AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Contract; Department of Human Services, Office of

Action Requested: County Manager Signature

Parties to the Agreement: BOCC & CO Dept Human Services

Term Begins: 7/1/2016 **Term Ends:** 6/30/2017 **Grant Contract #:**

Summary:

This is renewal of Early Childhood Council contract FY17. It includes 3 areas: Race to Top ($10,400) Systems Building $59,202) CO Childcare Assist. Program ($4,620). Staffing is basically unchanged. This provides support to early childhood systems including quality improvement with

Fiscal Impact: $74,222

Submitted by: C Worrall **Submitter's Email Address:** cworrall@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, only one component of this grant is new, CCCAP $4,620. Balance is continuation of ongoing programs.

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 5/11/2016

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 5/10/2016 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 5/12/2016

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

Agenda Date: 5/17/2016

Revised April 2015

CONTRACT

This contract is made and entered into by and between the named parties. In accordance with the purposes stated herein, it is hereby agreed as follows:

STATE:

State of Colorado for the use & benefit of the
Department of Human Services
Office of Early Childhood
1575 Sherman Street, 1st Floor
Denver, CO 80203

CONTRACTOR:

Gunnison County
225 North Pine Street, Suite E
Gunnison, CO 81230

CONTRACT MADE DATE:

3/28/2016

RQS PRE-ENCUMBRANCE NUMBER:

CT/CTGG1 ENCUMBRANCE NUMBER:

TERM:

This contract shall be effective upon approval by the State Controller, or designee, or on 7/1/2016 , whichever is later. The contract shall end on 6/30/2017.

PROCUREMENT METHOD:

Law Specified Vendor

BID/RFP/LIST PRICE AGREEMENT NUMBER:

LAW SPECIFIED VENDOR STATUTE:

C.R.S. 26-6.5-104 (c)

CONTRACTOR'S ENTITY TYPE:

Government

CONTRACTOR'S STATE OF INCORPORATION:

Colorado

BILLING STATEMENTS RECEIVED:

Monthly

STATUTORY AUTHORITY:

C.R.S. § 26-1-111

CONTRACT PRICE NOT TO EXCEED:

$74,222

MAXIMUM AMOUNT AVAILABLE PER FISCAL YEAR:

FY17: $74,222

PRICE STRUCTURE:

Cost Reimbursement

FUND SOURCE – NAME OF FEDERAL PROGRAM/GRANT AND FUNDS ID #

Child Care and Development Fund 93.575
Race to the Top Early Learning Challenge Grant 84.412A

STATE REPRESENTATIVE:

Stacey Kennedy
Office of Early Childhood
1575 Sherman Street, 1st Floor
Denver, CO 80203

CONTRACTOR REPRESENTATIVE:

Matthew Birnie
Gunnison County
225 North Pine Street, Suite E
Gunnison, CO 81230

SCOPE OF WORK:

In accordance with the provisions of this contract and its exhibits and attachments, the Contractor shall: As Fiscal Agent for Gunnison-Hinsdale Early Childhood Council shall oversee and administer an Early Childhood Council to improve and sustain the availability, accessibility, capacity, and quality of early childhood services for children and families in its community. Early Childhood Councils provide supports for licensed programs required to participate in the Colorado Shines Quality Rating and Improvement System.

EXHIBITS:

The following exhibits are hereby incorporated:

Exhibit A-	Early Childhood Council Overview
Exhibit B-	Statement of Work
Exhibit C-	Budget
Exhibit D-	Additional Provisions
Exhibit E-	Child Care and Development Fund Rules and Regulations
Exhibit F-	Race to the Top Subrecipient Monitoring Plan
Exhibit G-	Quality Rubric and Guidelines
Exhibit H-	Supplemental Provisions for Federal Awards
Exhibit I-	Sample Option Letter
Exhibit J-	HIPAA Business Associate Addendum

COORDINATION:

The State warrants that required approval, clearance and coordination has been accomplished from and with appropriate agencies.

APPROVAL:

In no event shall this contract be deemed valid until it shall have been approved by the State Controller or his/her designee.

PROCUREMENT:

This contractor has been selected in accordance with the requirements of the Colorado Procurement Code.

PRICE PROVISIONS:

Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services and/or deliverables. The liability of the State at any time for such payments shall be limited to the encumbered amount remaining of such funds.

Authority exists in the laws and funds have been budgeted, appropriated and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment.

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

The Contractor understands and agrees that the State shall not be liable for payment for work or services or for costs or expenses incurred by the Contractor prior to the proper execution and State Controller approval of this contract.

GENERAL PROVISIONS

The following clauses apply to this contract:

A. Governmental Immunity/Limitation of Liability: Notwithstanding anything herein to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the "Colorado Governmental Immunity Act", C.R.S. §24-10-101, *et seq.*, as now or hereinafter amended. The parties understand and agree that the liability of the State for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of C.R.S. §24-10-101, *et seq.*, as now or hereafter amended and the risk management statutes, C.R.S. §24-30-1501, *et seq.*, as now or hereafter amended. Any liability of the State created under any other provision of this contract, whether or not incorporated herein by reference, shall be controlled by, limited to, and otherwise modified so as to conform with, the above cited laws.

B. Federal Funds Contingency: Payment pursuant to this contract, if in federal funds, whether in whole or in part, is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. In the event that said funds, or any part thereof, become unavailable, as determined by the State, the State may immediately terminate this contract or amend it accordingly.

C. Billing Procedures: The State shall establish billing procedures and requirements for payment due the Contractor in providing performance pursuant to this contract. The Contractor shall comply with the established billing procedures and requirements for submission of billing statements. The State shall comply with CRS 24-30-202(24) when paying vendors upon receipt of a correct notice of the amount due for goods or services provided hereunder.

D. Exhibits- Interpretation: Unless otherwise stated, all referenced exhibits are incorporated herein and made a part of this contract. And, unless otherwise stated, in the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts shall be resolved by reference to the documents in the following order of priority: 1) the Special Provisions of this contract shall always be controlling over other provisions in the contract or amendments; 2) the contract "cover" pages; 3) the General Provisions of this contract; 4) the exhibits to this contract, except that any exhibit entitled: "Modifications to the General Provisions" shall take priority over the General Provisions of this contract.

E. Notice and Representatives: For the purposes of this contract, the representative for each party is as designated herein. Any notice required or permitted may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address provided, and if sent by mail it is effective when posted in a U.S. Mail Depository with sufficient postage attached thereto. Notice of change of address or change or representative shall be treated as any other notice.

F. Contractor Representations:

1. Licenses and Certifications: The Contractor certifies that, at the time of entering into this contract, it and its agents have currently in effect all necessary licenses, certifications, approvals, insurance, etc. required to properly provide the services and/or supplies covered by this contract in the state of Colorado. Proof of such licenses, certifications, approvals, insurance, etc. shall be provided upon the State's request. Any revocation, withdrawal or nonrenewal of necessary license, certification, approval, insurance, etc. required for the Contractor to properly perform this contract, shall be grounds for termination of this contract by the State.
2. Qualification: Contractor certifies that it is qualified to perform such services or provide such deliverables as delineated in this contract.
3. Exclusion, Debarment and/or Suspension: Contractor represents and warrants that Contractor, or its employees or authorized subcontractors, are not presently excluded from participation, debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise ineligible to participate in a "federal health care program" as defined in 42 U.S.C. § 1320a-7b(f) or in any other government payment program by any federal or State of Colorado department or agency. In the event Contractor, or one of its employees or authorized subcontractors, is excluded from participation, or becomes otherwise ineligible to participate in any such program during the Term, Contractor will notify the State in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to

Contractor, the State reserves the right to immediately cease contracting with Contractor.

4. Work Performed Outside the United States or Colorado, pursuant to C.R.S. §24-102-206: The Contractor certifies all work performed under this Contract, including any subcontracts, is anticipated to be and will be performed within the United States or Colorado, unless otherwise specified in the Statement of Work. If work under this Contract is anticipated to be or will be performed outside the United States or Colorado, the countries and/or states where work will be performed, and the reasons it is necessary or advantageous to go outside the United States or Colorado to perform the work are also specified in the Statement of Work.

G. Legal Authority: The Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and bind the Contractor to its terms. The person(s) executing this contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this contract.

H. Indemnification: Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

[Applicable Only to Intergovernmental Contracts] No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

I. Insurance: Contractor and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Contract. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State.

1. Contractor
   a. Public Entities: If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Contractor shall maintain at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.
   b. Non-Public Entities: If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Contract insurance coverage and policies meeting the same requirements set forth in provision I.2 below with respect to Subcontractors that are not "public entities".
2. Contractors – Subcontractors

   Contractor shall require each contract with Subcontractors other than those that are public entities, providing Goods or Services in connection with this Contract, to include insurance requirements substantially similar to the following:
   a. Worker's Compensation: Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Contractor or Subcontractor employees acting within the course and scope of their employment.
   b. General Liability: Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
      (a) $1,000,000 each occurrence;
      (b) $1,000,000 general aggregate;
      (c) $1,000,000 products and completed operations aggregate; and
      (d) $50,000 any one fire.

