerain Township Law Director

AUTHENTICATION

This is to certify that this Resolution was duly passed and filed with the Colerain Township Fiscal Officer this eighth day of October, 2019.

_____
Heather E. Harlow
Colerain Township Fiscal Officer

PLANNING & ZONING

Department: Administration

Department Head: Mike Ionna, Director - Planning and Zoning

Motion To Authorize Township Administrator To Execute All Necessary Documents To Purchase Property Located At 6700 Schuster Court For An Amount Not To Exceed $1,500.00.

Recommend adoption of a motion to authorize Township Administrator to execute all documents necessary to purchase property located at 6700 Schuster Court for an amount not to exceed $1,500.00

Rationale:

The subject property burned on August 14, 2018 and has been found to be vacant, unsafe and insecure.

PLANNING & ZONING

Department: Planning & Zoning

Department Head: Mike Ionna, Director - Planning and Zoning

Motion to set Public Hearing on November 12, 2019 - Zone Map Amendment (ZA2019-06)

Recommended adoption of a motion for a Public Hearing to be set for a Zone Map Amendment for Zoning Case ZA2019-06 on November 12, 2019 at 7:00PM in the Colerain Township Trustee Chambers.

Rationale:

The Colerain Township Zoning Commission is expected to make a recommendation on the Zone Map Amendment for the rezoning of 30 acres on the north side of W. Kemper Rd. at their October 15, 2019 Regular Meeting. This Zone Map Amendment would require a Public Hearing to be held in front of this Board of Trustees within 30 days of that recommendation.

PLANNING & ZONING

Department: Planning & Zoning

Department Head: Mike Ionna, Director - Planning and Zoning

Motion to set Public Hearing on November 12, 2019 - Zone Map Amendment (ZA2019-07)

Recommended adoption of a motion for a Public Hearing to be set for a Zone Map Amendment for Zoning Case ZA2019-07 on November 12, 2019 at 7:00PM in the Colerain Township Trustee Chambers.

Rationale:

The Colerain Township Zoning Commission is expected to make a recommendation on the Zone Map Amendment for the rezoning of the former Fireside Inn and Colerain Community Resource Center at their October 15, 2019 Regular Meeting. This Zone Map Amendment would require a Public Hearing to be held in front of this Board of Trustees within 30 days of that recommendation.

ADMINISTRATION

Department: Administration

Department Head: Geoff Milz, Administrator

Motion To Authorize The Township Administrator To Execute An Employment Agreement With Jeff McElravy To Fill The Position Of Finance Director

Recommend approval of a motion to authorize the Township Administrator to execute an employment agreement with Jeff McElravy to fill the position of Finance Director.

Rationale:

The position of Director of Finance was posted, applications were received and interviews conducted. A conditional offer of employment was extended to the following individual: Jeffrey McElravy, Jr.

The wage for this job is $47.12 per hour.

EMPLOYMENT AGREEMENT

THIS AGREEMENT dated October 8, 2019 is entered into between the Board of Trustees of Colerain Township, Hamilton County, Ohio, hereinafter referred to as the "Board" or "Trustees" and Jeff McElravy, hereinafter sometimes referred to as "Employee".

WITNESSETH:

WHEREAS, the Board desires to employ the services of the Employee as Finance Director for Colerain Township; and

WHEREAS, Employee desires to be employed as Finance Director for Colerain Township.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Duties

The Board hereby employs the Employee as Finance Director for Colerain Township to perform all duties specified by law and resolution and to perform such other duties as assigned by the Administrator.

Section 2. Term

The term of this agreement shall begin on November 4, 2019 and shall remain in effect until December 31, 2022 unless sooner terminated pursuant to Section 3 of this Agreement. In the event the parties mutually desire to extend the employment relationship beyond December 31, 2022, they shall exercise best efforts to discuss terms during the period beginning 90 days prior to the termination date and enter into a revised Agreement consistent with such discussions.

Section 3. Termination and Severance Pay

A. In the event Employee is terminated by the Board before the expiration of the term of this agreement, without just cause, and during such time that Employee is willing and able to perform her duties under this agreement, the Board agrees to continue to pay Employee's salary for a period of three (3) months after the date of termination and to continue health insurance coverage for a period of three (3) months (or in the event Employer is not able to maintain Employee's health insurance coverage pursuant to the terms of the plan, then Employer shall pay to Employee for a period of three (3) months the cost of health insurance premiums at a rate that will continue substantially similar health benefits for Employee as provided under the plan), plus the cash value of any accrued vacation time. The parties agree that the within severance pay provision shall constitute Employee's sole and exclusive remedy for termination without just cause.

B. In the event Employee is terminated by the Board before the expiration of the term of this agreement with just cause, the Board shall have no obligation to pay the severance sum set forth in Section 3.A.

C. In the event that the Board refuses, at any time during the term of this agreement, following written notice, to comply with any provision benefiting Employee herein, or Employee resigns following a suggestion by the Board that he resign, then the Employee may, at his option, be

deemed to be "terminated without just cause" at the date of such refusal to comply, or suggestion within the meaning and context of the severance pay provision herein contained.

D. In the event Employee desires to voluntarily resign his position with the Board before the expiration of the above term of this employment, then Employee shall give the Board 45 days' notice in advance, unless the parties agree otherwise in writing. In the event Employee voluntarily resigns his position, he shall not be entitled to the severance pay provisions contained in Section 3(A) hereof.

E. For the purposes of Section 3. hereof, "just cause" shall mean incompetence, inefficiency, dishonesty, drunkenness, criminal or immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, failure of good behavior, any breach of employee's duties under this agreement or any other act of misfeasance, malfeasance or nonfeasance in office.

Section 4. Compensation

The Board agrees to pay Employee for his services rendered pursuant hereto at an annual rate of $98,000 payable on a bi-weekly basis at the same time as other employees of the Board are paid. Said annual compensation shall be reviewed annually by the Board of Trustees, on or about January 1st of each year. While it is recognized that the Employee must devote considerable time outside the normal working hours to the business of the Board, no additional compensation will be granted to the Employee for such additional time.

Section 5. Benefits

The Employee shall be entitled to such other benefits as the Board provides to other employees of the Board including health insurance, dental insurance, vision insurance, life insurance, PERS, vacation, personal, and sick leave, as provided in the Colerain Township Employee Personnel Policies. Accumulated, unused vacation and sick leave will be subject to the policies adopted by the Board for all nonunion township employees. In addition, following a one-year probationary period, the Township shall pick up and pay fifty percent of the employee's contribution to PERS to be treated as a fringe benefit.

Section 6. Indemnification

The Board shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the reasonable performance of Employee's duties as Finance Director.

Section 7. Amendments

This Agreement may be modified or amended at any time by mutual written consent of the parties hereto.

Section 8. Severability

If any part of this agreement is found to be unconstitutional or unenforceable by a Court of competent jurisdiction, or legislative or administrative tribunal, then such decisions or legislation shall apply only to the specific provision of this agreement. The parties hereto will meet and discuss the abrogated provision. The remainder of the agreement shall remain in full force and effect to the extent reasonable in light of the abrogated provisions.

Section 9. Review

The Board and Employee shall exercise best efforts to review Employee's performance hereunder not less frequently than annually during the term of this Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the ____ day of _____, 2019.

Prepared and approved as to form:

Employee:

_____

Jeff McElravy

On behalf of the Board of Trustees:

_____

Geoff Milz, Township Administrator

By:

_____

Lawrence E. Barbiere,
Law Director

ADMINISTRATION

Department: Administration

Department Head:

Resolution Authorizing the Payment of the Statutorily Required Contribution to OPERS for the Assistant Township Administrator

Recommend approval of a resolution authorizing the payment of the statutorily required contribution to OPERS for the Assistant Township Administrator.

Rationale:

This resolution is required to comply with the current employment agreement entered into with Assistant Township Administrator Jeff Weckbach on May 8, 2018. This agreement stipulates that "beginning on January 1, 2020, the employer will pick up and pay 50% of the employee's contribution to PERS."

This resolution is required by the Township to permit said contribution.

The Board of Trustees of Colerain Township, County of Hamilton, State of Ohio, met in regular session at _____ p.m., on the eighth day of October, 2019, at the Colerain Township Administration Building, 4200 Springdale Road, Cincinnati, Ohio 45251, with the following members present:

Greg Insco, Raj Rajagopal, Dan Unger

Mr. _____ introduced the following resolution and moved its adoption:

RESOLUTION NO. _____-19

RESOLUTION THAT COLERAIN TOWNSHIP WILL PICK UP THE STATUTORILY REQUIRED CONTRIBUTION TO THE OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM FOR THE ASSISTANT TOWNSHIP ADMINISTRATOR PURSUANT TO IRC SECTION 414(h)(2)

WHEREAS, pursuant to federal and Ohio laws, Colerain Township may offset future salary increases and "pick up" (assume and pay) the contributions statutorily required by such elected officials and covered employees to the Ohio Public Employees Retirement System (OPERS) and such individuals will not be required to pay federal and state income taxes on such contributions.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of Colerain Township, Hamilton County, Ohio, as follows:

1. Effective January 1, 2020, five percent (5%) or half of the amount of the statutorily required employees' contributions to OPERS shall be picked up and paid as a fringe benefit by Colerain Township for the Assistant Township Administrator. The pick-up shall be an offset against future salary increases. This "pick up" by Colerain Township shall be designated as public employee contributions and shall be in lieu of contributions to OPERS by the Assistant Township Administrator. No person subject to this "pick up" shall have the option of choosing to receive the statutorily required contribution to OPERS directly instead of having it "picked up" by Colerain Township or of being excluded from the "pick up". Colerain Township shall, in reporting and making remittance to OPERS, report that the public employees' contribution for each person subject to this "pick up" has been made as provided by the statute. Therefore, contributions, although designated as employee contributions, are employer-paid, and employees do not have the option to receive the contributions directly. All contributions are paid by the employer directly to the plan.

