AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Memorandum of Understanding; State of Colorado Department of Human Services and the Board of County Commissioners of Other Elected Governing Body of Gunnison County, Colorado; Colorado Works Program and Childcare Services; 7/1/13 thru 6/30/15

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Gunnison County and CO Dept of Human Services

Term Begins: 7/1/2013 **Term Ends:** 6/30/2015 **Grant Contract #:**

Summary:
This was received 11/11/13 although term begins 7/1/2013. Little change from previous years.

Fiscal Impact: 0

Submitted by: R. Brown **Submitter's Email Address:** Rbrown@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

There is no fiscal impact detailed in this MOU. --M. Eden 12/18/2013

Reviewed by: GUNCOUNTY1\LNIENHUESER Discharge Date: 12/18/2013

County Attorney Review: (●) Required ( ) Not Required

Comments:

Reviewed by: GUNCOUNTY1\ATREZISE Discharge Date: 12/16/2013 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\MBIRNIE Discharge Date: 12/20/2013

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted:

Agenda Date: 1/7/2014 Follow Up Agenda Date:

Revised April 2013

Memorandum of Understanding - CW & CCAP - 2 Year Term

Madrid - CDHS, Darell [darell.madrid@state.co.us]

Sent: Wednesday, December 11, 2013 11:47 AM

To: ckline@adcogov.org; Joe Carrica; cternes@co.arapahoe.co.us; tstarr@archuletacounty.org; Ruth Wallace; Jonna Parker [jonna.parker@bentcounty.net]; falexander@bouldercounty.org; doldenettel@broomfield.org; Philip Maes; Jennifer Gribble; Cindy Dicken; Maria Garcia2; Tommy Vigil; Tonia Burnett; Laura Lockhart; Lemoine, Chuck [lemoine@deltacounty.com]; penny.may@denvergov.org; Dennis Story; dmakelky@douglas.co.us; rita.woods@eaglecounty.us; rachel.oys@eaglecounty.us; richardbengtsson@elpasoco.com; Jerri J Spear; Steven Clifton; mbaydarian@garfield-county.com; Elizabeth Donovan; Glen Chambers; Renee Brown; Sheila Hudson; ljohnson@jeffco.us; Dennis Pearson; Kindra Mulch; mayerle@co.laplata.co.us; Janeen McGee; griley@larimer.org; Catherine Salazar; Colette Barksdale; Dave Long; tracey.garchar@mesacounty.us; Jody Kern; Kerri T Klein; pmewes@montrosecounty.net; Steve Romero; Donna Rohde; Allan Gerstle; Joseph Homlar; Jacalyn Reynolds; nan.sundeen@co.pitkin.co.us; Fairbairn, Linda [lfairbairn@prowerscounty.net]; dssdirector@prowerscounty.net; tim.hart@dss.co.pueblo.co.us; Bonnie Ruckman; Jennifer M O'Hearon Cole; vclark@co.routt.co.us; Jeannie Norris; Lisa Ault; Joanne Sprouse; Kim Mauthe; Rick Agan; Griego, Judy [griegoja@co.weld.co.us]; David Henson; dallen@alamosacounty.org; rbockenfeld@co.arapahoe.co.us; commissioners@archuletacounty.org; sausmus@bacacounty.net; billlong@centurytel.net; cdomenico@bouldercounty.org; pquinn@broomfieldcitycouncil.org; gstokes@broomfieldcitycouncil.org; dgiese@chaffeecounty.org; bpaintin@rebeltec.net; Tim@timmauck.com; jsmccarroll54@yahoo.com; dolores.burns@costillacounty-co.gov; tobe@crowleycounty.net; lynn@custercountygov.com; datchley@deltacounty.com; milehighmayor@denvergov.org; marybeth.susmam@denvergov.org; dcdolocnty@fone.net; jrepella@douglas.co.us; kathy.chandlerhenry@eaglecounty.us; dennishisey@elpasoco.com; robert.rowland@elbertcounty-co.gov; debbie.bell@fremontco.com; jmartin@garfield-county.com; bschmalz@co.gilpin.co.us; jnewberry@co.grand.co.us; paula@gunnison.com; cindy.dozier@yahoo.com; john@huerfano.us; Npvet@aol.com; commish3@jeffco.us; kiowaco100@gmail.com; kccadmin@kitcarsoncounty.org; bobby.lieb@co.laplata.co.us; mbordogna@co.lake.co.us; swjohnson@larimer.org; gary.hill@lasanimascounty.org; tlyons@esrta.com; donaldson@logancountyco.gov; Steve.Acquafresca@mesacounty.us; rscotty@gojade.org; cgrobe@moffatcounty.net; azchappell70@yahoo.com; rhenderson@montrosecounty.net; sbailey@co.morgan.co.us; kgoodwin@oterogov.org; mfedel@ouraycountyco.gov; mdowaliby@parkco.us; jrkinnie@pctelcom.coop; george.newman@co.pitkin.co.us; jmarble@prowerscounty.net; hart@co.pueblo.co.us; sbolton@co.rio-blanco.co.us; kshriver@riograndecounty.org; dmonger@co.routt.co.us; ljoseph@saguachecounty-co.gov; bocc@sanjuancountycolorado.us; joanm@sanmiguelcounty.org; commissioners@sedgwickcountygov.net; thomasd@co.summit.co.us; pauld@co.teller.co.us; llaybourn@co.washington.co.us; wgarcia@co.weld.co.us; rwiley@plainstel.com