      If any aggregate limit is reduced below $1,000,000 because of claims made or paid, Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.
   c. Automobile Liability: Automobile Liability Insurance covering any auto (including

owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

d. Professional Liability: Professional liability insurance with minimum limits of liability of not less than $1,000,000, unless waived by the State.

e. Privacy Insurance
If this Contract includes a HIPAA Business Associates Addendum exhibit, Contractor shall obtain and maintain during the term of this Contract liability insurance covering all loss of Protected Health Information data and claims based upon alleged violations of privacy rights through improper use or disclosure of Protected Health Information with a minimum annual limit of $1,000,000.

f. Additional Insured: The State shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any Subcontractors hereunder.

g. Primacy of Coverage: Coverage required of Contractor and Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

h. Cancellation: The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with provision E. Notice and Representatives within seven days of Contractor's receipt of such notice.

i. Subrogation Waiver: All insurance policies in any way related to this Contract and secured and maintained by Contractor or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

3. Certificates: Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Contract. No later than 15 days prior to the expiration date of any such coverage, Contractor and each Subcontractor shall deliver to the State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Contract or any subcontract, Contractor and each Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this provision I.

J. Disaster Planning and Pandemic Outbreaks: The State may require the Contractor to submit a Disaster Response Plan (Plan) to ensure the delivery hereunder of essential government services during a disaster, declared emergency, and/or pandemic outbreak. The Plan would take precedence over and nullify any contractual provision relating to force majeure or "Acts of God." Accordingly, should the work performed by the Contractor under this contract include the provision of any essential government services, the State may request a Plan from the Contractor, and, upon such request, the Contractor shall forthwith submit a Plan, and the Contractor shall be bound to perform hereunder in accordance therewith.

K. Rights in Data, Documents and Computer Software or Other Intellectual Property:
All intellectual property including without limitation, databases, software, documents, research, programs and codes, as well as all, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the contractor in the performance of its obligations under this contract shall be the exclusive property of the State. Unless otherwise stated, all such materials shall be delivered to the State by the contractor upon completion, termination, or cancellation of this contract. Contractor shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of the contractor's obligations under this contract without a prior written consent of the State. All documentation, accompanying the intellectual property or otherwise, shall comply with the State requirements which include but is not limited to all documentation being in a paper, human readable format which is useable by one who is reasonably proficient in the given subject area.

L. Proprietary Information: Proprietary information for the purpose of this contract is information relating to a party's research, development, trade secrets, business affairs, internal operations and management procedures and those of its customers, clients or affiliates, but does not include information lawfully obtained by third parties, which is in the public domain, or which is developed independently.

Neither party shall use or disclose directly or indirectly without prior written authorization any proprietary information concerning the other party obtained as a result of this contract. Any proprietary information removed from the State's site by the Contractor in the course of providing services under this contract will be accorded at least the same precautions as are employed by the Contractor for similar information in the course of its own business.

M. Records Maintenance, Performance Monitoring & Audits: The Contractor shall maintain a complete file of all records, documents, communications, and other materials that pertain to the operation of the program/project or the delivery of services under this contract. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services, and other costs of whatever nature for which a contract payment was made. These records shall be maintained according to generally accepted accounting principles and shall be easily separable from other Contractor records.

The Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with this contract. Except as provided by law, no information in possession of the Contractor about any individual constituent shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor's parent, guardian, or the State. The Contractor shall have written policies governing access to, duplication and dissemination of, all such information and advise its agents, if any, that they are subject to these confidentiality requirements. The Contractor shall provide its agents, if any, with a copy or written explanation of these confidentiality requirements before access to confidential data is permitted.

The Contractor authorizes the State, the federal government or their designee, to perform audits and/or inspections of its records, at any reasonable time, to assure compliance with the state or federal government's terms and/or to evaluate the Contractor's performance. Any amounts the State paid improperly shall be immediately returned to the State or may be recovered in accordance with other remedies.

All such records, documents, communications, and other materials shall be the property of the State unless otherwise specified herein and shall be maintained by the Contractor, for a period of three (3) years from the date of final payment or submission of the final federal expenditure report under this contract, unless the State requests that the records be retained for a longer period, or until an audit has been completed with the following qualification. If an audit by or on behalf of the federal and/or state government has begun but is not completed at the end of the three (3) year period, or if audit findings have not been resolved after a three (3) year period, the materials shall be retained until the resolution of the audit findings.

The Contractor shall permit the State, any other governmental agency authorized by law, or an authorized designee thereof, in its sole discretion, to monitor all activities conducted by the Contractor pursuant to the terms of this contract. Monitoring may consist of internal evaluation procedures, reexamination of program data, special analyses, on-site verification, formal audit examinations, or any other procedures as deemed reasonable and relevant. All such monitoring shall be performed in a manner that will not unduly interfere with contract work.

N. Taxes: The State, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all state and local government use taxes [C.R.S. §39- 26-114(a) and 203, as amended]. The contractor is hereby notified that when materials are purchased for the benefit of the State, such exemptions apply except that in certain political subdivisions the vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the State.

O. Conflict of Interest: During the term of this contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the Contractor fully performing his/her obligations under this contract.

Additionally, the Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, the Contractor agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with the Contractor's fully performing his/her obligations to the State under the terms of this contract, without the prior written approval of the State.

In the event that the Contractor is uncertain whether the appearance of a conflict of interest may

reasonably exist, the Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.

Further, the Contractor shall maintain a written code of standards governing the performance of its agent(s) engaged in the award and administration of contracts. Neither the Contractor nor its agent(s) shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent;
2. Any member of the employee's immediate family;
3. The employee's partner; or
4. An organization which employees, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. Neither the Contractor nor its agent(s) will solicit nor accept gratuities, favors, or anything of monetary value from Contractor's potential contractors, or parties to subagreements.

P. Conformance with Law: The Contractor and its agent(s) shall at all times during the term of this contract strictly adhere to all applicable federal laws, state laws, Executive Orders and implementing regulations as they currently exist and may hereafter be amended. Without limitation, these federal laws and regulations include:

- Age Discrimination Act of 1975, 42 U.S.C. Section 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91;
- Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq.;
- Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq.;
- The Drug Free Workplace Act of 1988, 41 U.S.C. 701 et seq.;
- Equal Pay Act of 1963, 29 U.S.C. 206;
- Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d et seq. and implementing regulations, 45 C.F.R. Parts 160 and 164;
- Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b;
- Pro-Children Act of 1994, 20 U.S.C. 6081 et seq.;
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84;
- Titles VI & VII of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) & (e);
- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 USC 604a, PL 104-193. See also State Executive Order D 015 00;
- Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq.;
- The Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Rule), at 45 CFR, Part 92;
- The Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations (Common Rule), at 2 CFR 215;
- Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.
- OFFICE OF MANAGEMENT AND BUDGET GUIDANCE FOR GRANTS AND AGREEMENTS, 2 CFR Part 200.
- The Hatch Act (5 USC 1501-1508) and Civil Service Reform Act, Public Law 95-454 Section 4728.
- Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 1990, PL 101-166, Section 511.
- 45 CFR Subtitle A, Department of Health and Human Services regulations.
- The Single Audit Act Amendments of 1996, 31 USC 7501, Public Law 104-156, OMB Circular A-133, and 45 CRF 74.26.
- The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6062 of Public Law 110-252, including without limitation all data reporting requirements required thereunder. This Act is also referred to as FFATA.
- The American Recovery and Reinvestment Act of 2009 (Public Law 111-5), including without limitation all data reporting requirements required thereunder. This Act is also referred to as ARRA.

Q. Restrictions on Public Benefits: Pursuant to House Bill 06S-1023, as codified at C.R.S. § 24-76.5-101 et seq., except as otherwise provided therein or where exempt by federal law, the State is required to verify the lawful presence in the United States of each natural person 18 years of age or older who applies for state or local public benefits or for federal public benefits for the applicant. Accordingly, should the work performed by

the Contractor under this contract include the provision of any of said benefits to any natural person 18 years of age or older who applies therefore for the applicant, the Contractor shall follow the requirements of said law in the provision of said benefits as if it were the State. The State will provide the Contractor with specific instruction on the identification documentation required and the process to be followed by the Contractor to properly comply with the law if the work done under this contract is subject to these requirements.

R. Statewide Contract Management System:

1. When Applicable. If the maximum amount payable to Contractor under this Contract is $100,000 or greater, either on the Effective Date or at anytime thereafter, this provision applies.
2. Governing State Statutes. Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.
3. Performance Evaluation and Review. Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law (including without limitation CRS §24-103.5-101), and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include without limitation quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations hereunder. Such performance information shall be entered into the statewide Contract Management System at intervals during the term hereof determined appropriate by the State, and a final Evaluation, Review and Rating shall be rendered by the State within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.
4. Gross Failure to Meet Performance Measures. Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Human Services, for good cause shown, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation and Review and Rating by: **(a)** filing rebuttal statement(s), which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor by the Executive Director upon showing of good cause.
5. CORA Disclosure: To the extent not prohibited by federal law, this Contract and the performance measures and standards under CRS §24-103.5-101 are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

S. Performance Ratings and Guidelines:

The Contractor will be given a Final Contractor Performance Evaluation at the end of the contract term in accordance with C.R.S. §24-102-205(6) and General Provision R. above. The list of available Performance Ratings, along with guidelines for what final rating will be given, are as follows:

1. Above Standard: This rating may be given where Contractor consistently performs in a manner that exceeds the requirements of this Contract, and where such performance is measurable against objective factors specifically identified for use in achieving the purposes of this provision. If applicable to work performed under this Contract, the objective factors and performance required to merit an "Above Standard" rating are specified in a so dedicated Exhibit to this Contract, which may be included herein from the start of the contract or subsequently be added by formal contract amendment at any time before the end of the contract term. If there is no such dedicated Exhibit included or subsequently added herein, this rating is unavailable.
2. Standard: This rating will be given where: 1.) Contractor's performance hereunder meets the requirements of this Contract in areas of quality, cost, and timeliness; 2.) Contractor's work is

accepted by the State; and 3.) full payment hereunder is made to Contractor for such performance.