2. Under the fringe-benefit method of employer pick up, salary is not modified; however, the employer will pay the employees' statutorily required contribution to OPERS.

3. The Fiscal Officer is hereby authorized and directed to implement the provisions of this resolution to institute the "pick up" of the statutorily required contributions to OPERS for the Township Assistant Administrator so as to enable them to have their employee contributions paid by their employer.

4. That it is hereby found and determined that all formal actions of this Board concerning and relating to the passage of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board and any of its committees that resulted in such formal action were taken in meetings open to the public, in compliance with all legal requirements including §121.22 of the Ohio Revised Code; and

5. That this resolution is subject of the general authority granted to the Board of Trustees through the Ohio Revised Code and not the specific authority granted to the Board of Trustees through the status as a Limited Home Rule Township.

6. That the Board by a majority vote hereby dispenses with the requirement that this Resolution be read on two separate days, pursuant to Section 504.10 of the Ohio Revised Code, and hereby authorizes the adoption of the Resolution upon its first reading.

7. This Resolution shall take effect on the earliest date permitted by law.

Mr. _____ seconded the Resolution, and the roll being called upon the question of its adoption, the vote resulted as follows:

Vote Record: Mr. Insco_____, Mr. Rajagopal_____, Mr. Unger_____

ADOPTED this eighth day of October, 2019.

BOARD OF TRUSTEES:

_____
Greg Insco, Trustee

_____
Raj Rajagopal, Trustee

_____
Dan Unger, Trustee

ATTEST:

_____
Heather E. Harlow,
Colerain Township Fiscal Officer

Resolution prepared by and approved as to form:

_____
Lawrence E. Barbiere (0027106)
5300 Socialville Foster Rd., Suite 200
Mason, OH 45040 (513) 583-4200
Colerain Township Law Director

AUTHENTICATION

This is to certify that this Resolution was duly passed and filed with the Colerain Township Fiscal Officer this eighth day of October, 2019.

_____

Heather E. Harlow
Colerain Township Fiscal Officer

ADMINISTRATION

Department: Administration

Department Head:

Motion to Establish 2019 Halloween Trick or Treat Hours

Recommend approval of a motion to set the hours for Halloween Trick or Treating in Colerain Township to be from 6 PM to 8 PM on October 31, 2019.

Rationale:

6 PM - 8 PM is a consistent time frame for trick or treating throughout the region.

CONSENT ITEMS

Department: Administration

Department Head: Geoff Milz, Administrator

Contract with Council on Aging for Senior Services

Recommend adoption of all consent items.

Rationale:

The Council on Aging helps to cover the cost of a congregate meal program and for transportation of Township Seniors to activities at the Colerain Community Center. The total Township cost for these needed programs is $4,842, which is the local match for the $33,143 program.

SERVICE AGREEMENT

between

COUNCIL ON AGING OF SOUTHWESTERN OHIO

and

COLERAIN TOWNSHIP BOARD OF TRUSTEES dba COLERAIN TOWNSHIP SENIOR & COMMUNITY CENTER

Funded by THE OLDER AMERICANS ACT OF 1965, AS AMENDED, Part A through E, including the Nutrition Services Incentive Program ("NSIP") and Senior Community Services State Subsidy

October 1, 2019 through September 30, 2022

THIS AGREEMENT ("Agreement") is entered into by and between Council on Aging of Southwestern Ohio, hereinafter "COA," and Colerain Township Board of Trustees dba Colerain Township Senior & Community Center, hereinafter "Provider," is effective October 1, 2019.

WHEREAS, COA is authorized by the Ohio Department of Aging ("ODA") to receive and disburse funding from Title III of the Older Americans Act of 1965, as amended ("OAA"), Nutrition Services Incentive Program ("NSIP"), and Senior Community Services State Subsidy, Alzheimer's Respite State Grant, and other funds, and to monitor the expenditure of such funds to assist in the provision of nutrition/social services to persons aged 60 and older, and/or their caregivers (Title III-E) and in order to promote independent living, and thereby reduce unnecessary institutionalization; and

WHEREAS, Provider submitted a proposal in response to a Request for Proposal to Provide Services funded by Title III of the Older Americans Act, Nutrition Services Incentive Program, and Senior Community Services State Subsidy ("RFP") released by COA on March 18, 2019; and

WHEREAS, COA accepted Provider's Proposal and desires to enter into an Agreement with the Provider to define the terms and conditions under which Provider is to furnish and bill for services provided.

NOW THEREFORE, in consideration of the foregoing and other mutual promises herein contained, the parties hereto agree as follows:

Provider shall serve the geographic area detailed in Provider's accepted Proposal, incorporated herein by reference;

Provider shall satisfy the service needs of older persons (individuals who are 60 years of age or older) with the greatest economic and social needs with particular attention 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, and those who are at risk for institutional placement.

Provider shall provide only those services marked below and shall provide the services in compliance with the specifically identified in rule 173-3-06 and rules 173-4-05 thru 173-4-09 of the Ohio Administrative Code ("OAC") or the COA Service Specification, whichever is applicable to the specific service:

☐ Respite - Adult Day Service Rule (see service specification)
☐ Alzheimer's Education/CORE (see service specification)
☐ Caregiver Services FCSP – Support Group (see service specification)
☐ Caregiver Services FCSP – Counseling (see service specification)
☒ Congregate Nutrition Service (see service specification)
☐ Home Delivered Meals (see service specification)
☐ Legal Assistance (see service specification)
☐ Ombudsman (see service specification)
☐ Respite - Personal Care (see service specification)
☐ Supportive Services (see service specification)
☒ Transportation (see service specification)

Provider shall meet all COA specific objectives for giving service priority to specific consumer groups.

Provider shall request reimbursement for services provided within the time frames established by COA and in a format prescribed by COA.

Provider shall have, and maintain during the entire term of this Agreement, a computer with high speed Internet access (minimum DSL and/or cable modem), and a printer either connected directly to the computer used for accessing the Internet, or available as part of a local area network; and shall ensure it can connect to the Internet and access Wellsky Aging & Disability System (Wellsky) formerly known as SAMS, the web-based application used for reporting.

SECTION I - SERVICES AND REVENUE

A. Under this Agreement, Provider shall provide the services identified on the Service and Funding Schedule ("Schedule") of this Agreement, in the service unit specified, and at the reimbursement unit rate indicated on the Schedule for a total dollar amount not to exceed the amounts listed under "Title III," "Senior and Community," "NSIP," and Total Funding. (The Schedule is attached hereto this Agreement, and made a part hereof.)

B. Provider shall furnish the required "Minimum Match" (as stated on the Schedule), derived from non-federal sources, of total program costs as specified for each service category.

C. Funding is contingent upon COA's receipt of the projected Title III/NSIP and/or State funds from ODA and subject to the terms and conditions stated herein. COA has the right to disburse and/or retain funds as it determines best benefits the program, subject to the terms and conditions under which the funds were allocated and the terms and conditions stated herein.

D. Although the Agreement is for 36 months, through September 30, 2022, the funding as indicated on the Schedule is only awarded for the Title III 2020 program year, October 1, 2019 through September 30, 2020. Funding will be awarded for program years 2021 (October 1, 2020 through September 30, 2021) and 2022 (October 1, 2021 through September 30, 2022), at COA's sole discretion based on, but not limited to: provider performance, available funding, program requirements and priorities, consumer needs, and COA's Mission and Vision.

E. COA at its sole discretion may adjust Schedules, which includes rates and units, based on Provider performance or lack thereof, unforeseen situations, change in funding, change in law, or to best meet the needs of consumers or the program. Additionally, COA, at its sole discretion, at times during the term of this Agreement may offer Provider an opportunity to request unit revisions to the Schedules. Such revisions shall be requested in writing in a format provided by COA and must be submitted with written justification for the requested revision. No such revisions shall be considered in effect until COA has received the signed revised schedule from Provider.

F. All sources of revenue shall be expended for the benefit of services stated on the Schedule.

G. Provider will not be reimbursed for any service unless a valid Agreement is in place at the time the service is provided. The Agreement is not valid until it has been signed by authorized representatives from both COA and Provider.

SECTION II - EARNING AND DISBURSING OF FUNDS

A. Title III, NSIP, and/or State funds are earned under the following conditions:
   1. Upon providing units of service to persons age 60 and over, and/or caregivers (if expending Title III E funds) in compliance with the rules as stated in the OAC.
   2 Upon submission of the required data in SAMS and/or other reports as required by COA, documenting the delivery of such service.
   3. Upon furnishing the "Required Minimum Match" of total program costs from non-federal sources for each service category.

B. Provider will be reimbursed monthly by COA, contingent upon the conditions of this Agreement being met and Provider timely invoicing for services delivered according to a "Billing and Payment Schedule" available in the Service Providers section on COA's website, *www.help4seniors.org*. COA will issue payment directly to the Provider via Electronic Funds Transfer (EFT). COA will not issue payment to any third-party, even if directed to do so by the Provider.

C. Compensation will be based on the unit rate as listed on the Schedule and the actual units provided during the previous month of this Agreement as reported by the Provider using Wellsky. Total dollars reimbursed under this Agreement will not exceed the amounts listed on the Schedule. COA retains the right throughout the term of this Agreement to issue revisions to the Schedule, including unit rates, units planned, and dollars, if Provider's performance, change in funding, or other conditions warrant such action.