Cc: Sarah Marsh-Leopold - CDHS [sarah.leopold@state.co.us]; Levetta Love; Katie M Griego; Jessica Valand; Jamie Ulrich - CDHS [jamie.ulrich@state.co.us]; Danielle S Dunaway; bdeherrera@alamosacounty.org; jesssmith@archuletacounty.org; cparsons@bacacounty.net; schambers@bacacounty.net; bentadmin@bentcounty.net; mkrezek@bouldercounty.org; info@ci.broomfield.co.us; bchristianse@chaffeecounty.org; dshort@chaffeecounty.org; ccadmin@rebeltec.net; tbreslin@co.clear-creek.co.us; tressesa@co.conejos.co.us; costillabocc1861@gmail.com; rlavalley@deltacounty.com; ddebord@douglas.co.us; keith.Montag@eagelcounty.us; jeffgreene@elpasoco.com; george.sugars@fremontco.com; agorgey@garfield-county.com; rbaker@co.gilpin.co.us; lcurran@co.grand.co.us; mbirnie@co.gunnison.co.us; lkvierheller@centurytel.net; kentcrowder@aol.com; rschell@jeffco.us; spinajm@co.laplata.co.us; joe.kerby@co.laplata.co.us; lhoffmann@larimer.org; neilg@larimer.org; leeann.fabec@lasanimascounty.org; tom.fisher@mesacounty.us; mcurtis@moffatcounty.net; mbrunner@co.montezuma.co.us; reckert@montrosecounty.net; cotero@oterogov.org; chunt@ouraycountyco.gov; pcadmin@parkco.us; Randy.Schafer@phillipscounty.co; Jon.Peacock@co.pitkin.co.us; ctyadmin@prowerscounty.net; bocc@co.rio-blanco.co.us; sbentonr@riograndecounty.org; tsullivan@co.routt.co.us; sagcoadm@centurytel.net; wmaez@saguachecounty-co.gov; lynnb@sanmiguelcounty.org; martinezg@co.summit.co.us; deckers@co.teller.co.us; cpacker@co.washington.co.us; mmika@co.weld.co.us; adminlanduse@co.yuma.co.us

Attachments: Colorado Works MOU Final 2~1.doc (68 KB)

Dear Director:

As you are aware, Colorado Revised Statute (C.R.S.) 26-2-715 requires the Department of Human Services and Colorado counties to enter into an annual performance contract identifying a county's duties and responsibilities in implementing the Colorado Works Program and the Child Care Assistance Program. This annual performance contract, a Memorandum of Understanding (MOU), is jointly signed by each county's Board of County Commissioners (BOCC) and the Department's Executive Director.

The previous MOU was written when Colorado first implemented welfare reform, and has been signed annually since then with very little change. For State Fiscal Year 2012-13, counties and CDHS signed a one page extension to the previously existing agreement.