3. Below Standard: This rating may be given where Contractor materially fails to perform the requirements of this Contract and such failure results in the State's invocation of contract remedies and/or contract termination in accordance with General Provision X. below.

T. Discrimination: The Contractor during the performance of this contract shall:

1. not discriminate against any person on the basis of race, color, national origin, age, sex, religion and handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions.
2. not exclude from participation in, or deny benefits to any qualified individual with a disability, by reason of such disability.

Any person who thinks he/she has been discriminated against as related to the performance of this contract has the right to assert a claim, Colorado Civil Rights Division, C.R.S. §24-34-302, et seq.

U. Criminal Background Check: Pursuant to C.R.S. §27-90-111 and Department of Human Services Policy VI-2.4, any independent contractor, and its agent(s), who is designated by the Executive Director or the Executive Director's designee to be a contracting employee under C.R.S. §27-90-111, who has direct contact with vulnerable persons in a state-operated facility, or who provides state-funded services that involve direct contact with vulnerable persons in the vulnerable person's home or residence, shall:

1. submit to a criminal background check, and
2. report any arrests, charges, or summonses for any disqualifying offense as specified by C.R.S. §27-90-111 to the State.

Any Contractor or its agent(s), who does not comply with C.R.S. §27-90-111 and DHS Policy VI-2.4, may, at the sole discretion of the State, be suspended or terminated.

V. Litigation: The Contractor shall within five (5) calendar days after being served with a summons, complaint, or other pleading which has been filed in any federal or state court or administrative agency notify the State that it is a party defendant in a case which involves services provided under this contract. The Contractor shall deliver copies of such document(s) to the State's Executive Director. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization and/or foreclosure.

W. Disputes: Except as herein specifically provided otherwise, disputes concerning the performance of this contract which cannot be resolved by the designated contract representatives shall be referred in writing to a senior departmental management staff designated by the department and a senior manager designated by the Contractor. Failing resolution at that level, disputes shall be presented in writing to the Executive Director and the Contractor's chief executive officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.

X. Remedies: Acceptance is dependent upon completion of all applicable inspection procedures. The State reserves the right to inspect the goods and/or services provided under this contract at all reasonable times and places. The Executive Director of the State or her/his designee may exercise the following remedial actions should s/he find the Contractor substantially failed to satisfy the scope of work found in this contract. Substantial failure to satisfy the scope of work shall be defined to mean substantially insufficient, incorrect or improper activities or inaction by the Contractor. Without limitation, the State has the right to:

1. withhold payment until performance is cured,
2. require the vendor to take necessary action to ensure that the future performance conforms to contract requirements,
3. request removal of a Contractor's agent from contract work,
4. equitably reduce the payment due the vendor to reflect the reduced value of the services performed,
5. recover payment for work that due to the Contractor cannot be performed or would be of no value to the State,
6. modify or recover payments (from payments under this contract or other contracts between the State and the vendor as a debt due to the State) to correct an error due to omission, error, fraud and/or defalcation,
7. terminate the contract.

These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

Y. Termination:

1. Termination for Default: The State may terminate the contract for cause. If the State terminates the contract for cause, it will first give ten (10) days prior written notice to the Contractor, stating the reasons for cancellation, procedures to correct problems, if any, and the

date the contract will be terminated in the event problems have not been corrected. In the event this contract is terminated for cause, the State will only reimburse the Contractor for accepted work or deliverables received up to the date of termination. In the event this contract is terminated for cause, final payment to the Contractor may be withheld at the discretion of the State until completion of final audit. Notwithstanding the above, the Contractor may be liable to the State for the State's damages. If it is determined that the Contractor was not in default then such termination shall be treated as a termination for convenience as described herein.

2. Termination for Convenience: The State shall have the right to terminate this contract by giving the Contractor at least twenty (20) days prior written notice. If notice is so given, this contract shall terminate on the expiration of the specified time period, and the liability of the parties hereunder for further performance of the terms of this contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination.
3. Immediate Termination: This contract is subject to immediate termination by the State in the event that the State determines that the health, safety, or welfare of persons receiving services may be in jeopardy. Additionally, the State may immediately terminate this contract upon verifying that the Contractor has engaged in or is about to participate in fraudulent or other illegal acts.
4. Termination for Financial Exigency: The State shall have the right to terminate this contract for financial exigency by giving the Contractor at least thirty (30) days prior written notice. For the purposes of this provision, a financial exigency shall be a determination made by the Colorado legislature or its Joint Budget Committee that the financial circumstances of the State are such that it is in the best interest of the State to terminate this contract. If notice of such termination is so given, this contract shall terminate on the expiration of the time period specified in the notice, and the liability of the parties hereunder for further performance of the terms of this contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination.

   In the event that the State terminates this contract under the Termination for Convenience or Termination for Financial Exigency provisions, the Contractor is entitled to submit a termination claim within ten (10) days of the effective date of termination. The termination claim shall address and the State shall consider paying the following costs:
   a. the contract price for performance of work, which is accepted by the State, up to the effective date of the termination.
   b. reasonable and necessary costs incurred in preparing to perform the terminated portion of the contract
   c. reasonable profit on the completed but undelivered work up to the date of termination
   d. the costs of settling claims arising out of the termination of subcontracts or orders, not to exceed 30 days pay for each subcontractor
   e. reasonable accounting, legal, clerical, and other costs arising out of the termination settlement.

   In no event shall reimbursement under this clause exceed the contract amount reduced by amounts previously paid by the State to the Contractor.

Z. Venue: The parties agree that venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

AA. Understanding of the Parties:
1. Complete Understanding: This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules. Descriptive headings as used herein are for convenience and shall not control or affect the meaning or construction of any provision of this contract.
2. Severability: To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.
3. Benefit and Right of Action: Except as herein specifically provided otherwise, it is expressly

understood and agreed that this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. All rights of action relating to enforcement of the terms and conditions shall be strictly reserved to the State and the named Contractor. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Contractor that any such person or entity, other than the State or the Contractor, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.

4. Waiver: The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.
5. Survival: The State and the Contractor's obligations under this contract shall survive following termination or expiration to the extent necessary to give effect to the intent and understanding of the parties.
6. Subcontracting: Except as herein specifically provided otherwise, the duties and obligations of the Contractor arising hereunder cannot be assigned, delegated, subgranted or subcontracted except with the express prior written consent of the State. The subgrants and subcontracts permitted by the State shall be subject to the requirements of this contract. The Contractor is responsible for all subcontracting arrangements, delivery of services, and performance of any subgrantor or subcontractor. The Contractor warrants and agrees that any subgrant or subcontract, resulting from its performance under the terms and conditions of this contract, shall include a provision that the said subgrantor or subcontractor shall abide by the terms and conditions hereof. Also, the Contractor warrants and agrees that all subgrants or subcontracts shall include a provision that the subgrantor or subcontractor shall indemnify and hold harmless the State. The subgrantors or subcontractors must be certified to work on any equipment for which their services are obtained.

BB. Holdover: In the event that the State desires to continue the services provided for in this Contract and a replacement contract has not been fully executed by the expiration date of the Contract, this Contract may be extended unilaterally by the State for a period of up to two (2) months upon written notice to the Contractor under the same terms and conditions of the original Contract including, but not limited to, prices, rates, and service delivery requirements. However, this extension terminates when the replacement contract becomes effective when signed by the State Controller or an authorized delegate.

CC. Health Insurance Portability & Accountability Act of 1996 ("HIPAA"). Federal law and regulations governing the privacy of certain health information requires a "Business Associate Contract" between the State and the Contractor. 45 C.F.R. Section 164.504(e). If applicable to this Contract, attached and incorporated herein by reference and agreed to by the parties is a HIPAA Business Associate Addendum for HIPAA compliance. Terms of the Addendum shall be considered binding upon execution of this contract and shall remain in effect during the term of the contract including any extensions.

DD. Colorado Department of Human Services (CDHS) Fraud Policy. The CDHS Fraud Policy addresses the need for effective and consistent measures for preventing, detecting, and deterring fraud. The relevant parties discussed in the policy include CDHS employees, CDHS management, CDHS appointees, and community partners, including contractors, grantees, vendors, and other sub-recipients. CDHS employees, clients, and community partners will all benefit from an effective fraud prevention, detection, and deterrence policy because fraud can damage the reputation and public trust of CDHS.

All appointees and employees of the CDHS must comply with the standards of conduct set forth in Title 24, Article 18 of the Colorado Revised Statutes, known as the Code of Ethics, including exposing corruption or impropriety in government, whenever discovered. The CDHS Fraud Policy outlines how the CDHS employees and community partners should report fraud and how fraud will be investigated once it is reported.

The full text of the CDHS Fraud Policy, which Contractor hereby agrees to be subject to and abide by, can be found on the CDHS Fraud Policy and Training web page at: http://www.colorado.gov/cs/Satellite/CDHS-Emp/CBON/1251610724004.