D. In the event Provider is paid for services not allowable under the terms of this Agreement, the amount of overpayment will be deducted from future reimbursements to Provider. If the amount of future reimbursement is insufficient to cover this obligation, or if final payment to Provider under this Agreement already has been made, then Provider shall refund the overpayment amount to COA within ten (10) business days of receiving the written request for repayment.

E. If necessary, adjustments may be made by COA, at intervals to be determined by COA, in order to reconcile differences between COA's disbursement of Title III/NSIP and/or State funds to Provider and the earning of such funds by Provider.

F. Provider shall report the "Required Minimum Match monthly." Additionally, Provider shall furnish COA with proof of the "Required Minimum Match" upon request of COA. Failure to report the match or provide such proof may result in Provider remitting to COA, upon demand, all unearned funds.

G. Provider shall maintain a service utilization rate of at least 90% for each service provided pursuant to the Agreement. For any service for which the Provider does not maintain an 90% service utilization rate, COA, in its sole and absolute discretion, retains the right to adjust funding, terminate the specific service from the Provider Agreement, or take such other action to benefit the program, up to and including, terminating the Agreement for all services the Provider is contracted to provide pursuant to the Agreement.

H. The Provider is required to collect and report program income to COA as outlined in the service specification using a method established by COA. The current method of reporting program

income is through an internet site called Survey Monkey. The program income reporting survey can be found on COA's website, www.help4seniors.org. COA reserves the right to change the method for submitting program income.

Provider shall allow and encourage voluntary contributions for services reimbursed with OAA funds:

1. Offer each consumer an opportunity to contribute voluntarily to the cost of the service.
2. Clearly inform each consumer that there is no obligation to contribute and that the contribution is purely voluntary.
3. Protect the privacy of each recipient with respect to the consumer's contribution or lack of contribution.
4. Establish appropriate procedures to safeguard and account for all contributions.
5. Use all contributions collected to expand the services under Title III/NSIP and or State funds for which the contributions were given.
6. Have a written policy that incorporates all of the above and is available for service recipients.

Provider may develop a suggested contribution schedule for services; however, Provider must consider the income ranges of older persons in the community. Means tests are not allowed. Provider may not deny any older person a service because the older person will not or cannot contribute to the cost of the service

I. For Services that require cost sharing (see OAC Rule 173-3-07 and the Service Specifications available at www.help4seniors.org), provider shall establish a consumer cost sharing policy that includes:

1. The sliding-fee schedule below which determines the percentage of the actual (or partial) contracted cost of a unit of service that the Provider shall suggest that a consumer pay based upon the consumer's individual income as a percentage of the federal poverty level found in the federal poverty guidelines, which are updated periodically in the federal register by the U.S. Department Of Health And Human Services under 42 U.S.C. 3302 (2);

SLIDING-FEE SCHEDULE	
INCOME LEVEL	SUGGESTED COST SHARE
149% and below	0%
150-174%	10%
175-199%	20%
200-224%	30%
225-249%	40%
250-274%	50%
275-299%	60%
300-324%	70%
325-349%	80%
350-374%	90%
375% and above	100%

2. A requirement to determine the consumer's individual income solely by the consumer's self-declaration with no requirement for verification;

3. A procedure for collecting consumer cost-sharing payments from a consumer receiving consumer-directed services;
4. A requirement to distribute written materials to consumers that explain: (a) The services subject to consumer cost sharing; (b) The procedure for sharing costs; (c) The sliding-fee schedule; and, (d) That a provider may not decline to provide a service because a consumer fails or refuses to share costs.
5. A requirement to provide a receipt to a consumer or family caregiver who makes a payment;
6. A procedure for safeguarding and accounting for all consumer cost-sharing funds collected;
7. A requirement to retain records of all consumer cost-sharing funds collected;
8. A requirement to keep the consumer's declaration of income (or non-declaration of income) and cost-sharing payment history confidential; and,
9. A requirement to use the funds collected from consumer cost sharing to expand the capacity to provide the service for which the funds were given.

J. Unexpended (left over) funds held by Provider at conclusion/termination of this Agreement shall be returned to COA.

K. Provider shall return to COA any funds received for providing services if the provision of the service did not comply with the OAC, the Ohio Revised Code ("ORC"), or any other law that regulates the provider or the services provided.

SECTION III - RECORDS AND DOCUMENTATION, CONTROL POLICIES AND MONITORING

A. RECORDS AND DOCUMENTATION

1. Provider is required to store consumer records in a designated locked storage space, or within a secure, password protected, electronic file format.

2. Provider shall insure that any records relating to costs, work performed, supporting documentation for payment of work performed, all deliverables, and any other records necessary to fully disclose the extent of services provided under this Agreement are maintained and made available at all reasonable times for auditing or monitoring by COA, ODA, the state auditor, the inspector general, duly-authorized law enforcement officials, and agencies of the United States government (or designees of any of these entities). The above listed records and documentation are to be retained for not less than three (3) years from the expiration of this Agreement or submission of final report (whichever is later). If a monitoring or audit is initiated within the three (3) year period, the Provider shall retain the records until the monitoring or auditing is concluded and all issues or exceptions are resolved, even if doing so requires the provider to retain records for more than three (3) years.

3. Provider shall not use or disclose any information, systems, records or other protected health information (45 CFR 160 and 164 (A) and (E)) made available to it by COA for any purpose other than to fulfill its obligations under this Agreement. Further, Provider agrees to comply with all applicable Federal and State confidentiality laws including without limitation, The Health Insurance Portability and Accountability Act of 1996 (HIPAA), as

Amended, and all other regulations applicable to the program(s) under which this Agreement is funded.

4. Provider shall not use or disclose any information concerning a consumer for any purpose, directly associated with the provision of services, unless the provider has written documentation of the consumer's consent to do so.

5. Provider shall not use or disclose any information concerning a consumer for any purpose not directly associated with the provision of services, even if the consumer consents to doing so.

B. CONTROL POLICIES AND MONITORING

1. COA, ODA, the State Auditor, the Ohio Inspector General, the Department of Health and Human Services, the Comptroller General of the United States, or any of their duly authorized representatives, shall at all times have the right to inspect the sites, products, procedures and plans of Provider, books, documents, papers, and records of Provider which are directly pertinent to the specific Agreement for the purposes of conducting an audit, examination, taking excerpts, and making transcriptions, determining compliance with all applicable laws and regulations of any kind and the terms and conditions of this Agreement.

2. COA's Contract Auditor will perform a compliance and financial review. This review shall include a comprehensive review of all applicable documentation including but not limited to a test of consumer eligibility, and a review of documentation to verify compliance with the non-Federal matching and all other contract requirements. Provider shall cooperate fully to accomplish said audit. The timing of the audit performed shall be at the discretion of COA.

3. Provider shall retain all records relating to costs, work performed, supporting documentation for payment of work performed and all deliverables pursuant to this agreement and will file it in a manner allowing it to be readily located for monitoring by COA, ODA, or their duly authorized representatives. Adequate measures will be taken by COA to insure that records of a confidential nature will not be compromised. It shall be the responsibility of Provider to obtain releases of information from program participants for any personal information found in the records, data files, etc., maintained by Provider. The release shall permit authorized COA representatives to examine said personal information for evaluation and monitoring purposes. If, in the judgment of COA, the Provider is found to be in violation of this section or unable to carry out its provisions, COA at its option, upon written notice may suspend, amend, or terminate this Agreement.

4. Provider agrees to accept responsibility for receiving, replying to, and/or complying with any audit exceptions directly related to the provisions of this Agreement. Provider agrees to accept the conclusions of, and to be bound by, the results of the audit(s) and to pay to COA, upon demand, within ten (10) business days after receipt of written notice to do so, the full amount as may be determined in any audit exception. COA, at its sole discretion, may establish a repayment plan for the Provider, or may recover funds from future payments due Provider.

5. Provider agrees to submit to COA a copy of the annual independent certified public audit of the funds (financial audit) earned by Provider pursuant to this Agreement. COA requires an audit for each year funds are expended under this Agreement. Copies of the financial audit of

funds expended under this Agreement are due within nine (9) months of the end of the program year (the program year ends September 30th). The auditor must use OMB Circular No. A-133 guidelines, if applicable. Non-submission or late submission of the required financial audit may be grounds to terminate this Agreement.

SECTION IV - HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, AS AMENDED ("HIPAA")

Provider shall maintain adequate safeguards to prevent access, use or disclosure of individually identifiable health information. Provider agrees that it shall be prohibited from using or disclosing patient identifiable health information provided or made available for any purpose other than as expressly permitted or required by law and only after obtaining the consumer's written, informed consent to do so. Provider ensures that any subcontractor or agent to whom it may disclose patient identifiable health information is bound by the confidentiality terms of this Agreement and by law. The Provider will retain consumer records in a secure manner, whether it is in a designated locked storage space, or within a secure, password protected, electronic file format.

SECTION V - INDEMNIFICATION

This section is left intentionally blank.

SECTION VI - APPLICABLE FEDERAL, STATE AND LOCAL LAWS, REGULATIONS, AND ESTABLISHED POLICIES AND PROCEDURES

A. This agreement is for the provision of goods or services paid with federal funds that the United States Department of Health and Human Services appropriated to the Ohio Department of Aging (ODA). ODA, in turn, allocated the federal funds to the area agency on aging. The agreement is subject to federal laws and rules, state laws, and ODA's rules.