A new MOU has been developed with input from county, state and advocate partners through a Policy Advisory Committee-approved work group. Revisions reflect post-welfare reform evidence and will better reflect the Department's employment goals and the accompanying shift away from process measurement to outcome measurement, our current working relationship with the county programs, and the Governor's aims of simplifying, streamlining, and aligning.

The term of this two-year MOU will be from July 1, 2013 through June 30, 2015.

Please return signed copies to the department, as noted below, by the close of business, Friday, December 27, 2013:

Office of Economic Security | Employment and Benefits Division
1575 Sherman Street - 3rd Floor
Denver, CO 80203
Attn: Darell Madrid

Thank you for your immediate attention to this important matter!

--

Darell A. Madrid
Programs Policy Analyst
Office of Economic Security | Employment and Benefits Division
1575 Sherman St 3rd Fl, Denver CO 80203-1702
Office: 303-866-5710 | Mobile: 303-847-9084

"Promote and implement a variety of programs to ensure Coloradans can take steps to improve their quality of life through EMPLOYMENT and meet their basic needs in times of hardship through BENEFITS."

MEMORANDUM OF UNDERSTANDING

The State of Colorado Department of Human Services

and

The Board of County Commissioners or other elected governing body of Gunnison County, Colorado

This Memorandum of Understanding (or "MOU") is made this _____ day of _____, between the State of Colorado Department of Human Services (the "CDHS") and the Board of County Commissioners or other elected governing body of Gunnison County, Colorado (the "County").

CDHS is the sole state agency with the responsibility to administer or supervise the administration of the human services programs listed in CRS 26-1-201.

The Colorado General Assembly enacted Senate Bill 97-120 in response to the passage of the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" thereby adopting the Colorado Works Program ("Works Program") and the Colorado Child Care Assistance Program ("Child Care Program").

CRS 26-2-715 requires CDHS and the County to enter into an annual performance contract that explains the County's duties and responsibilities in implementing the Works Program and the Child Care Program.

CDHS and the County understand and agree that the services and assistance outlined in this MOU are subject to available appropriations by the General Assembly, and the County, and neither party will be obligated to provide services or assistance if adequate appropriations have not been made.

The following terms are agreed to by CDHS and the County:

1. MOU MEETS PERFORMANCE CONTRACT REQUIREMENT

The parties agree that the provisions of this MOU constitute compliance with CRS 26-2-715.

2. TERM

The term of this two-year MOU will be from July 1, 2013 through June 30, 2015.

3. REQUIRED DUTIES OF THE COUNTY

a) The County will administer and implement the Works Program and the Child Care Program using fair and objective criteria, and in compliance with federal law.

b) The County will not reduce the basic assistance grant administered according to CRS 26-2-709, except as otherwise provided by law.

c) The County will not restrict eligibility or the provisions of services, nor will it impose sanctions that are inconsistent with Part 7 of Article 2 of Title 26, C.R.S., or the State Plan submitted by CDHS to the federal government.

d) For the term of this MOU, the County agrees to meet work participation rates equal to the federally required participation rate less any employment credit, caseload reduction credit, or other possible credit that might subsequently be adopted. The percentages contained in this paragraph (d) represent the maximum work participation rates to which the County may be held during the term of this MOU. The County's agreement to meet the federally required participation rate is relevant to CDHS's anticipation that CDHS will, in turn, be able to meet any work participation rates imposed by the federal government.

e) The parties acknowledge that the work participation rate is, as of the signing of this MOU, the only federally-mandated performance goal identified. This performance goal is in accordance with CRS 26-2-712 (4). The parties also acknowledge that, in an effort to help individuals prepare for and enter the

workforce, they may adopt alternate measures as outlined under "OPTIONAL OUTCOME MEASURES" below.

f) The County will maintain sufficient records, and will permit CDHS, its duly designated agents and/or representatives of the federal government, to inspect the records and will make such records available to CDHS as specified in CRS 26-2-717. The County must also continue to report to CDHS as currently required by CRS 26-2-716, 717 and shall report to the Department in the future as required by law. In addition, counties or county departments that are covered entities or contracting parties to a business associate agreement pursuant to the Health Insurance Portability & Accountability Act of 1996 ("HIPAA") must comply with HIPAA as may be required by law.