EE. Performance Outside the State of Colorado and/or the United States: Not applicable if Contract Funds include any federal funds] Following the Effective Date, Contractor shall provide written notice to the State, in accordance with General Provision E. (Notices and Representatives), within 20 days of the

earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this requirement shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Contractor to provide notice to the State under this requirement shall constitute a material breach of this Contract

FF. C-Stat - Performance Based Program Analysis and Management Strategy (C-Stat Strategy): For the sole purpose of providing support to the State's internal C-Stat Strategy, the parties understand and agree that upon request from the State, and without any additional cost to the State, the Contractor shall collect, maintain, and provide to the State certain contract performance data determined by the State during the term hereof to assist the State to measure and assess the programmatic effectiveness of the Contractor's performance hereunder, all in support of the State's internal continuous quality improvement working towards positive outcomes and managing its performance for the betterment of all Colorado residents.

The parties understand and agree that the exercise of the requirements of this provision shall not be used by the State to effect unilateral changes to the performance requirements of the Contractor hereunder.

SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

1. CONTROLLER'S APPROVAL. **CRS §24-30-202(1)**. This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. **CRS §24-30-202(5.5)**. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. GOVERNMENTAL IMMUNITY. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW. Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. **CRS §§24-18-201 and 24-50-507**. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest

whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. **CRS §§24-30-202 (1) and 24-30-202.4**. [***Not Applicable to intergovernmental agreements***] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. **CRS §8-17.5-101**. [***Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services***] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

CONTRACTOR **Gunnison County** By: Matthew Birnie Title: Gunnison County Manager _____ *Signature Date: _____	**STATE OF COLORADO** **John W. Hickenlooper, Governor** Department of Human Services Reggie Bicha, Executive Director _____ By: Mary Anne Snyder, Director, Office of Early Childhood Signatory avers to the State Controller or delegate that Contractor has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules Date: _____
2nd Contractor Signature if Needed By: INSERT-Name of Authorized Individual Title: INSERT-Official Title of Authorized Individual _____ *Signature Date: _____	**LEGAL REVIEW** Cynthia H. Coffman, Attorney General By:_____ Signature - Assistant Attorney General Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By:_____

Clint Woodruff / Valri Gimple

Date:_____

AN OVERVIEW OF COLORADO'S EARLY CHILDHOOD COUNCILS

The State of Colorado recognizes the critical need for effective, high-quality services for young children. State legislation acknowledges that "research has demonstrated the positive outcomes for young children and their families who receive quality, integrated child care and related services in their early, preschool years, delivered through a comprehensive early childhood system that includes quality care and education, family support, health, and mental health programs." (C.R.S. 26-6.5-103). State legislation expects Colorado's Early Childhood (EC) Councils to "improve and sustain the availability, accessibility, capacity, and quality of early childhood services for children and families throughout the state." (C.R.S. 26-6.5-103)

A primary goal of the EC Councils is to increase the quality and availability of, and accessibility to, early childhood services by planning, building, and growing a sustainable, locally-based system. The foundations of this system are identified in the Colorado Early Childhood Framework:

- build and support partnerships,
- fund and invest,
- change policy,
- build public engagement,
- share accountability, and,
- generate education/leadership opportunities.

Each EC Council is charged with convening local partners to collaboratively create a seamless system of early childhood services that is both effective and responsive to local conditions. Knowing that parents don't utilize one type of service during their children's earliest years, EC Councils must also involve representatives from the four developmental domains of early childhood: health, mental health, family support/parent education, and early learning. EC Councils are also expected to effectively engage parents and other key stakeholders, such as local elected officials, businesspeople, and members of the faith community, in developing and growing an effective, efficient, sustainable early childhood system; transforming discrete programs into a coherent, cohesive mechanism for increasing the availability and accessibility of high quality services to young children and their families.

Expected benefits that will accrue to Colorado and local communities through this contract include:

- More effective use of resources to address identified needs;
- Gains in efficiency, clarity of goals, cohesiveness of services, and unity of messages to potential external stakeholders, all of which frequently result in a community's ability to leverage additional funds;
- Collaborative practice leading to greater engagement in common goals, leading to more productive results;
- Children and families have improved access to early childhood services; and,
- A framework for communities to build long-term investment in early childhood services and supports.

RACE TO THE TOP – EARLY LEARNING CHALLENGE GRANT

In January 2013 the State of Colorado, Department of Human Services was awarded the Race to the Top – Early Learning Challenge Grant (GS412A130004, CFDA 84.412A) to improve the quality of programs and professional that serve our highest-need children. The total award amount for this grant is $44,886,728.00. The Early Learning Challenge Grant will enhance quality in early childhood education programs, align standards, and coordinate disparate elements of early care and education into a more efficient, unified, high-quality system with measurable outcomes. All of these elements mark significant changes to the practices of the state and the experiences of the children and families receiving these benefits.

The Early Childhood Councils are a key partner in the successful implementation of the Race to the Top Early Learning Challenge Grant. As community leaders, Early Childhood Councils provide guidance to:

- Families interested in accessing quality early care and learning;
- Facilities interested in pursuing a higher quality rating;
- Early childhood professionals interested in pursuing educational opportunities to enhance their careers;
- Teachers interested in utilizing child assessment tools to inform practice; and
- Families interested in knowing more about early learning and development.

Race to the Top Early Learning Challenge Grant funds are allocated to Early Childhood Councils to support governance strategies. Grant funds for governance shall enhance or expand strategies outlined within the contract scope of work for each Early Childhood Council, including staff time needed to support the implementation of the communication strategies.

Grant funds are also allocated to support communication strategies specific to the Early Learning and Development Guidelines. Early Childhood Councils shall work with the Early Learning Challenge Grant communication vendor(s) to inform the communication deployment plan for the Early Learning and Development Guidelines to ensure that the unique needs of each community is incorporated. The individual Early Childhood Councils shall align all dissemination, education and communication engagement strategies with the state communication deployment plan for the Early Learning and Development Guidelines. Early Childhood Councils shall only utilize materials that correspond with the state communication deployment plan.

EXHIBIT B

STATEMENT OF WORK (SOW)

GUNNISON COUNTY
225 NORTH PINE STREET
GUNNISON, CO 81230

AS FISCAL AGENT FOR:

GUNNISON-HINSDALE EARLY CHILDHOOD COUNCIL
225 N. PINE STREET, SUITE E
GUNNISON, CO 81230

JULY 1, 2016 – JUNE 30, 2017

EXHIBIT B

The Statement of Work (SOW) is a document which describes the scope of work required to complete a specific project. It is a formal document and must be agreed upon by all parties involved and ultimately becomes a part of the executed agreement (Contract, PO, etc.). In order to be effective, the SOW must contain an appropriate level of detail so all parties clearly understand what work is required, the duration of the work involved, what the deliverables are, and what is acceptable.

INTRODUCTION/BACKGROUND

In 2007, Colorado House Bill 1062 authorized the creation of the Colorado Early Childhood Councils. The intent of the Councils as stated in the legislation is to "improve and sustain the availability, accessibility, capacity and quality of early childhood services for children and families throughout the state." According to the legislation, these Councils were established "for the purpose of developing and ultimately implementing a comprehensive system of early childhood services to ensure the school readiness of children five years of age or younger in the community".

Early Childhood Councils are partners in implementing quality initiatives in child care, funded by federal and state funding streams. This Statement of Work addresses the funding available to Early Childhood Councils through the Child Care Development Fund, and Race to the Top Early Learning Challenge grant.

SCOPE OF WORK

The Scope of Work is intended to:

- Increase Quality in licensed child care programs serving children ages zero to five – practices and programs reach the highest levels of quality
- Increase/enhance the number of formal agreements between the Early Childhood Council and other community early childhood partners related to the Early Childhood Colorado Framework
- Increase awareness and technical assistance support to licensed child care programs within the community regarding the Colorado Shines Quality Rating and Improvement System.
- Administer quality improvement funding to licensed programs completing Level 2 and/or Level 3-5 requirements within the Colorado Shines Quality Rating and Improvement System.
- **Outcome WIG - Increase the number of children receiving child care subsidy enrolled in high quality programs to meet the goal set within the Office of Early Childhood, Colorado Department of Human Services CSTAT.**

PERIOD OF PERFORMANCE

The Period of Performance is the State Fiscal Year, July 1, 2016 - June 30, 201

Work Plan					
OUTCOMES, BENCHMARKS, AND MILESTONES					
Outcome statement:	Increase Quality – engagement of programs to reach higher quality levels				
Key Activity A: Increase the percentage in number of high quality ratings					
Tasks	**Time Period**	**Deliverable**	**Measurement**	**Person(s) Responsible**	**Budget Category**
Track program participation rates from the Colorado Shines data system dashboards (effective start date July 2016)	Monthly reporting to be communicated by the end of the following month	Data shall be reported monthly. Early Childhood Councils shall utilize the ecConnect Sugar CRM and submit indicator data, along with the results of trend analysis and a narrative of public engagement and awareness strategies utilized to inform best practices.	Report trend of increase in number of high quality ratings Total Licensed programs 17 Current L2-L5 4 Targeted goal 8, increase by 4 programs	Early Childhood Council Coordinator or designee(s) named by Early Childhood Council Coordinator	Personnel Contractors/ Consultants Travel Supplies & Operating
Conduct trend analysis	Monthly reporting to be communicated by the end of the following month	Data shall be reported monthly. Early Childhood Councils shall utilize the ecConnect Sugar CRM and submit indicator data, along with the results of trend analysis and a narrative of public engagement and awareness strategies utilized to inform best practices.	Report trend of increase in number of high quality ratings Total Licensed programs 17 Current L2-L5 4 Targeted goal 8, increase by 4 programs	Early Childhood Council Coordinator or designee(s) named by Early Childhood Council Coordinator	Personnel Contractors/ Consultants Travel Supplies & Operating