B. Provider shall conform to the requirements of all applicable federal, state and local laws, federal circulars, regulations, and established policies and procedures incorporated by reference herein, including, but not limited to the following, all as may be amended from time to time:

1. Older Americans Act of 1965, as Amended
2. OAC, including but not limited to, Chapter 173-3-01 - 173-3-09 the rules relating to provider contracts and service delivery and Chapter 173-4-01 - 173-4-09 relating to nutrition and nutrition related services;
3. COA Policies and Procedures, including Service Specifications;

4. Provider's Proposal submitted in response to "Request For Proposal From Established Organizations To Provide Services Funded By Title III Of The Older Americans Act, NSIP and Senior Community Services State Subsidy;"
5. Civil Rights Act of 1964, as Amended;
6. Section 504 of the Rehabilitation Act of 1973, as Amended, if direct services are provided on the premises;
7. Age Discrimination Act of 1975, as Amended;
8. Federal Fair Labor Standards Act of 1938 (FLSA), as Amended, including but not limited to the provisions of FLSA relating to payment for travel time; payment for all hours worked and payment of the minimum wage and overtime;
9. Age Discrimination Act of 1975, as Amended;
10. Age Discrimination in Employment Act of 1967, as Amended;
11. Americans with Disabilities Act of 1990;
12. State and local health, fire, safety, zoning, and sanitation codes;
13. Drug Free Workplace Act of 1988.
14. Federal, State, and local regulations regarding taxes, unemployment, Workers Compensation, etc.
15. Health Insurance Portability and Accountability Act ("HIPAA").
16. Family Medical Leave Act ("FMLA") and
17. Uniformed Services Employment and reemployment Rights Act ("USERRA").

C. Provider shall, at its sole cost, comply with the criminal records background check requirements in accordance with ORC Section 173.38 and OAC Rule 173-9-01 through 173-9-10.

D. Provider shall incorporate the foregoing requirements in all subcontract agreements for work hereunder.

E. Provider shall, upon request, furnish COA with Provider's payment of wages policy, as evidence of compliance with the Fair Labor Standards Act.

SECTION VII - EQUAL EMPLOYMENT OPPORTUNITY

A. In carrying out this Agreement, Provider shall not discriminate against any employee or applicant for employment because of race, religion, national origin, ancestry, color, sex, sexual orientation, age, disability or Vietnam-era Veteran status. Provider shall ensure that applicants are hired, and that employees are treated during employment without regard to their race, religion, national origin, ancestry, color, sex, sexual orientation, age, disability or Vietnam-era Veteran status. Such action shall include but not be limited to the following: Employment; Upgrading; Demotion or Transfer; Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and selection for Training, including Apprenticeship.

B. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that Provider will comply with all applicable Federal and State non-discrimination laws. Provider shall, in all solicitations or advertisements for employees placed by or on behalf of the Provider, state that all qualified applicants shall receive consideration for employment without regard to race, religion, national origin, ancestry, color, sex, sexual orientation, age, disability or Vietnam-era Veteran status.

C. Provider shall incorporate these requirements in all subcontracts for work completed under this Agreement.

D. Provider shall update its Affirmative Action Plan annually, and upon request, shall furnish COA with its antidiscrimination and affirmative action plan as evidence of compliance with Title VII of the Civil Rights Act, Age Discrimination in Employment Act, Executive Order 11246 and Revised Order No 4, if applicable, the Rehabilitation Act of 1973, and the Americans with Disabilities Act.

SECTION VIII - DEBARMENT AND SUSPENSION

Provider certifies by entering into this Agreement, that neither it nor its principals are listed on the non-procurement portion of the General Services Administration's "Excluded Parties List System" ("EPLS") and are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any state or federal department or agency. The term 'principal' for purposes of this Agreement is defined as an officer, director, owner, member, manager, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Provider's business. Provider shall notify COA immediately in the event it becomes aware of any such actual or proposed debarment, suspension, ineligibility, or voluntary exclusion

SECTION IX - INSURANCE

A. Provider, at Provider's sole cost and expense, shall carry and maintain in full force, with no interruption of coverage during the term of this Agreement the following:

1. Comprehensive general liability insurance not less than $1,000,000 per occurrence and $2,000,000 annual aggregate. The insurance certificate shall name "Council on Aging of Southwestern Ohio (COA℠)" as an additional insured and shall include a provision that requires written notice to COA at least thirty (30) days in advance of any change, cancellation, or non-renewal of coverage.
2. Third Party Fidelity or similar insurance covering consumer loss due to theft of consumer's property or money, or property damage, by any employee or volunteer of Provider. Additionally, Provider shall furnish COA with a written procedure describing the step-by-step instructions a consumer must follow to file a claim.
3. Workers Compensation coverage for the State(s) in which the employees are eligible for benefits.
4. Fidelity bond covering all individuals authorized by the Provider to collect and/or disburse funds.
5. Automobile liability insurance, as applicable, covering all vehicles leased or owned by provider that are used or operated to deliver of service(s) provided under this Agreement. i.e. transportation, adult day service transportation, meals delivery. The Certificate of Insurance shall indicate Provider has the appropriate coverage against claims for injury and/or death in the amount not less than $1,000,000 per occurrence, unless there is a greater amount otherwise required by the OAC or other federal, state, or local rules under which the Provider is required to operate.

6. Professional liability insurance for providers of Adult Day Services, and legal assistance insuring Provider and such professionals against any and all claims, actions, causes, cost and expense relating to or arising out of the performance of services under this Agreement. The minimum amount of coverage shall be $2,000,000 for each incident and $2,000,000 annual aggregate.

B. Provider further agrees that in the event its commercial general liability policy or professional liability policy (if required) is maintained on a "claims made" basis, and in the event that this Agreement is terminated, Provider shall continue such policy in effect for the period of any statute or statutes of limitation applicable to claims thereby insured notwithstanding the termination of this Agreement.

C. Provider shall have all the above described insurance in full force and in effect prior to the commencement of services under this Agreement. The insurance must be maintained through a carrier licensed to provide insurance in Ohio and reasonably acceptable to COA.

D. Provider understands it is responsible for ensuring a current Certificate of Insurance is received by COA's Provider Services department whenever a change is made to the Provider's insurance coverage including, but not limited to, change in insurance carrier(s), change in coverage, renewal of coverage.

E. Cancellation or non-renewal of required insurance, or not furnishing COA with evidence of required insurance coverage shall be grounds for COA to suspend or terminate this Agreement.

F. The insurance required under this Agreement shall cover the acts or omissions of both paid employees and volunteers working for Provider.

G. Provider shall require the same amount of insurance from all subcontractors utilized under this Agreement.

SECTION X - AMENDMENT / MODIFICATION

This Agreement may not be amended or modified except through a written instrument signed by both parties.

It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in a correlative modification to this Agreement, without the necessity for executing a written amendment.

SECTION XI - TERMINATION

Except as otherwise provided herein, either party may at any time during the term of this Agreement or any extension thereof, with or without cause and without having to show a breach, terminate this Agreement, or any service(s) offered pursuant to this Agreement by giving ninety (90) days' notice in writing to the other party of its intention to do so. Provider must notify COA in writing of its intent to terminate this Agreement prior to notifying consumers being served by Provider for COA under this Agreement of such termination. In addition, this Agreement, or any service(s) offered pursuant to this Agreement, may be suspended or terminated at any time (without 90 days written notice) by COA for good and just cause as determined within the sole discretion of COA, including but not

limited to, unsatisfactory Provider performance, funding decline, or if a situation arises that was unforeseen at the time the parties entered into this Agreement. Examples of unsatisfactory Provider performance include, but are not limited to, not maintaining the required 90% utilization rate for all services contracted to Provider pursuant to this Agreement. Examples of unforeseen situations include, but are not limited to, a change in market condition or a change in law that regulates the service(s) or program offered pursuant to this Agreement. In the event funds to finance this Agreement, or part of this Agreement, become unavailable, the parties will make best efforts to provide twenty (20) days written notice to the other party prior to termination. COA shall be final authority as to the availability of federal, state, or local funds.

Additionally, COA may terminate this Agreement without obligation or liability to COA if ODA determines, through the appeals process or through monitoring, that this Agreement was entered into inappropriately.

SECTION XII - ASSIGNABILITY

A. Provider shall not assign, subcontract, or transfer its rights and duties under this Agreement without the prior written consent of COA, which may be withheld in COA's sole and absolute discretion. COA and Provider each bind themselves, their permitted successors and assignees to this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer, director, trustee, employee or agent of either COA or Provider.

B. If Provider is being purchased by, or merged with, another entity (even if the purchasing/merging entity has an existing Agreement with COA), the Provider shall provide written notice to COA at least sixty days (60) prior to the effective date of such merger or purchase. Provider must notify COA prior to notifying consumers being served by Provider for COA under this Agreement of such purchase or merger. Provider acknowledges that a purchase of or merger with another entity may affect the terms of this Agreement. Upon receipt of written notification, COA will notify Provider of any effect such a merger or purchase will have on this Agreement.

C. If Provider subcontracts any services offered under the Agreement, Provider is solely responsible for assuring subcontractor(s) meet all applicable terms and conditions of this Agreement and all applicable federal, state, and local laws and regulations. Such subcontracts shall be in writing, current, and available to COA upon request.

