AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Memorandum of Understanding; State of Colorado, De

Action Requested:

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

MOU for Colorado Works and Childcare Assistance Program

Fiscal Impact: 0

Submitted by: Randy Morgan for Joni **Submitter's Email Address:** rmorgan@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 8/25/2016

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 8/26/2016 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 8/30/2016

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 9/6/2016

Revised April 2015

COLORADO
Office of Economic Security
Division of Employment & Benefits
Katie Griego, Director

July 1, 2016

Dear Director,

Enclosed is a Memorandum of Understanding (MOU) for the Colorado Works Program and the Colorado Child Care Assistance Program covering the period July 1, 2016 through June 30, 2017.

The current MOU, for State Fiscal Year 2015-2016 will remain in place until new MOU's are executed, no longer than August 5, 2016. Requests for extensions past the August 5, 2016 date may be granted on an individual county basis for up to thirty days at a time to allow for scheduling and signature with your Board of County Commissioners.

Please return the MOU with your signature by the close of business, Friday, August 5, 2016. Once signed by the Office of the Executive Director, the original signed MOU will be returned to you for your files and electronic copies will be posted on the portal. Please send the signed MOU to:

Darell Madrid
Colorado Works Program
1575 Sherman Street, 3rd Floor
Denver, CO 80203

If you have any questions or need any further information, please call Darell Madrid at (303) 866-5710 or e-mail him at darell.madrid@state.co.us. Thank you for your cooperation in this important process.

Sincerely,

Katie Griego

Katie Griego
Director
Division of Employment & Benefits

Cc: Board of County Commissioners

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 1st day of July, 2016, 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 MOU will be from July 1, 2016 through June 30, 2017.

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 of 50% for all families and 90% for all two parent households. 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 are encouraged to adopt employment focused 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 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 and to update their Child Care Program county plan when changes impact the administration of such program.

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 human/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 may submit a proposal as an attachment to this MOU, additional employment focused performance measures specific to employment. Such proposals may be submitted either at the time of execution or at any time during the period 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 contribute to the evidence base for effective programs. 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 negotiated work participation rates that take into account employment focused outcome measures and anticipated statewide case load credit reductions. .

5. DUTIES OF CDHS

a) In consultation with the Counties, CDHS will oversee the implementation of the Works Program and the Child Care Program statewide, and will develop standardized forms that streamline the application process, the delivery of services, and the tracking of 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 (HCPF) and CDHS); and

e) CDHS exercises oversight of and responsibility for the development, implementation, maintenance, and enhancement of the Child Care Automated Tracking System (CHATS) and its application relative to the Child Care Program. CHATS is a system that utilizes decision tables run by a rules engine for determining eligibility, to the extent allowed by law, the counties shall be held harmless for erroneous decisions made by CHATS. Without limitation, this

applies to erroneous eligibility decisions, erroneous decisions resulting in overpayments and subsequent claims, or erroneous decisions resulting in underpayments and subsequent supplemental payments. Counties will also not be accountable for any legal or recovery actions resulting from erroneous, inaccurate, or inadequate CHATS notices to Child Care 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 CHATS system caused error. This hold harmless provision does not apply to any errors 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 CHATS training and data entry rules and/or any rules that are part of the CHATS rules engine.

f) CDHS will develop and provide CHATS training for Child Care Program staff. Training is available and provided by CDHS; and

g) 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 to counties 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 performance measures as negotiated.

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.

v. Failing to meet Child Care Program federal improper payment error rate guidelines.

vi. Failing to comply with the Code of Colorado Regulations, Income Maintenance (Volume 3).

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 agreed-upon performance measure, CDHS will first follow the procedure for determining whether the County made a good faith effort to achieve its work participation rate or 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 individualized plan hour commitments, an assessment and an individualized plan for all Works Program participants;

iii. Accurate and timely data entry into CBMS for all Works program participants, including proper coding and work participation or

negotiated 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 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, good faith effort to meet 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/or Child Care. In that event, CDHS will provide the County thirty (30) days written notice before assuming these duties. Upon receipt

of 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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 or Designee

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

_____

Chairman

ATTEST:

_____ County Clerk to the Board

DATE: _____