Work Plan					
OUTCOMES, BENCHMARKS, AND MILESTONES					
Outcome statement:	Increase/enhance the number of formal agreements between the Early childhood Council and other community early childhood partners related to the Early Childhood Colorado Framework.				
Key Activity B: Increase the number and percentage of MOUs between system and Council partners					
Tasks	**Time Period**	**Deliverable**	**Measurement**	**Person(s) Responsible**	**Budget Category**
Track MOUs and shared outcomes between partners	Monthly reporting to be communicated by the end of the following month	Data will be submitted monthly Early Childhood Councils shall utilize the ecConnect Sugar CRM and submit indicator data, along with the results of trend analysis and a narrative of public engagement and awareness strategies utilized to inform best practices	Increase number of MOUs between system partners/and or enhance current MOUs if no new partners are available Report of activities monthly of new agreements or enhancements to existing agreements	Early Childhood Council Coordinator or designee(s) named by Early Childhood Council Coordinator	Personnel Contractors/ Consultants Travel Supplies & Operating

Work Plan					
OUTCOMES, BENCHMARKS, AND MILESTONES					
Outcome statement:		Administer quality improvement funding to licensed programs completing Levels 2 through 5 requirements within the Colorado Shines Quality Rating and Improvement System. In alignment with engagement goal.			
Key Activity C: Increase the number of programs participating in quality improvement funding					
Tasks	**Time Period**	**Deliverable**	**Measurement**	**Person(s) Responsible**	**Budget Category**
Track program participation rates	Monthly reporting to be communicated by the end of the following month	Data will be submitted monthly Early Childhood Councils shall utilize the ecConnect Sugar CRM to track the award and approval of quality improvement assets	Number of Level 2 programs Number of Level 3-5 programs	Early Childhood Council Coordinator or designee(s) named by Early Childhood Council Coordinator	Personnel Contractors/ Consultants Travel Supplies and Operations
Conduct trend analysis	Monthly reporting to be communicated by the end of the following month	Data shall be reported monthly. Early Childhood Councils shall utilize the ecConnect Sugar CRM to track the award and approval of quality improvement assets	Number of Level 2 programs Number of Level 3-5 programs	Early Childhood Council Coordinator or designee(s) named by Early Childhood Council Coordinator	Personnel Contractors/ Consultants Travel Supplies & Operating

SCHEDULE/MILESTONES

GUNNISON HINSDALE EARLY CHILDHOOD COUNCIL, will report monthly on milestones for this project. Milestones should be specific, based on measurable information such as ecConnect reporting or QRIS dashboard reports. Reports are due monthly for the previous month. For example, Reporting for the month of January will be due to the Office of Early Childhood QRIS Coordinator by February 28. Invoices are to be submitted monthly to your QRIS Coordinator.

ACCEPTANCE CRITERIA

The acceptance of all deliverables will reside with the Office of Early Childhood Child Care Quality Initiatives Unit. The designated program coordinator will monitor all deliverables in order to ensure the completeness of each stage of the project and that the scope of work has been met. The OEC program coordinator will either sign off on the approval, or reply to the vendor, in writing, advising what tasks must still be accomplished.

Colorado Department of Human Services
Office of Early Childhood
BUDGET SUMMARY

Contractor Name	Gunnison County (Gunnison-Hinsdale Early Childhood Council)
Budget Period	July 1, 2016 - June 30, 2017
Project Name	Early Childhood Council

Program Contact Name, Title, Phone and Email	Margaret Wacker, Early Childhood Council Coordinator, 970-641-7913 mwacker@gunnisoncounty.org
Fiscal Contact Name, Title, Phone and Email	Jody Wise, Accountant 970-641-7679 jwise@gunnisoncounty.org

	FY 2017
Total Race to the Top - Early Learning Challenge Grant (RTT)	**$10,400**
Total CCDF Early Childhood Council - Systems Building	**$59,202**
Total Colorado Child Care Assistance Program (CCCAP)	**$4,620**
TOTAL	**$74,222**

*All funds are rounding using standard accounting principles (0.00-0.49 = 0; 0.5-0.99 = 1)

Colorado Department of Human Services
Office of Early Childhood
BUDGET WITH JUSTIFICATION FORM

Contractor Name	Gunnison County (Gunnison-Hinsdale Early Childhood Council)
Budget Period	July 1, 2016 - June 30, 2017
Project Name	Race to the Top Early Learning Challenge Grant (RTT)

Program Contact Name, Title, Phone and Email	Margaret Wacker, Early Childhood Council Coordinator, 970-641-7913 mwacker@gunnisoncounty.org
Fiscal Contact Name, Title, Phone and Email	Jody Wise, Accountant 970-641-7679 jwise@gunnisoncounty.org

Expenditure Categories					
Personnel Services - Salaried Employees					**FY 2017**
Position Title/Employee Name	**Description of Work**	**Gross or Annual Salary**	**Fringe**	**Percent of Time on Project**	**Total Amount Requested from OEC**
Council Coordinator	Manages the budgets and contracts, coordinates council meetings, leads planning processes, completes quarterly reports, and writes grants. Fringe Benefits Include: Retirement Plan, Health, Dental, Payroll Taxes, Health Savings Account.	$54,080	$26,000	2.5%	$2,002
Quality Improvement Navigator	Supports licensed providers navigating Colorado Shines system, imports information into Sugar system. Fringe Benefits Include: Paid Time Off (Sick and Annual), Aflac, Payroll Taxes.	$42,008	$3,640	15%	$6,847
				Total Personnel Services (including fringe benefits)	**$8,849**
Contractors/Consultants (payments to third parties or entities)					**FY 2017**
Name	**Description of Item**				**Total Amount Requested from OEC**
	No costs will be reimbursed by CDHS for this category.				$0
				Total Contractors/Consultants	**$0**
Travel					**FY 2017**
Item	**Description of Item**				**Total Amount Requested from OEC**
Travel for trainings related to quality improvement	Travel to Denver area for quality improvement related trainings for coaches and other staff., 3 trips to Denver area per year, 400 miles x 3 x $.54=$648. Lodging $100 x 3 = $300. Per diem $36 x 3= $108.				$1,056
				Total Travel	**$1,056**
Supplies & Operating Expenses					**FY 2017**
Item	**Description of Item**				**Total Amount Requested from OEC**
	No costs will be reimbursed by CDHS for this category.				$0
				Total Supplies & Operating Expenses	**$0**
				MODIFIED TOTAL DIRECT COSTS (MTDC)	**$9,905**
Indirect Costs **[not to exceed 10% unless Negotiated Federal Indirect Cost rate or Negotiated State Indirect Cost rate is attached]**					**FY 2017**
Item	**Description of Item**				**Total Amount Requested from OEC**
Indirect rate:	5% of Modified Total Direct Costs				$495
				Total Indirect	**$495**
				TOTAL	**$10,400**

Colorado Department of Human Services
Office of Early Childhood
BUDGET WITH JUSTIFICATION FORM

Contractor Name	Gunnison County (Gunnison-Hinsdale Early Childhood Council)
Budget Period	July 1, 2016 - June 30, 2017
Project Name	Child Care Development Fund (CCDF) Early Childhood Council Systems Building

Program Contact Name, Title, Phone and Email	Margaret Wacker, Early Childhood Council Coordinator, 970-641-7913 mwacker@gunnisoncounty.org
Fiscal Contact Name, Title, Phone and Email	Jody Wise, Accountant 970-641-7679 jwise@gunnisoncounty.org

Expenditure Categories					
Personnel Services - Salaried Employees					**FY 2017**
Position Title/Employee Name	**Description of Work**	**Gross or Annual Salary**	**Fringe**	**Percent of Time on Project**	**Total Amount Requested from OEC**
Council Coordinator	Manages the budgets and contracts, coordinates council meetings, council member outreach, leads planning processes, completes quarterly reports, and writes grants. Fringe Benefits Include: Retirement Plan, Health, Dental, Payroll Taxes, Health Savings Account.	$54,080	$26,000	47.5%	$38,038
Assistant Coordinator	Assists in systems building activities, administrative work, event planning, council member outreach. Fringe Benefits Include: Paid Time Off (Sick and Annual), Aflac, Payroll Taxes.	$43,972	$6,240	25%	$12,553
				Total Personnel Services (including fringe benefits)	**$50,591**
Contractors/Consultants (payments to third parties or entities)					**FY 2017**
Name	**Description of Item**				**Total Amount Requested from OEC**
	No costs will be reimbursed by CDHS for this category.				$0
				Total Contractors/Consultants	**$0**
Travel					**FY 2017**
Item	**Description of Item**				**Total Amount Requested from OEC**
Travel to ECCLA and State TA day meetings	Travel to Denver area for ECCLA and State TA days, as well as local travel for council meetings in Crested Butte and Lake City. 5 trips to Denver per year, including mileage 400 miles x 5 x $.54 = **$1,080**, lodging $120 per night x 10 = **$1,200**. Per diem $36 x 10 = **$360**. Local travel for Early Childhood Council meetings, 2 in Crested Butte and 1 in Lake City, 60 miles x 3 x .54 = **$97.20**.				$2,737
				Total Travel	**$2,737**
Supplies & Operating Expenses					**FY 2017**
Item	**Description of Item**				**Total Amount Requested from OEC**
Annual Conference	Annual Conference providing 6 hours of professional development trainings for local childcare providers, space rental, food, speakers				$700
Office and meeting supplies	Snacks, $20 x 6 meetings = $120, and $35 for binders, paper, pens.				$155
Partial Scholarships	Partial Scholarships for directors and teachers to meet licensing requirements				$500
Computer costs, IT charge	Annual cost of a computer is $2,550, 2/3 of that is $1,700 per year.				$1,700
				Total Supplies & Operating Expenses	**$3,055**
				MODIFIED TOTAL DIRECT COSTS (MTDC)	**$56,383**
Indirect Costs **[not to exceed 10% unless Negotiated Federal Indirect Cost rate or Negotiated State Indirect Cost rate is attached]**					**FY 2017**
Item	**Description of Item**				**Total Amount Requested from OEC**
Indirect rate:	5% of Modified Total Direct Costs				$2,819
				Total Indirect	**$2,819**
				TOTAL	**$59,202**