SECTION XIII - NOTICE REQUIREMENTS

Whenever, under this Agreement, notice is required to be given, it shall be in writing and shall either be hand-delivered, sent via the United States Postal Service certified mail, or sent prepaid, return receipt requested, via an overnight express carrier to the party to receive the notice at:

If to COA to: Council on Aging of Southwestern Ohio
175 Tri County Parkway
Cincinnati, OH 45246

Attention: Suzanne Burke
Chief Executive Officer

If to Provider to:

Colerain Township Senior & Community Center
4200 Springdale Road
Colerain Township, OH 45251

Attention: Tawanna Molter
Event Coordinator

SECTION XIV - MISCELLANEOUS

A. **APPEALS:**

Provider shall have the right of appeal regarding actions taken by COA pertaining to this Agreement per the COA Appeals Process Policy and OAC Rule 173-03-09. (See Appendix D of the 2019 Title III RFP)

B. **CONFLICT OF INTEREST**:

Provider agrees to have in force a written conflict of interest policy that, at a minimum:

1. Applies to the procurement and disposition of all real property, equipment, supplies, and services by the agency and to the agency's provision of assistance to individuals, businesses, and other private entities.
2. Provides that no employee, board member, or other person who exercises any decision-making function with respect to agency activities may obtain a personal or financial benefit from such activities for themselves or those with whom they have family or business ties during their tenure with the agency.
3. Assures that no immediate family member of any person(s) employed by the Provider can be a member of the Provider's Board of Trustees or ruling body.
4. Assures that no purchase of supplies, vehicles, or equipment is made with COA funds from any person(s) employed by the Provider or from an immediate family member of any employee. An immediate family member is defined as spouse, parent, grandparent, brother, sister, child, or in-law.

C. **RELATIONSHIP OF THE PARTIES**:

It is mutually understood and agreed that Provider is and shall at all times be considered to be engaged by COA to perform services pursuant to this Agreement as an independent contractor. Provider is not an agent or employee of COA by virtue of this Agreement. COA shall neither have nor exercise any control or direction over the methods by which Provider shall perform Provider work and functions under this Agreement, provided that all services shall at all times be performed in a manner consistent with all relevant professional standards and the provisions of this Agreement and applicable law.

Provider shall not make any monetary, material or “in kind” contribution of any nature to COA or any COA staff member, manager, trustee, officer or agent.

D. **MEDIA, PUBLIC RELATIONS, AND OUTREACH**:

Provider shall collaborate with COA to help ensure that media relations, public information, and outreach related to the Title III Program are mutually beneficial to the Provider and to COA including any use of social media.

Any Title III outreach campaigns, including media relations, shall be coordinated with the COA Communications Director prior to planning such campaigns.

Per OAC rule 173-3-06, Section (B)(4)(b), provider 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.

Program information, whether in print or electronic format, shall include, at a minimum, the COA Agency Partner logo and a statement that the program or service receives funds administered by Council on Aging of Southwestern Ohio. Formats for such information include, but are not limited to, brochures, annual reports, news releases, media interviews, and web site content. News releases do not have to include the COA Partner Logo, but if the news release concerns a Title III-funded program or service, it should state that the program receives funds administered by Council on Aging of Southwestern Ohio. In media interviews, there should be informal, verbal acknowledgement of COA. In the spirit of this agreement, Provider should include the COA Agency Partner logo in paid advertisements whenever this is possible without incurring additional expense due to increased advertisement size. The COA Agency Partner logo can be downloaded from the COA website, *www.help4seniors.org*, under Service Provider Information. Or, upon request to the Communications Manager, COA will furnish Provider with logo in digital format.
If Provider has a website that includes content about the Title III Program, Provider shall establish and maintain a link from the TITLE III section to the COA website, *www.help4seniors.org.*

If contacted by the news media regarding any major unusual incident, Provider is not to respond to the media inquiry, but must immediately, as soon as possible within one hour, contact COA's Communications Manager by phone or e-mail. For major unusual incidents see paragraph "E" of this section.

COA Communications Manager can be reached by phone at (513) 345-3315 or (513) 509-9211 (mobile phone) or e-mail *Psmith@help4seniors.org*.

Although information about and generated under this Agreement may fall within the public domain, Provider will not release information about or related to this Agreement to the general public or media verbally, in writing, or by any electronic means without prior approval from the COA Communications Director, unless Provider is required to release requested information by law.

Except where COA approval has been granted in advance, the Provider will not seek to publicize and will not respond to unsolicited media queries requesting: announcement of Agreement award, Agreement terms and conditions, Agreement scope of work, government-furnished documents COA may provide to Provider to fulfill this Agreement scope of work,

deliverables required under this Agreement, results obtained under this Agreement, and impact of Agreement activities. If contacted by the media about this Agreement, Provider agrees to notify the COA Communications Director in lieu of responding immediately to media queries. If it is not feasible for the Provider to contact the Communications Manager first, the Provider may discuss with the media general service provision only as related to this Agreement.

Nothing in this section is meant to restrict Provider from using Agreement information to market to specific consumers or prospects.

Provider shall not make any monetary, material or "in-kind" contribution of any nature to COA or any COA staff member, manager, trustee, officer or agent.

COA reserves the right to announce to the general public and media: award of this Agreement, Agreement terms and conditions, scope of work under this Agreement, deliverables and results obtained under this Agreement, impact of Agreement activities, and assessment of Providers' performance under this Agreement.

E. **MAJOR UNUSUAL INCIDENT** (INCLUDING ABUSE, NEGLECT, OR EXPLOITATION)

Provider shall have a written policy detailing procedure for reporting major unusual incidents.

Provider shall notify COA of any and all major unusual incidents that impact the Provider and/or any consumer served pursuant to this Agreement. The notification shall be phoned or e-mailed to COA's Manager of Provider Services immediately, within one hour, after the Provider becomes aware of the major unusual incident. Provider agrees to furnish, upon request of COA, any reports relating to such incident and to cooperate with COA and/or its authorized representatives in any investigation of any major unusual incident.

A major unusual incident is any alleged, suspected, or actual occurrence of an incident/event that could adversely affect the health or safety of a consumer, the credibility of Provider's staff or organization, or any incident in which COA or Provider may have liability. Major unusual incidents include, but are not limited to: abuse; neglect; suspicious accident; death from abuse, neglect, serious injury, or any reason other than natural causes; criminal or suspected criminal acts; a police, court/legal, or public complaint which has the potential to be reported to the media or elected officials or any in which COA or Provider may have liability; lawsuit or potential lawsuit.

Additionally, any Provider 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 provider has reasonable cause to believe a consumer is the victim of abuse, neglect, or exploitation, and has the consent of the consumer in accordance with section 5101.63 of the Revised Code.

F. **SPECIAL CONDITIONS**

Provider also agrees to the following special conditions:

1. Immediately notify COA's Manager of Provider Services of any incident that poses a health risk or may be viewed as a risk to the health and safety of any consumer**.** COA's Manager of Provider Services can be reached by phone at (513) 721-1025.
2. Notify COA's Manager of Provider Services of any interruption in service to all consumers or to a significant number of consumers served by Provider.
3. Include the phrase "Funded by the Ohio Department of Aging through Council on Aging of Southwestern Ohio" on all program literature purchased with Title III or State funds and whenever possible include the COA logo. (See section D above for usage information and instructions on obtaining logo.)
4. Menus of all Title III meals served under this Agreement must be approved by COA's dietitian or nutrition personnel.
5. Designated staff members, as applicable, are trained in first aid and CPR procedures.
6. Maintain an advisory council or Board of Trustees.
7. Assure that where State or local public jurisdictions require licensure for the provision of services, Provider will be licensed.
8. Cooperate with COA 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 or a local emergency management official declares that the Provider's service area is a disaster area. COA may also call upon Provider to assist in times of other disaster or emergencies as deemed necessary by COA.
9. Fulfill all NAPIS reporting requirements of ODA and COA.
10. Provider using the caterer or caterers designated by COA (each a "Caterer") as the vendor (meal preparation and delivery) for meals provided by the Caterer agrees to process payment to the Caterer within forty-five (45) days of receipt of invoice from the Caterer.
11. All meals supervisors shall attend meal supervisor training sessions and meetings sponsored by COA.
12. Provider will ensure that no information about, or obtained from, an individual and in its possession will be disclosed in a form identifiable with an individual without the informed consent of the individual. Lists of older persons compiled pursuant to the provision of Information and Referral will be used solely for the purpose of providing social services, only with the informed consent of each individual on such list.
13. Unless Provider has received a prior waiver from COA, Provider agrees to use the food service vendor specified by and under contract with COA (hereafter referred to as food service vendor) as the vendor for all Catered Meals. In order to ensure food quality and service, COA has conducted a bid process, selected and contracted with a food service provider to be the sole vendor for Catered Meals, whether served at a Congregate Meal site or served as Home Delivered Meals. Provider agrees to process payment to the food service vendor within forty-five (45) calendar days of receipt of monthly invoice from the food service vendor.
14. Provider will notify COA care management staff of any significant change that may necessitate a reassessment of the case-managed consumer's need for goods or services no later than one day after the provider is aware of a repeated refusal to receive goods or services; changes in the consumer's physical, mental, or emotional status; documented changes in the consumer's environmental conditions; or, other significant, documented changes to the consumer's health and safety.
15. Provider will notify COA and the consumer in writing of the anticipated last day of service to a consumer in a care-coordination program no later than thirty (30) business

days before the anticipated last day of service, unless the reason for discontinuing the service is the hospitalization, institutionalization, or death of the consumer; serious risk to the health or safety of the provider; the consumer's decision to discontinue the service; or a similar reason why the provider is unable to notify COA thirty (30) days before the anticipated last day of service. Provider shall also notify the consumer how he or she may reach a long-term care ombudsman.