g) The County agrees to provide its adopted policies to CDHS, as required by CRS 26-2-716 (2.5). The County may, at its discretion, change the way in which it implements the Works and Child Care Programs in any manner that is still consistent with state and federal law. The County agrees to provide CDHS with updated written information, when or if, changes to these Programs are made. The County agrees to provide the information and policies specified in paragraph (g) herein to CDHS within thirty (30) days of their adoption.

h) The parties agree that information and policies provided by the County to CDHS as described in paragraph (g) herein are for informational purposes, and are provided to assist CDHS in meeting its responsibilities with respect to these Programs. Nothing in this MOU gives CDHS the authority to approve, deny or require any County policies beyond what is required by statute or rule. The County acknowledges CDHS's right to review, comment upon or request reasonable additional information or clarification of any County policies or records. Such requests will be made in writing and directed to the County department of social services director. The County maintains that it will consider such comments in its implementation of these Programs, but is not obligated to incorporate them.

4. OPTIONAL OUTCOME MEASURES

a) Counties/regions of the state may submit a proposal as an attachment to this MOU, either at the time of execution or anytime throughout the duration of this MOU. The proposal is limited to issues regarding the pursuit of programs, strategies, and associated evaluation plans that focus on improving employment outcomes and contributing to the evidence base for effective programs focusing on employment and/or credential attainment that lead to employment. In addition, terms and conditions will require either interim targets for each performance measure or a strategy for establishing baseline performance on a set of performance measures and a framework for how interim goals will be set after the baseline measures are established. The terms and conditions will establish consequences for failing to meet interim performance targets, including but not limited to, the implementation of an improvement plan and/or, termination of approved programs and strategies due to the county's or region's continued failure to meet performance targets.

b) Upon approval of the proposal by CDHS, the county or region will be subject to the performance measures, interim goals, and other conditions set forth in the MOU addendum and not the work participation rates outlined in Paragraph 3(d) above.

5. DUTIES OF CDHS

a) In consultation with the Counties, CDHS will oversee the implementation of the Works Program statewide, and will develop standardized forms that streamline the application process, delivery of services, and track participants; and

b) CDHS will monitor the County's provision of basic assistance grants, and if necessary, perform the duties outlined CRS 26-2-712(5)(e); and

c) CDHS exercises oversight of and responsibility for the development, implementation, maintenance, and enhancement of the Colorado Benefits Management System (CBMS) and its application relative to the Colorado Works Program. Because CBMS is a system that utilizes decision tables run by a rules engine for determining eligibility and amount of benefits, to the extent allowed

by law, the counties shall be held harmless for erroneous decisions made by CBMS. Without limitation, this applies to erroneous eligibility decisions, erroneous determinations of amount of benefits, erroneous decisions resulting in overpayments and subsequent claims, and erroneous decisions resulting in underpayments and subsequent supplemental payments or restorative benefits. Counties will also not be accountable for any legal or recovery actions resulting from erroneous, inaccurate, or inadequate CBMS controlled notices to Colorado Works households. The State will hold counties harmless, and will not take recovery action against a county for any claim, including a legal claim that is defined as a CBMS system caused error. This hold harmless provision does not apply to any errors, claims or issues caused by a county's inaccurate data entry into the system, the county's failure to follow clear, reasonable, and lawful instructions, or failure to follow program rules formally adopted by the State Board of Human Services. This hold harmless provision does apply to CBMS training and data entry rules and/or any rules that are part of the CBMS rules engine.

d) CDHS will develop and provide CBMS training for Works Program staff as required by CRS 26-2-712(7) (training is available and provided by the Colorado Department of Healthcare Policy & Financing and CDHS); and

e) The amount identified for a county's level of spending shall be identified annually in the Allocation Agency Letter as required by CRS 26-2-712 and pursuant to CRS § 26-2-715.