Colorado Department of Human Services
Office of Early Childhood
BUDGET WITH JUSTIFICATION FORM

Contractor Name	Gunnison County (Gunnison-Hinsdale Early Childhood Council)
Budget Period	July 1, 2016 - June 30, 2017
Project Name	Colorado Child Care Assistance Program (CCCAP)

Program Contact Name, Title, Phone and Email	Margaret Wacker, Early Childhood Council Coordinator, 970-641-7913 mwacker@gunnisoncounty.org
Fiscal Contact Name, Title, Phone and Email	Jody Wise, Accountant 970-641-7679 jwise@gunnisoncounty.org

Expenditure Categories					
Personnel Services - Salaried Employees					**FY 2017**
Position Title/Employee Name	**Description of Work**	**Gross or Annual Salary**	**Fringe**	**Percent of Time on Project**	**Total Amount Requested from OEC**
Quality Improvement Navigator and Coach	Supports licensed providers navigating Colorado Shines system, imports information into Sugar system. Also provides Quality Improvement Coaching for Colorado Shines. Fringe Benefits Include: Paid Time Off (Sick and Annual), Aflac, Payroll Taxes.	$42,008	$3,640	2.5%	$1,141
				Total Personnel Services (including fringe benefits)	**$1,141**
Contractors/Consultants (payments to third parties or entities)					**FY 2017**
Name	**Description of Item**				**Total Amount Requested from OEC**
	No costs will be reimbursed by CDHS for this category.				$0
				Total Contractors/Consultants	**$0**
Travel					**FY 2017**
Item	**Description of Item**				**Total Amount Requested from OEC**
	No costs will be reimbursed by CDHS for this category.				$0
				Total Travel	**$0**
Supplies & Operating Expenses					**FY 2017**
Item	**Description of Item**				**Total Amount Requested from OEC**
Quality Improvement Assetts	Funding for Tenderfoot Child and Family Development Center for improving quality and attaining a higher level in the Colorado Shines system.				$3,059
				Total Supplies & Operating Expenses	**$3,059**
				MODIFIED TOTAL DIRECT COSTS (MTDC)	**$4,200**
Indirect Costs **[not to exceed 10% unless Negotiated Federal Indirect Cost rate or Negotiated State Indirect Cost rate is attached]**					**FY 2017**
Item	**Description of Item**				**Total Amount Requested from OEC**
or 10% Indirect rate:	10% indirect rate				$420
				Total Indirect	**$420**
				TOTAL	**$4,620**

Additional Provisions

A. Order of Precedence

1. Order of Precedence: In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

   a. Colorado Special Provisions, pages 14 to 15.

   b. Contract, pages 1 to 2.

   c. General Provisions, pages 3 to 13.

   d. Additional Provisions (**Exhibit D**), pages 1 to 5.

   e. **Exhibit B** (Contractor's Statement of Work)

2. The parties understand and agree that the order of precedence set forth in this provision shall control over any conflicting order that may be prescribed in paragraph D of the contract General Provisions.

B. Contract Provisions:

1. In accordance with **Exhibit B**, the contractor shall comply with the following requirements for programs and services:

   a. Distribute online Annual Collaboration Survey to all Early Childhood Council members and encourage members' full participation in survey completion.

   b. One individual with leadership responsibilities in the local council must attend at least 5 of the 6 scheduled Early Childhood Council Leadership Alliance meetings that occur during each contract year.

   c. Agree to participate in relevant technical assistance activities which may include, but are not limited to, the following:

      - Participate in a planning process with an assigned Lead State Staff member to identify and address technical assistance needs;
      - Connect (via telephone, e-mail, and/or face-to-face) with an assigned Lead State Staff member; and/or,
      - Participate in site visits with assigned Lead State Staff.

   d. The contractor shall perform, at a minimum, one of the following child care quality and availability improvement activities, in accord with the contractor's approved work plan and budget in **Exhibit B**.

      i. Provide needs assessment and planning of community based child care and education efforts which promote CCDF goals;

      ii. Build public-private partnerships and business involvement in child care;

      iii. Child care program start-up activities;

      iv. Expansion of child care space in existing facilities;

      v. Provide grants and loans to child care providers to assist them in meeting applicable state, local and/or tribal child care standards, including applicable health and safety requirements; grants and loans to promote start-up and expansion of child care and to expand the number of children served;

      vi. Improve the monitoring of, compliance with and enforcement of applicable state, local and/or tribal requirements under the federal regulations;

      vii. Provide comprehensive consumer education activities for parents and the public;

      viii. Provide activities that increase parental choice;

ix. Operate directly or provide financial assistance to organizations for the enhanced development, establishment, expansion, operation and coordination of resource and referral programs specifically related to child care;

x. Provide training and technical assistance in one or more of the following child care areas;

- Health and safety;
- Nutrition;
- First aid;
- Recognition of communicable diseases;
- Child abuse detection and prevention; or
- Care for special needs children.

xi. Provide activities that improve salaries and other compensation, e.g., fringe benefits, for full-and part-time staff who provide child care services;

xii. Create coordinated care systems such as wraparound, full-day, full-week, full- year care. This may also include the creation of transportation systems to support these services and projects linking child care and Head Start or other pre-kindergarten programs;

xiii. Minor renovation of facilities to meet licensing requirements;

xiv. Develop and implement teen parent programs or weekend/evening or sick child care programs; or,

xv. Expand provider training and innovative recruitment/retention strategies.

e. The contractor shall use grant funds only for those activities that result in the creation of new child care options and/or enhancing and expanding current child care options.

f. The contractor shall operate the grant within the confines of the federal child care rules and regulations in **Exhibit C** as these regulations currently exist or as they may be amended during the term of this Contract.

g. The contractor shall not use funds to supplant or replace funds currently being used, planned, or committed, for child care activities. Grant funds shall not be used to replace existing program revenues.

h. The contractor shall start funded activities within 30 days of receiving a signed contract.

i. In administering the grant program and funds, the contractor shall prioritize:

i. making effective use of community resources, and

ii. meeting the needs of low-income parents and families having children with special needs who are eligible for child care under federal child care regulations,

iii. providing high quality programs, which create an environment that enhances the age-appropriate, educational, social, cultural, emotional and recreational development of children.

j. Funds shall not be used for direct subsidies/scholarships for child care or for general administrative support services which are not directly related to this quality expansion grant.

k. The contractor shall cooperate with state and/or federal monitoring of the contractor's program and costs.

l. The contractor shall not use funds for the following activities:

- to purchase or improve land,
- to purchase vans, trucks, or automobiles;
- to purchase, construct or permanently improve any building or facility.

m. The contractor shall not engage in activities intended to extend or replace regular academic programs or for tuition (in grades 1-12) or for related expenses for academic programs.

C. Qualified Staff

1. The contractor shall provide qualified staff person(s) to administer and oversee the Contract and the appropriate and lawful selection of the subcontractors, through a lawful procurement process, awardance of sub-contracts and approved funds, ongoing oversight of the appropriate sub-contractor obligations and expenditures of said funds, data gathering, reporting and audit acceptable procedures.

D. Expenditures and Invoices

1. The contractor shall spend all encumbered funds by June 30, 2017 in accordance with Federal Rules governing Child Care Development Funds.
2. The contractor shall submit monthly invoices to the State in a format specified and provided by the State.

E. Reporting

1. The contractor shall provide the State with brief quarterly programmatic and financial progress reports, a final program report and a final financial report which includes discussion of sub-contractor and/or other lower tier participant activities and costs.

   a. The brief programmatic progress reports shall be due within 30 days after the end of the quarter. The report include, at a minimum, a brief status update on the contractor's progress on the overall program of services as enumerated in **Exhibit B**, activity/service report for the quarter, outreach and public awareness activities to inform low-income families about the project; any significant problems and barriers which may have arisen and which might impact the program of services; significant innovations; copies of products or reports generated during the reporting period; and a brief list of activities planned for the next reporting period. These reports shall be provided in a format and according to specifications to be provided to the contractor by the State.

   b. The final program report shall be due by July 31, 2017 for the period of July 1, 2016 - June 30, 2017 and shall include the following information:

      i. The contractor shall include in the final program report a description of all accomplishments and programs of service as enumerated in **Exhibit B**, any significant problems and barriers which impacted development or completion of the program of services; a final activity/service outcome report, significant innovations; a list of products or reports generated during the project; and how child care availability and/or quality were increased under the project. These reports shall be provided in a format and according to specifications provided to the contractor by the State.

      ii. The contractor shall also provide in the final program report other information available and requested by the State during the year and any additional information that might be required pursuant to changes in federal reporting requirements governing the use of these funds. The contractor shall confer with the Director of the State Division of Child Care (DCC), or the Director's designee, as deemed appropriate by the State or at the request of the contractor, to allow for open discussions of progress, problem(s) encountered, and problem(s) solutions.

   c. The final financial report shall be due by July 31, 2017 for the period of July 1, 2016 - June 30, 2017 and shall include the following information:

      i. The financial data shall include the actual costs for the program services and the actual costs of specific activities to build child care capacity and improve the availability of child care, within the budget limitations and categories specified on **Exhibit B**.