G. **BREACH / WAIVER OF BREACH**:

If Provider has materially breached the terms of this Agreement, COA agrees to deliver to Provider a written notice detailing the nature of the breach and the timeframe within which the breach must be corrected (generally 10 days after receipt of the written notice thereof). If Provider has not corrected the breach within the timeframe specified by COA, COA, at its sole discretion, may sanction, suspend or terminate this Agreement upon written notice of such sanction, suspension or termination.

Notwithstanding anything herein to the contrary, in the event that COA determines Provider is in breach of this Agreement, COA shall have the right to withhold 5% of the next monthly payment due to Provider hereunder, pending Provider's cure of the breach to COA's satisfaction. In such event, one-half of said 5% withheld shall be paid to Provider upon cure of the breach, and the remaining one-half shall be paid to Provider 90 days after the cure of the breach so long as Provider is not then otherwise in breach of this Agreement. Such right to withhold is in addition to, and not in limitation of, COA's other rights and remedies under this Agreement or Ohio law in the event of Provider's breach of this Agreement.

Any waiver of any breach of this Agreement shall not be construed to be a continuing waiver or consent to any subsequent breach on the part of either party to this Agreement.

H. **SEVERABILITY**:

If any provision of this Agreement is held to be unenforceable for any reason, the remainder of this Agreement shall, nevertheless, remain in full force and effect.

I. **PRIORITY OF DOCUMENTS**:

The Agreement, the RFP, the Application, the Ohio Department of Aging Current Administrative Rules and other documents referenced therein shall be read so as to complement each other. However, in the event of an irreconcilable conflict in the terms thereof, the Ohio Department of Aging Current Administrative Rules shall control, then the provisions of this Agreement; then the RFP, then the Application, and then other documents referenced herein.

J. **GOVERNING LAW**:

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to its rules as to conflicts of laws.

SECTION XV - TERM OF THE AGREEMENT

This Agreement by and between Provider and COA shall be effective October 1, 2019 and shall remain in effect, unless amended or terminated by one or both of the parties, through September 30, 2022.

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all prior Agreements and understandings, whether written or oral.

All provisions in this Agreement that by their terms must necessarily be performed after termination or expiration of this Agreement (e.g., records retention, auditing requirements, etc.) shall survive such termination or expiration.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures.

Provider: Colerain Township Board of Trustees dba Colerain Township Senior & Community Center
4200 Springdale Road
Colerain Township, OH 45251

DocuSigned by:
851E351322CB412...

Date: 9/25/2019

Geoff Milz
Administrator

COA: Council on Aging of Southwestern Ohio
175 Tri County Parkway
Cincinnati, OH 45246

Date:

Suzanne Burke
Chief Executive Officer

ATTACHMENT A

Title III Hardware & Software System Requirements

Title III Hardware & Software System Requirements

Applicants are required to have high speed internet access (minimum DSL and/or cable modem) **to enable connection via the internet to the SAMS application**.

Access

WellSky hosts the SAMS application and allows connections via Citrix. According to WellSky, users have the option of choosing any operating system they want (Windows, Mac, Linux, etc.), as long as they have Internet Explorer 6.1or later with the appropriate service pack. Other browsers may be used but could have problems displaying information within the SAMS application.

Technical Support and Computer/Communication Problems

Personnel are available to handle the password needs of the SAMS application, such as resetting passwords.
COA technical staff will provide technical support for Applicant's to connect to the SAMS application only. We cannot provide support for the Applicant's computer equipment or connectivity to the internet except as it related to connection to SAMS.
Questions regarding these specifications or to obtain additional information regarding connectivity or problems please contact:

Computer Help Desk, Phone: (513) 345-3303, Fax: (513) 721-0090
E-mail: helpdesk@help4seniors.org

COA Applicant Support/Computer Help Desk

COA provides support to Applicants as it relates to the SAMS application. Read this document carefully to understand the coverage being provided.

Service(s) Provided

COA will provide technical support as it relates to connectivity to the SAMS application.

Services Not Covered

COA cannot provide support for the Applicant's computer equipment except as it relates to connectivity to the SAMS application. The Applicant is responsible for getting connected to the internet and accessing the SAMS webpage at https://fs.harmonyis.net/adfs/ls/?wa=wsignin1.0&wtrealm=https%3a%2f%2flogin.harmonyis.net%2f_trust%2f&wctx=https%3a%2f%2flogin.harmonyis.net%2f_layouts%2fAuthenticate.aspx%3fSource%3d%252F- for the full version of SAMS.

Connection or Other Fees

COA retains the right to implement computer hardware, software, or other user fees, at any time, upon providing advance notice to Applicant of its intent to do so.

Computer Help Desk Coverage and Service

COA will provide support Monday - Friday between the hours of 8:00 am - 4:30 pm EST. The **Computer Help Desk number is (513) 345-3303** and will be staffed during these hours. In the event your call goes to Voicemail, please leave a message and the call will be returned quickly, usually within the hour, but no longer than four (4) business hours. We strive to serve you with the best and most courteous customer service available. If, after contacting the Computer Help Desk, you feel a problem and concern hasn't been addressed to your satisfaction, please feel free to call COA IT Manager, at (513) 721-1025.

ATTACHMENT B

FOCAL POINTS

A "focal point" is a highly visible facility designated by COA as a focal point where anyone in the community may obtain information and access to services for older persons and that encourages the maximum collocation and coordination of services, per the definition noted in Section 306(a)(3)(B) of the Older Americans Act. The following are the focal points for the service area covered by this agreement:

- Alzheimer's Association of Greater Cincinnati
- Catholic Charities of Southwestern Ohio
- Central Connections
- Cincinnati Area Senior Services, Inc.
- Cincinnati Recreation Commission (all sites receiving funds under this Agreement)
- Clermont Senior Services, Inc.
- Clinton County Community Action Program
- Colerain Township Community Center
- Harrison Senior Center
- Hyde Park Multi-Service Center for Older Adults
- Jewish Family Service of the Cincinnati Area
- MARIELDERS, Inc.
- Mayerson JCC
- North College Hill Senior Center
- North Fairmount Community Center
- Oxford Senior Citizens, Inc.
- Partners in Prime
- Pro Seniors, Inc.
- Warren County Community Services, Inc.
- West College Hill Neighborhood Services, Inc.

Service & Funding Schedule

Planning and Service Area 1

Issued: 09/23/2019
Effective: 10/01/2019

Contract Date period 10/01/2019 - 09/30/2020
Provider: Colerain Township Senior Center

Service Category	Service Unit	Units	Title III B	Title III C1	Title III C2	Title III D	Title III E	NSIP	Senior and Community Services	COA Total Funding	COA Reimb Rate	*Title III Required Match*	Total Program Cost	Total Program Unit Rate
Congregate Services	1 Meal	1,088	$0	$6,231.00	$0	$0	$0	**$863**	**$0**	**$7,094**	**$6.52**	***$1,100***	**$8,194**	**$7.53**
Transportation: One-Way Trip	1-Way Trip	2,288	$21,207.00	$0	$0	$0	$0	**$0**	**$0**	**$21,207**	**$9.27**	***$3,742***	**$24,949**	**$10.91**
TOTALS		**3,376**	**$21,207**	**$6,231**	**$0**	**$0**	**$0**	**$863**	**$0**	**$28,301**		**$4,842**	**$33,143**	

***NOTE Total Program Cost = Award Plus Match Dollars

Title III B	Supportive Service, CFDA #93.044
Title III C-1	Congregate Meals, CFDA #93.045
Title III C-2	Home Delivered Meals, CFDA #93.045
Title III D	Disease Prevention & Health Promotion, CFDA #93.043
Title III E	National Family Caregiver Support Program & Administration, CFDA #93.052
Title VII	Elder Abuse Prevention, CFDA #93.041
Title VII	Ombudsman, CFDA #93.042
NSIP (**N**utrition **S**ervices **I**ncentive **P**rogram)	Delivery of Nutritious Meals, CFDA #93.053

DocuSigned by:
851F351322CB412...

9/25/2019

Geoff Milz
Administrator
Date

Suzanne Burke
Chief Executive Officer
Date

BUSINESS ASSOCIATE AGREEMENT

COUNCIL ON AGING OF SOUTHWESTERN OHIO

WHEREAS, pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 2024 (Aug. 21, 1996) ("HIPAA"), the Office of the Secretary of the Department of Health and Human Services has issued: (1) regulations providing Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Subparts A and E of Part 164 ("Privacy Rule"); (2) regulations providing Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Subpart C of Part 164 (the "Security Rule"); (3) regulations requiring certain transmissions of electronic date be conducted in standardized formats at 45 CFR Subpart I of Part 162 (the "Electronic Transactions Rule"); and (4) regulations modifying the Privacy Rule, Security Rule, Enforcement and Breach Notification Rules; and

WHEREAS, the privacy and security provisions of HIPAA have been amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) provisions of the American Recovery and Reinvestment Act of 2009, and any and all references in this Agreement to the "HIPAA Rules" shall be deemed to include the Privacy Rule, the Security Rule, the Electronic Transaction Rule, HITECH, the Enforcement and Breach Notification Rules, and all existing and future implementing regulations, as they become effective; and

WHEREAS, the HIPAA Rules provide, among other things, that a Covered Entity is permitted to disclose Protected Health Information to a Business Associate and allow the Business Associate to obtain, receive, and create Protected Health Information on the Covered Entity's behalf, only if the Covered Entity obtains satisfactory assurances in the form of a written contract, that the Business Associate will appropriately safeguard the Protected Health Information; and

WHEREAS, Council on Aging of Southwestern Ohio ("Covered Entity") has engaged Colerain Township ("Business Associate") to perform services pursuant to an agreement to provide service to Covered Entity, which may be described in a separate contract (the "Services Arrangement") and Business Associate may receive Protected Health Information from Covered Entity, or create and receive such information on behalf of Covered Entity in the performance of services on behalf of Covered Entity. Covered Entity and Business Associate desire to determine the terms under which they shall comply with the HIPAA Rules;

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. GENERAL HIPAA COMPLIANCE PROVISIONS

1.1. **HIPAA Definitions.** Except as otherwise provided in this Agreement, all capitalized terms contained in this Agreement shall have the meanings set forth in the HIPAA Rules.