6. SANCTIONS

a) Subject to limitations set forth herein, including those contained in paragraph 5(c) herein, if CDHS is subject to a federal sanction, CDHS may impose sanctions pursuant to this MOU. Regardless of whether CDHS is subject to any federal sanction, CDHS may develop a remediation plan, as provided in this MOU, if, during the term of this MOU, the County engages in any of the following actions:

i. Misusing federal or state Works Program or Child Care Program funds, including receipts or recoveries that are not reported, where a federal or state law or regulation enacted before the use of the funds requires the funds to be spent in a different way. County Works Program and Child Care Program funds that are misused will not qualify toward meeting the County maintenance of effort or County share requirements.

ii. Failing to satisfy work participation rates as contained in this MOU and/or failing to meet other negotiated performance measures within a negotiated time frame.

iii. Reducing the basic assistance grant, restricting eligibility or the provision of services, or imposing sanctions in a manner inconsistent with a federally compliant state law and state plan.

iv. Failing to comply with any other provision of the Colorado Works Program if such failure causes CDHS to incur a federal fiscal sanction.

b) In any case where CDHS is considering a sanction or remediation plan for the County due to the County's failure to achieve its work participation rate or other agreed-upon performance measure, CDHS will first follow the procedures for determining whether the County made a good faith effort to achieve its work participation rate or other agreed-upon performance measure. In making its determination, CDHS, without limitation, shall consider documentation of the following:

i. Implementation of an effective process for moving clients through programs and resources to obtain and maintain employment using the full range of countable federal work activities;

ii. Implementation of a County procedure for encouraging participation at the required number of hours, such as incentives for meeting individual responsibility contract (IRC) hour commitments, an assessment and an IRC for all Works Program participants;

iii. Accurate and timely data entry in CBMS for all Works program participants, including proper coding and work participation data tracking, and any other documentation which may demonstrate a good faith effort;

iv. County identification of problems in performance and implementation of an action plan to improve performance;

v. The operational capacity of CBMS. The County will be held harmless for any CBMS programming irregularities, missing or incomplete functionality necessary to support work programs and work participation documentation and/or implementation problems attributed to CDHS that affects documentation for work participation.

c) CDHS will not sanction or develop a remediation plan for the County's failure to meet its performance measure(s) unless it was determined that the County did not make a reasonable and good faith effort towards meeting its performance measure(s). The process for a sanction (fiscal or non-fiscal) against the County by CDHS will be as follows:

i. CDHS will provide the County thirty (30) days written notice of the proposed sanction before imposing any sanction. This notification will include the rationale of imposing the sanction, as well as all associated documentation, a calculation of the proposed sanction, and an indication of what constitutes a remedy or correction that will allow the County to avert the sanction, if any remedy or correction is possible. Any corrective action contained in the notice shall be specific to the action giving rise to the sanction, and shall not extend beyond such violation. Upon receiving such notice, the County has thirty (30) days to contest, explain, offer evidence of mitigating factors, and/or submit a corrective action plan to correct the alleged failure before CDHS imposes the sanction. CDHS shall allow the County corrective action plan to be implemented unless it is manifestly insufficient.

ii. If the County corrective action plan does not rectify the performance problem, CDHS will negotiate a remediation corrective action plan (RCAP) with the board of county commissioners within thirty (30) days of CDHS' determination that the County corrective action plan has failed, in an effort to further the mutual goal of the successful operation of MOU-related programs. The RCAP shall be agreed to within thirty (30) days of failure of the corrective action plan specified herein. If the RCAP includes deployment of fiscal resources, the County will determine the source of such resources. The County's utilization of financial resources does not necessarily constitute fiscal sanction as contemplated by CRS § 26-2-716(4)(b) and the amount of the fiscal resources committed shall be mutually agreed upon, adequate to meaningfully attempt to correct the performance problem.

iii. If the County fails to correct the action, and a sanction is imposed, the amount cannot be greater than that imposed by the federal government, and cannot exceed the amount expended by CDHS as a result of the County's failure to meet its obligation. If CDHS has incurred a sanction due to the failure of more than one County to meet its obligations, the County will only be sanctioned for its share of the sanction.