2. The contractor shall confer with the Director of the State Division of Child Care (DCC), or the Director's designee, as deemed appropriate by the State or at the request of the contractor, to allow for open discussions of progress, problem(s) encountered, and problem(s) solutions.

F. Federal Child Care Rules and Regulations Compliance

The contractor shall operate the Program(s) within the express confines of the federal child care rules and regulations, 45 CFR Part 98 and 99, as amended, governing the use of these funds; copies of these

documents, which are in the possession of each party, are hereby incorporated herein by this reference. The contractor acknowledges by its signature on this contract that these rules and regulations will be explained to and/or incorporated into all subcontractor and/or other lower tier participant agreements or contracts as appropriate. The contractor and all subcontractors shall operate the Program(s) in accord with any new federal and/or State Rules and Regulations applicable to this contract which may hereafter be promulgated by the State and/or federal government during the term of this contract, upon notification by the State, as deemed appropriate by the State and in consultation with the contractor.

G. Acknowledge Receipt of Publications

The contractor and all sub-contractors shall publicly acknowledge and include an acknowledgment in publications and/or written materials developed and disseminated through funding available under this Contract that funding was provided by the Colorado Department of Human Services, Division of Child Care, as the lead agency in Colorado for administering Child Care and Development Fund funds available through the U.S. Department of Health and Human Services.

H. Certification Regarding Environmental Tobacco Smoke

Public Law 103-227, Part C- Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (ACT), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided by private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the contractor certifies that it will comply with the requirements of the Act. The contractor further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify and perform accordingly.

I. Reallocation of Budget Line Items

The amount of funds allocated to each line item of the budget may be reallocated upon written request of the contractor and the subsequent written approval of the State, subject to the limitation of the Compensation/Maximum Payable clause.

J. Loss of Federal Participation

In any case where the contractor's failure to perform in accordance with this Contract results in a loss of federal financial participation (as in the case of a federal audit exception), the contractor will bear full financial responsibility for the loss and, if necessary, seek restoration of the funds. Financial responsibility shall also include payment of any legal expense incurred in the defense of such an audit exception. The State shall also have the right to implement other available remedial actions.

K. Final Payment

Final payment shall be made upon completion, submittal, and acceptance of a Final Financial Fiscal Report and the Final Program Report as described in Paragraphs II.D.1.b.i. and II.D.1.b.ii., respectively.

L. Monthly Invoicing, Budget Narrative, Audit Requirements

This contract is a "Cost Reimbursement" contract-- allowable and reasonable costs incurred by the Early Childhood Council are reimbursed in accordance with the terms of the Contract, OMB Circulars A-122, A-87, A-21, A-133 and State Fiscal Rules (if received state funds).

OMB A-122 "Cost Principles for Non-Profit Organizations"

OMB A-87 "Cost Principles for State, Local, and Indian Tribal Governments" OMB A-21 "Cost Principles for Educational Institutions"

OMB A-133 "Audits of State, Local Governments, and Non-Profit Organizations"

The Colorado Department of Human Services (CDHS), Office of Early Childhood (OEC) staff will monitor this contract for the proper expenditure of funds and to assure that expenditures are reasonable, necessary and allowable for the OEC programs.

The Early Childhood Council understands and agrees that an approved budget amendment is required for any budget category change that exceeds 10% of the overall budget. This budget amendment requirement shall be submitted to OEC in written form for OEC approval, prior to invoicing with any changes. A budget amendment will be required if the Early Childhood Council wishes to invoice for expenditures that were not included in the approved contract budget.

The Early Childhood Council understands that a Single Audit is required by the Office of Management and Budget (OMB), Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" if an entity expends federal awards of $500,000 or more annually. The amount of federal awards your agency received from all sources should be combined each year to determine whether a Single Audit is necessary. If a single audit is required please send a copy to the CDHS, Audit Division.

CDHS Audit Division, 4126 S. Knox Ct. Denver Colorado 80236 or chervl.wilmer@state.co.us

The Early Childhood Council agrees to properly document compensation for personal services expenditures in accordance the Federal Cost Circular that applies to the agency. For example, for nonprofit agencies, the distribution of salaries and wages to awards must be supported by personal activity reports, the reports must reflect after the fact determination of the actual activity for each employee, and be maintained for all staff members whose compensation is charged in whole or in part directly to the OEC program (Page 3: Sample Personnel Activity Record).

The Early Childhood Council shall submit monthly invoices to the state in a format specified and approved by the State. The Early Child Council shall maintain supporting documentation for all expenditures, included in the monthly invoice. Documentation may be requested by DEC staff beginning with the first invoice submitted after contract approval. Financial statements and records must be available for audit purposes. Early Childhood Councils are required to keep copies of the supporting documentation on file to support monthly invoices.

Documentation must consist of actual invoices that include the pro-rata share of how the expenditures were allocated across the Early Childhood Council funding sources (if the expenditure benefits more than one program). (Page 4: Suggested Basis of Cost Distribution). The invoices must also contain a detailed description of the goods or services purchased and be properly authorized.

Exhibit D

The Early Childhood Council shall maintain records that appropriately document expenditures charged to the grant, including, but not necessarily limited to:

EXPENDITURE	DOCUMENTATION
Personnel costs	Timesheets and Personnel Activity Reports (can be combined if they include all the required information)
Fringe benefits	Payroll records or other documentation of the cost of actual benefits
Travel	Mileage logs, hotel, meal, airline receipts, etc.
Meetings (if allowable see terms of the contract and OMB Cost Circulars)	Vendor invoices, list of attendees and associated organization, meeting agenda and explanation of how the meeting fulfills the objectives of the contract/grant
Supplies and non-capitalized equipment	Invoices from vendors
Rent	Monthly rental invoices (note: generally Federal funds may be expended on depreciation and interest; however they may not be used for mortgage payments).
Communications	Vendor invoices
Conferences and training	Registration receipts, confirmation of registration, payment for all attendees, and a training agenda

Greater Metro Independent Living Center

Participant Name	John Q. Coordinator
Period (From MM/DD/YYYY to MM/DDD/YYYY)	07/22/2013 - 08/02/2013

Month	July 22 - August 3								Grant - ILC/OIB/SS					Subtotal
Day	22-Jul	23-Jul	24-Jul	25-Jul	26-Jul	27-Jul	28-Jul	29-Jul	30-Jul	31-Jul	1-Aug	2-Aug	3-Aug	
Hours Spent on Creating Plans - ILC	2.0			1.0	8.0					2.0		3.0		16.0
Hours Spent on Advertising - ILC		1.0	2.0					4.0			4.0			11.0
Hours Spent on Visiting Clients -ILC														0.0
Total ILC	2.0	1.0	2.0	1.0	8.0	0.0	0.0	4.0	0.0	2.0	4.0	3.0	0.0	27.0
Hours Spent on Creating Plans - OIB				1.0										1.0
Hours Spent on Advertising - OIB	5.0	5.0							5.0	3.0				18.0
Hours Spent on Visiting Clients - OIB												2.0		2.0
Total OIB	5.0	5.0	0.0	1.0	0.0	0.0	0.0	0.0	5.0	3.0	0.0	2.0	0.0	21.0
Hours Spent on Creating Plans - SS		1.0		3.0					2.0					6.0
Hours Spent on Advertising - SS	1.0		3.0	3.0							4.0			11.0
Hours Spent on Visiting Clients - SS		1.0	2.0						1.0			3.0		7.0
Total SS	1.0	2.0	5.0	6.0	0.0	0.0	0.0	0.0	3.0	0.0	4.0	3.0	0.0	24.0
SUB-TOTAL WORK HOURS (Day)	8.0	8.0	7.0	8.0	8.0	0.0	0.0	4.0	8.0	5.0	8.0	8.0	0.0	72.0
Leave - Sick			1.0					4.0		3.0				8.0
Leave - Vacation													8.0	8.0
SUB-TOTAL LEAVE	0.0	0.0	1.0	0.0	0.0	0.0	0.0	4.0	0.0	3.0	0.0	0.0	8.0	16.0
TOTAL HOURS	8.0	8.0	8.0	8.0	8.0	0.0	0.0	8.0	8.0	8.0	8.0	8.0	8.0	88.0

Percent of Direct Program Work Time = (Total Program Hrs/Subtotal Work Hours)
ILC - 27/72 = 37.5%
OIB - 21/72 = 29.2%
SS - 24/72 = 33.3%

John Q. Coordinator's Salary - $2,000.00

ILC - $2,000.00*.375 = $750
OIB - $2,000.00*.292 = $584
SS - $2,000.00*.333 = $666

This is what we would expect see billed to each program area.