1.2. **HIPAA Readiness.** Business Associate agrees that it will be fully compliant with the requirements of the HIPAA Rules by the compliance dates established under such rules to the extent necessary to enable Covered Entity to comply with their obligations under the HIPAA Rules.

1.3. **Changes in Law.** Business Associate agrees that it will comply with any changes in HIPAA Rules by the compliance date established for any such changes. If, due to such a change, either or all of the parties are no longer required to treat Protected Health Information in the manner provided for in this Agreement, the parties shall renegotiate this Agreement, subject to the requirements of Section 5. Any such renegotiation shall occur as soon as practicable following the occurrence of the change.

1.4. **Relationship.** The relationship of the Business Associate to Covered Entity is solely a contractual relationship and nothing in the Services Arrangement or this Agreement shall be interpreted as creating an agency relationship with the Business Associate under Federal common law.

2. OBLIGATIONS OF BUSINESS ASSOCIATE

2.1. Permitted Uses and Disclosures of Protected Health Information.

2.1.1. **Uses and Disclosures on Behalf of Covered Entity**. The Business Associate shall be permitted to use and disclose Protected Health Information for services Business Associate is providing to Covered Entity pursuant to the Services Arrangement, which may include but not be limited to Treatment, Payment activities and/or Health Care Operations, and as otherwise required to perform its obligations under this Agreement and the Services Arrangement.

2.1.2. **Other Permitted Uses and Disclosures**. In addition to the uses and disclosures set forth in Section 2.1.1, Business Associate may use or disclose Protected Health Information received from, or created or received on behalf of, Covered Entity under the following circumstances:

2.1.2.1. **Use of Protected Health Information for Management, Administration, and Legal Responsibilities.** Business Associate is permitted to use Protected Health Information if necessary for the proper management and administration of Business Associate or to carry out its legal responsibilities.

2.1.2.2. **Disclosure of Protected Health Information for Management, Administration, and Legal Responsibilities.** Business Associate is permitted to disclose Protected Health Information if necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities, provided that the disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person will notify Business Associate immediately of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.

2.1.2.3. **Data Aggregation Services.** Business Associate is also permitted to use or disclose Protected Health Information to provide data aggregation services, as that term is defined by 45 CFR 164.504, relating to the health care operations of Covered Entity.

2.1.2.4. **Commercial Purposes.** Business Associate is only permitted to receive direct or indirect remuneration for any exchange of PHI not otherwise authorized under HITECH without individual authorization, if (i) specifically required for the provision of services under the underlying Services Arrangement; (ii) for treatment purposes; (iii) providing the individual with a copy of his Protected Health Information; or (iv) otherwise determined by the Secretary in regulations.

2.1.3. **Further Uses Prohibited.** Except as provided in Sections 2.1.1 and Section 2.1.2, Business Associate is prohibited from further using or disclosing any information received from Covered Entity, or from any other Business Associate of Covered Entity, for any commercial purposes of Business Associate, including, for example, "data mining." Business Associate shall not engage in any sale (as defined in HIPAA Rules) of Protected Health Information.

2.2. **Minimum Necessary.** Business Associate shall only request, use, and disclose the minimum amount of Protected Health Information necessary to accomplish the purposes of the request, use, or disclosure. Business Associate and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with HITECH and the HIPAA Rules.

2.3. **Prohibited, Unlawful, or Unauthorized Use and Disclosure of Protected Health Information**. Business Associate shall not use or further disclose any Protected Health Information received from, or created or received on behalf of, Covered Entity, in a manner that would violate the requirements of the Privacy Rule if done by Covered Entity.

2.4. **Required Privacy Safeguards.** Business Associate will develop, implement, maintain, and use appropriate safeguards to prevent use or disclosure of Protected Health Information received from, or created or received on behalf of, Covered Entity or other than as provided for in this Agreement or as required by law, including adopting policies and procedures regarding the safeguarding of Protected Health Information; and providing training to relevant employees, independent contractors, and subcontractors on such policies and procedures to prevent the improper use or disclosure of Protected Health Information. To the extent Business Associate will carry out one or more of Covered Entity's obligations under the Privacy Rule, the Business Associate will comply with the requirements of the Privacy Rules that apply to the Covered Entity in the performance of such obligations.

2.5. **Mitigation of Improper Uses or Disclosures.** Business Associate shall 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.

2.6. **Reporting of Unauthorized Uses and Disclosures.** Business Associate shall promptly report in writing to Covered Entity any use or disclosure of Protected Health Information not provided for under this Agreement, of which Business Associate becomes aware, but in no event later than five business days of first learning of any such use or disclosure. Business Associate agrees that if any of its employees, agents, subcontractors or representatives use or disclose Protected Health Information received from, or created or received on behalf of, Covered Entity, or any derivative De-identified Information in a manner not provided for in this Agreement, Business Associate shall ensure that such employees, agents, subcontractors and representatives shall receive

training on Business Associate's procedures for compliance with the HIPAA Rules, or shall be sanctioned or prevented from accessing any Protected Health Information Business Associate receives from, or creates or receives on behalf of, Covered Entity. Continued use of Protected Health Information in a manner contrary to the terms of this Agreement shall constitute a material breach of this Agreement.

2.7. **Security Rule.**

2.7.1. **Security Safeguards.** Business Associate agrees to implement administrative, physical, and technical safeguards set forth in the Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

2.7.2. **Security Incidents.** Business Associate agrees to report to Covered Entity any unauthorized access, use, disclosure, modification, or destruction of information or interference with information system operations which affect Electronic Protected Health Information created, received, maintained, or transmitted on behalf of Covered Entity of which Business Associate becomes aware. Business Associate agrees to also report to Covered Entity any attempted unauthorized access affecting Electronic Protected Health Information created, received, maintained, or transmitted on behalf of Covered Entity of which Business Associate becomes aware; provided that Business Associate determines that the attempted access was material and credible.

2.8. **Breach Incident Notifications.** Business Associate agrees to notify the applicable Covered Entity of any disclosure of Unsecured Protected Health Information that may constitute a Breach (a "Breach Incident") within 10 days from the date of discovery.

2.8.1. **Information About Breach Incident.** Business Associate shall provide a report to Covered Entity within 15 days of discovery of a Breach Incident except when despite all reasonable efforts by Business Associate to obtain the information required, circumstances beyond the control of the Business Associate necessitate additional time. Under such circumstances Business Associate shall provide to Covered Entity the required information as soon as possible and without unreasonable delay, but in no event later than 30 calendar days from the date of discovery of a Breach Incident. A Breach Incident will be treated as discovered in accordance with 45 CFR §164.410. The Business Associate's report shall include: (i) the date of the Breach Incident; (ii) the date of discovery of the Breach Incident; (iii) a list of each individual whose Unsecured Protected Health Information has been or is reasonably believed to have been used, accessed, acquired, or disclosed during the Breach Incident; (iv) a description of the type of Unsecured Protected Health Information involved; (v) the identity of who made the non-permitted use or disclosure and who received the non-permitted disclosure (if known); and (vi) any other details necessary to complete an assessment of the risk of harm to the affected individual.

2.8.2. **Notification to Individual and Others.** Unless otherwise agreed between Covered Entity and Business Associate, if Covered Entity determines that the disclosure of Unsecured Protected Health Information constitutes a Breach, Covered Entity shall be responsible to provide notification to individuals whose Unsecured Protected Health Information has been disclosed, as well as the Secretary of Health and Human Services and the media, as required by 45

CFR 164 Subpart D. Business Associate agrees to pay actual costs for notification and of any associated mitigation incurred by Covered Entity, such as credit monitoring, if Covered Entity reasonably determines that the Breach is significant enough to warrant such measures.

2.8.3. **Investigation and New Procedures.** Business Associate agrees to investigate the Breach Incident and to establish procedures to mitigate losses and protect against future Breach Incidents, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.

2.9. **Individual Requests**. Covered Entity and Business Associate acknowledge that Individuals have certain rights under the Privacy Rule to access, amend and receive an accounting of certain disclosures of their Protected Health Information. Business Associate further understands that Covered Entity has developed specific policies and procedures to be followed for Individuals who make such requests as an exercise of their rights under the Privacy Rule. A request by an Individual or such Individual's personal representative made in accordance with such policies and procedures to access, amend or receive an accounting of disclosures of the Individual's Protected Health Information is referred to herein as a "Formal HIPAA Request."

2.9.1. **Access to Protected Health Information.** Within 10 days of Covered Entity's request on behalf of an Individual, Business Associate agrees to make available to Covered Entity any relevant Protected Health Information in a Designated Record Set received from, or created or received on behalf of, Covered Entity in accordance with the Privacy Rule. If Business Associate receives, directly or indirectly, a request from an individual requesting Protected Health Information, Business Associate shall notify Covered Entity in writing promptly of such request no later than 5 business days of receiving such request. If Covered Entity requests an electronic copy of Protected Health Information that is maintained electronically in a Designated Record Set in the Business Associate's custody or control, Business Associate will provide an electronic copy in the form and format specified by Covered Entity if it is readily producible in such format; if it is not readily producible in such format, Business Associate will work with Covered Entity to determine an alternative form and format that enables Covered Entity to meet its electronic access obligations under 45 CFR §164.524.