iv. CDHS agrees to provide the County with all documents received from the federal government related to any proposed or imposed federal sanction within twenty (20) days of receipt, together with all CDHS documents related to the actions giving rise to that federal sanction, or that relate to the sanction process.

c) If the County continues to deliberately or consistently fail to meet its obligation specified in this MOU, CDHS, at its sole discretion, may do the following:

i. CDHS (or its duly designated agent) may assume the County's administration and implementation of the Works Program and the Child Care Program. In that event, CDHS will provide the County thirty (30) days written notice before assuming these duties. Upon receiving such notice, the County shall have the opportunity to contest, explain, offer evidence of mitigating factors, or to correct the failure before the Department assumes the duties.

ii. CDHS may allocate the amount of moneys that are provided to the County as part of the County's block grant for the purpose of its administration and implementation of the Works Program in accordance with the formulas described in CRS 26-2-714.

iii. CDHS will, in consultation and in conjunction with the County, develop or modify automated systems to meet the reporting requirements of CRS 26-2-717.

5. DISCRETIONARY MATTERS

The parties agree that all portions of Part 7 of Article 2 of Title 26, C.R.S., and Part 8 of Article 2 of Title 26, C.R.S. that grant discretion to either party regarding the administration of the Works or Child Care Programs in the County will not be affected by the execution of this MOU.

6. SEVERABILITY

To the extent that this MOU is executed, and performance of the obligations of the parties may be accomplished within the intent of the MOU, the terms of the MOU are severable. Thus, should any term or provision herein be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision herein. The waiver of any breach of term herein shall not be construed as a waiver of any other term, or of the same term upon subsequent breach.

7. INTEGRATION OF UNDERSTANDING

This MOU is intended as the complete integration of the understanding between the parties concerning the matters negotiated between them and incorporated in this MOU. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied in writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendment executed by the parties.

The parties recognize the nature of the relationship between the County and the State. This relationship is governed more broadly by pertinent provisions of the Colorado Constitution and of state statutes and rules, including lawful rules promulgated by the State Board of Human Services. The parties further recognize that this MOU is not intended to supersede or change the relationship between the County and the State as established by any legal authority.

8. NO THIRD PARTY BENEFICIARY

This MOU is binding on CDHS and the County, as well as their respective successors and assigns. It is agreed that the enforcement of the terms and conditions of this MOU are reserved for CDHS and the County, to the extent permitted by law. Nothing contained in this MOU allows a claim or right of action by a third party. Any third party receiving services or benefits under the provisions of this MOU is deemed an incidental beneficiary.

9. DISPUTE RESOLUTION

Prior to the execution of this document, if the parties are unable to reach agreement concerning the inclusion of, or wording of, provisions of the MOU, either party may refer the dispute to the State Board of Human Services for resolution pursuant to the provisions of CRS 26-2-715(3).

Subsequent to the execution of this document, both parties will work in good faith to resolve a dispute arising from any provision of this executed MOU. If the parties are

unable to resolve such dispute, any of the following non-binding mediation options are available by agreement of the parties:

a) Mediation by the Governor or a third party of the Governor's choosing. Such review must be initiated by notice provided to the Governor and other party by certified mail. Decision by the Governor or his appointed third-party is non-binding.

b) Mediation by a dispute resolution panel, to consist of one County-designated member, one CDHS-designated member, and one member selected by the other two panelists. Each party must pay for its own costs and attorney fees, and will share equally in any fees paid to panel members. The panel's decision will be made by a majority vote of its members, and is non-binding.

c) Mediation by the State Board of Human Services. If the State Board is requested to mediate, the provisions of CRS 26-2-715(3) concerning time limits and final effect of the State Board's decision will not apply. The State Board of Human Services' decision is non-binding.

None of these options will be a jurisdictional prerequisite to legal action by either party.

REGGIE BICHA
STATE OF COLORADO
DEPARTMENT OF HUMAN SERVICES

_____

Executive Director

COUNTY OF GUNNISON COLORADO,
by and through the BOARD OF COUNTY COMMISSIONERS

_____

Chairman

ATTEST:

_____ County Clerk to the Board

DATE: _____