2.9.2. **Amendment of Protected Health Information**. Within 10 days of Covered Entity's request, Business Associate agrees to make available to Covered Entity any relevant Protected Health Information in a Designated Record Set received from, or created or received on behalf of, Covered Entity so Covered Entity may fulfill its obligations to amend such Protected Health Information pursuant to the Privacy Rule. Business Associate shall incorporate any amendments to Protected Health Information into any and all Protected Health Information Business Associate maintains. If Business Associate receives, directly or indirectly, a request from an Individual requesting Protected Health Information, Business Associate shall notify Covered Entity in writing promptly of such request no later than 5 business days of receiving such request. Covered Entity shall have full discretion to determine whether the requested amendment shall occur.

2.9.3. **Accounting of Disclosures.** Business Associate shall maintain, beginning as of the date Business Associate first receives Protected Health Information from Covered Entity, an accounting of those disclosures of Protected Health Information it receives from, or creates or receives on behalf of, Covered Entity which are not excepted from disclosure accounting under the

Privacy Rule. Within 10 days of Covered Entity's request, Business Associate shall make available to Covered Entity the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528. If Business Associate receives, directly or indirectly, a request from an individual requesting an accounting of disclosures of Protected Health Information, Business Associate shall notify Covered Entity in writing promptly of such request no later than 5 business days of receiving such a request. Business Associate shall provide such an accounting based on an Individual's Formal HIPAA Request to the Covered Entity. Covered Entity shall have full discretion to determine whether the requested accounting shall be provided to the requesting Individual. Business Associate will maintain the disclosure information for at least 6 years following the date of the accountable disclosure to which the disclosure information relates.

2.10. **Restrictions and Confidential Communications.** Business Associate shall, upon notice from Covered Entity in accordance with Section 3.3, accommodate any restriction to the use or disclosure of Protected Health Information and any request for confidential communications to which Covered Entity has agreed or is required to abide by in accordance with the Privacy Rule.

2.11. **Subcontractors.** Business Associate will require any of its Subcontractors to whom it provides Protected Health Information received from, or created or received on behalf of, Covered Entity to agree, in a written agreement with Business Associate, to comply with the Security Rule, and to agree to all of the same restrictions and conditions contained in this Agreement or the Privacy and Security Rules that apply to Business Associate with respect to such information. Business Associate shall not assign any of its rights or obligations under this Agreement without the prior written consent of Covered Entity. Business Associate shall provide Covered Entity for approval a copy of any agreement with any agent or subcontractor to whom Business Associate provides Protected Health Information received from, or created or received on behalf of, Covered Entity prior to its execution.

2.12. **Data Transmission.** The parties agree that Business Associate shall, on behalf of Covered Entity, transmit data for transactions that are required to be conducted in standardized format under the HIPAA Rules. Electronic Protected Health Information that is transmitted over an electronic communications network will be protected against unauthorized access to, or modification of, electronic protected health information. When electronic protected health information is transmitted from one point to another, it will be protected in a manner commensurate with the associated risk. This includes, but is not limited to, transmission through mobile devices and smart phones.

2.12.1. **Standardized Format.** Business Associate shall comply with the HIPAA Rules for all transactions conducted on behalf of Covered Entity that are required to be in standardized format.

2.12.2. **Subcontractors.** Business Associate shall ensure that any of its subcontractors to whom it delegates any of its duties under its contract with Covered Entity, agrees to conduct and agrees to require its agents or subcontractors to comply with the HIPAA Rules for all transactions conducted on behalf of Covered Entity that are required to be in standardized format.

2.13. **Audit.**

2.13.1. **Audit by Secretary of Health and Human Services.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received on behalf of, Covered Entity available to the Secretary of Health and Human Services upon request for purposes of determining compliance by Covered Entity with the Privacy and Security Rules.

2.13.2. **Audit by Covered Entity.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received on behalf of, Covered Entity available to Covered Entity within 14 business days of Covered Entity's request for the purposes of monitoring Business Associate's compliance with this Agreement.

2.14. **Enforcement.** Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the HIPAA Rules.

3. OBLIGATIONS OF COVERED ENTITY

3.1. **Notice of Privacy Practices**. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

3.2. **Revocation of Permission.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by any Individual to use or disclose Protected Health Information, if such changes affect Business Associate**'**s permitted or required uses and disclosures with respect to Covered Entity.

3.3. **Notice of Restrictions and Confidential Communications**. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information and any request for confidential communications that Covered Entity has agreed to or must abide by in accordance with the HIPAA Rules.

3.4. **Permissible Requests By Covered Entity.** Except as provided in Section 2.1, Covered Entity shall not request that Business Associate use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

4. LIABILITY

4.1. **Indemnification by Business Associate.** Business Associate shall be solely responsible for, and shall indemnify and hold Covered Entity harmless from any and all claims, damages, or causes of action (including the Covered Entity's reasonable attorneys' fees) arising out of the gross negligence or willful misconduct of Business Associate or Business Associate's employees, agents, and Subcontractors (or arising out of any action by the Business Associate that is determined to have been taken as the agent of the Covered Entity under the terms of the Services Agreement or this Agreement), and Business Associate will pay all losses, costs, liabilities, and expenses agreed to in settlement of, or in compromise of, or finally awarded Covered Entity in

connection with such claims or actions. Covered Entity shall notify Business Associate promptly of any action or claims threatened against or received by them and provide Business Associate with such cooperation, information, and assistance as Business Associate shall reasonably request in connection therewith. This Section 4.1 shall survive the termination of this Agreement.

4.2. **Indemnification by Covered Entity –** Section intentionally removed**.**

5. AMENDMENT AND TERMINATION

5.1. **Termination for Violation of Agreement.** Without limiting the rights of the parties under the Services Arrangement, Covered Entity will have the right to terminate this Agreement and the Services Arrangement if Business Associate has engaged in an activity or practice that constitutes a material breach or violation of Business Associate's obligations regarding Protected Health Information under this Agreement and, on notice of such material breach or violation from Covered Entity, fails to take reasonable and diligent steps to cure the breach or end the violation. Covered Entity will follow the notice of termination procedures (if any) applicable to the Services Arrangement. Notwithstanding the termination of this Agreement, Business Associate shall continue to comply with Section 5.2 hereof after termination of this Agreement.

5.2. **Return of Protected Health Information.** At termination of this Agreement or the Services Arrangement, whichever shall be first to occur, Business Associate shall return to Covered Entity all Protected Health Information received from, or created or received on behalf of, Covered Entity that Business Associate maintains in any form and shall retain no copies of such information. This provision shall also apply to Protected Health Information that is in the possession of any Subcontractor of Business Associate. Further, Business Associate shall require any such Subcontractor to certify to Business Associate that it has returned or destroyed all such information. If such return is not feasible, Business Associate shall notify Covered Entity thereof and Business Associate shall destroy such Protected Health Information and/or extend the protections of this Agreement to such Protected Health Information retained by Business Associate and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

6. MISCELLANEOUS PROVISIONS

6.1. **Third-Party Beneficiary.** No individual or entity is intended to be a third-party beneficiary to this Agreement.

6.2. **Severability.** If any provisions of this Agreement shall be held by a court of competent jurisdiction to be no longer required by the HIPAA Rules, the parties shall exercise their best efforts to determine whether such provision shall be retained, replaced, or modified.

6.3. **Procedures.** The parties shall comply with procedures mutually agreed upon by the parties to facilitate the Covered Entity's compliance with the HIPAA Rules, including procedures for employee sanctions and procedures designed to mitigate the harmful effects of any improper use or disclosure of the Protected Health Information of Covered Entity.

6.4. **Choice of Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Ohio, except to the extent federal law applies.

6.5. **Headings.** The headings and subheadings of the Agreement have been inserted for

convenience of reference only and shall not affect the construction of the provisions of the Agreement.

6.6. **Cooperation.** The parties shall agree to cooperate and to comply with procedures mutually agreed upon to facilitate compliance by Covered Entity with the HIPAA Rules, including procedures designed to mitigate the harmful effects of any improper use or disclosure of Covered Entity's Protected Health Information.

6.7. **Notice.** All notices, requests, demands, approvals, and other communications required or permitted by this Agreement shall be in writing and sent by certified mail or by personal delivery. Such notice shall be deemed given on any date of delivery by the United States Postal Service. Any notice shall be sent to the following address (or such subsequent address provided by the applicable party):

6.7.1. If to Covered Entity:

Council on Aging
Privacy Officer
175 Tri County Parkway
Cincinnati, Ohio 45246
(513) 721-1025

6.7.2. If to Business Associate

Colerain Township
Geoff Milz Township Administrator
4200 Springdale Rd
Colerain Township, Ohio 45251

6.8. **Conflict.** In the event of any conflict between the provisions of the Services Arrangement and this Agreement, the terms of this Agreement shall govern to the extent necessary to assure Covered Entity's compliance with the HIPAA Rules.

IN WITNESS WHEREOF, the undersigned, having full authority to bind their respective principals, have executed this Agreement as of this 25th day of September, 2019.

Covered Entity:

COUNCIL ON AGING OF SOUTHWESTERN OHIO

By: _____

Title: _____

Date: _____

Business Associate:
Colerain Township

By: DocuSigned by: _____
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Title: Township Administrator

Date: 9/25/2019