I hereby certify that the hours reported above were spent on the specified projects in accordance with the terms of the award, that they are true and accurate and that payment for the time worked has not been paid by nor will be billed to another project

Employee Signature: John Q. Coordinator Date: 8/5/13

I hereby certify that the hours reported by the participant identified above are true and accurate to the best of my knowledge and belief and are in accordance with the terms of the award

Supervisor Signature: Thomas X. Manager Date: 8/6/13

Exhibit D

Source: **Implementation Guide For OMB A-87**

4.6.2 Suggested Bases for Cost Distribution

Listed below are suggested bases for distributing joint costs of central-type services to local government departments or agencies and to projects and programs utilizing these services. The bases are suggestions only, and should not be used if they are not suitable for the particular services involved. Any method of distribution can be used which will produce an equitable distribution of cost. In selecting one method over another, consideration should be given to the additional effort required to achieve a greater degree of accuracy.

Type of Service	*Suggested Bases for Allocation*
Accounting	Number of transactions processed
Auditing	Direct audit hours
Budgeting	Direct hours of identifiable services of employees of central budget
Buildings lease management	Number of leases
Data processing	System usage
Disbursing service	Number of checks or warrants issued
Employees retirement system administration	Number of employees contributing
Insurance management service	Dollar value of insurance premiums
Legal services	Direct hours
Mail and messenger service	Number of documents handled or employees served
Motor pool costs, including automotive management	Miles driven and/or days used
Office machines and equipment maintenance repairs	Direct hours
Office space use and related costs (heat, light, janitorial services, etc.)	Square feet of space occupied
Organization and management services	Direct hours, Square feet
Payroll services	Number of employees
Personnel administration	Number of employees
Printing and reproduction	Direct hours, job basis, pages printed, etc.
Procurement service	Number of transactions processed
Local telephone	Number of telephone instruments
Health services	Number of employees
Fidelity bonding program	Employees subject to bond or penalty amounts

M. Option Letter Provisions

a. Option to extend the term:
The State may require continued performance for a period of 1 year at the same rates and same terms specified in the Contract. If the State exercises the option, it will provide written notice to Contractor at least 30 days prior to the end of the current contract term in a form substantially equivalent to **Exhibit I**. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the original contract. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed 5 years.

b. Option to increase or decrease quantities and total price:
The State may increase or decrease the quantity of goods/services described in **Exhibits B and C** based upon the rates established in the Contract. If the State exercises the option, it will provide written notice to Contractor as least 30 days prior to the end of the current contract term in a form substantially equivalent to **Exhibit I**. Delivery/performance of the goods/service shall continue at the same rates and terms. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the original contract.

List of Subjects

45 CFR Part 98

Child care, Grant program--social programs, Parental choice, Reporting and record keeping requirements.

45 CFR Part 99

Administrative practice and procedure, Child care, Grant program--social programs.

(Catalog of Federal Domestic Assistance Programs: 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

Dated: March 16, 1998.
Olivia A. Golden,
Assistant Secretary for Children and Families.

Approved: June 10, 1998.
Donna E. Shalala,
Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, Parts 98 and 99 of Subtitle A of Title 45 of the Code of Federal Regulations are amended as follows:

1. Part 98 is revised as follows:

PART 98--CHILD CARE AND DEVELOPMENT FUND

Subpart A--Goals, Purposes and Definitions

Sec.
98.1 Goals and purposes.
98.2 Definitions.
98.3 Effect on State law.

Subpart B--General Application Procedures

98.10 Lead Agency responsibilities.
98.11 Administration under contracts and agreements.
98.12 Coordination and consultation.
98.13 Applying for funds.
98.14 Plan process.
98.15 Assurances and certifications.
98.16 Plan provisions.
98.17 Period covered by plan.
98.18 Approval and disapproval of plans and plan amendments.

Subpart C--Eligibility for Services

98.20 A child's eligibility for child care services.

Subpart D--Program Operations (Child Care Services)--Parental Rights and
Responsibilities

98.30 Parental choice.
98.31 Parental access.
98.32 Parental complaints.
98.33 Consumer education.
98.34 Parental rights and responsibilities.

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Subpart E--Program Operations (Child Care Services)--Lead Agency and Provider Requirements

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Authority: 42 U.S.C. 618, 9858.

Subpart A--Goals, Purposes and Definitions

Sec. 98.1 Goals and purposes.

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(a) The goals of the CCDF are to:

(1) Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the State;

(2) Promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;

(3) Encourage States to provide consumer education information to help parents make informed choices about child care;

(4) Assist States to provide child care to parents trying to achieve independence from public assistance; and

(5) Assist States in implementing the health, safety, licensing, and registration standards established in State regulations.

(b) The purpose of the CCDF is to increase the availability, affordability, and quality of child care services. The program offers Federal funding to States, Territories, Indian Tribes, and tribal organizations in order to:

(1) Provide low-income families with the financial resources to find and afford quality child care for their children;

(2) Enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance under the CCDF;

(3) Provide parents with a broad range of options in addressing their child care needs;

(4) Strengthen the role of the family;

(5) Improve the quality of, and coordination among, child care programs and early childhood development programs; and

(6) Increase the availability of early childhood development and before- and after-school care services.

(c) The purpose of these regulations is to provide the basis for administration of the Fund. These regulations provide that Lead Agencies:

(1) Maximize parental choice through the use of certificates and through grants and contracts;

(2) Include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers;

(3) Provide quality child care that meets applicable requirements;

(4) Coordinate planning and delivery of services at all levels;

(5) Design flexible programs that provide for the changing needs of recipient families;

(6) Administer the CCDF responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided; and

(7) Design programs that provide uninterrupted service to families and providers, to the extent statutorily possible.

Sec. 98.2 Definitions.

For the purpose of this part and part 99:

The Act refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, as amended and codified at 42 U.S.C. 9858 et seq.

ACF means the Administration for Children and Families;

Application is a request for funding that includes the information required at Sec. 98.13;

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services;

Caregiver means an individual who provides child care services directly to an eligible child on a person-to-person basis;

Categories of care means center-based child care, group home child care, family child care and in-home care;

Center-based child care provider means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Child care certificate means a certificate (that may be a check, or other disbursement) that is issued by a grantee directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider, pursuant to Sec. 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider;

Child Care and Development Fund (CCDF) means the child care programs conducted under the provisions of the Child Care and Development Block Grant Act, as amended. The Fund consists of Discretionary Funds authorized under section 658B of the amended Act, and Mandatory and Matching Funds appropriated under section 418 of the Social Security Act;

Child care provider that receives assistance means a child care provider that receives Federal funds under the CCDF pursuant to grants, contracts, or loans, but does not include a child care provider to whom Federal funds under the CCDF are directed only through the operation of a certificate program;

Child care services, for the purposes of Sec. 98.50, means the care given to an eligible child by an eligible child care provider;

Construction means the erection of a facility that does not currently exist;

The Department means the Department of Health and Human Services;

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Discretionary funds means the funds authorized under section 658B of the Child Care and Development Block Grant Act. The Discretionary funds were formerly referred to as the Child Care and Development Block Grant;

Eligible child means an individual who meets the requirements of Sec. 98.20;

Eligible child care provider means:

(1) A center-based child care provider, a group home child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that--

(i) Is licensed, regulated, or registered under applicable State or local law as described in Sec. 98.40; and

(ii) Satisfies State and local requirements, including those referred to in Sec. 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, sibling (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;

Facility means real property or modular unit appropriate for use by a grantee to carry out a child care program;

Family child care provider means one individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Group home child care provider means two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Sec. 1601 et seq.) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

In-home child care provider means an individual who provides child care services in the child's own home;

Lead Agency means the State, territorial or tribal entity designated under Secs. 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided. The Lead Agency is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Licensing or regulatory requirements means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or tribal law;

Liquidation period means the applicable time period during which a fiscal year's grant shall be liquidated pursuant to the requirements at Sec. 98.60.;

Major renovation means: (1) structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or (2) extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change;

Mandatory funds means the general entitlement child care funds described at section 418(a)(1) of the Social Security Act;

Matching funds means the remainder of the general entitlement child care funds that are described at section 418(a)(2) of the Social Security Act;

Modular unit means a portable structure made at another location and moved to a site for use by a grantee to carry out a child care program;

Obligation period means the applicable time period during which a fiscal year's grant shall be obligated pursuant to Sec. 98.60;

Parent means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing in loco parentis;

The Plan means the Plan for the implementation of programs under the CCDF;

Program period means the time period for using a fiscal year's grant and does not extend beyond the last day to liquidate funds;

Programs refers generically to all activities under the CCDF, including child care services and other activities pursuant to Sec. 98.50 as well as quality and availability activities pursuant to Sec. 98.51;

Provider means the entity providing child care services;

The regulation refers to the actual regulatory text contained in parts 98 and 99 of this chapter;

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment;

Secretary means the Secretary of the Department of Health and Human Services;

Sectarian organization or sectarian child care provider means religious organizations or religious providers generally. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

Sectarian purposes and activities means any religious purpose or activity, including but not limited to religious worship or instruction;

Services for which assistance is provided means all child care services funded under the CCDF, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

Sliding fee scale means a system of cost sharing by a family based on income and size of the family, in accordance with Sec. 98.42;

State means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and includes Tribes unless otherwise specified;

Tribal mandatory funds means the child care funds set aside at section 418(a)(4) of the Social Security Act. The funds consist of between one and two percent of the aggregate Mandatory and Matching child care funds reserved by the Secretary in each fiscal year for payments to Indian Tribes and tribal organizations;

Tribal organization means the recognized governing body of any Indian Tribe, or any legally established organization of Indians, including a consortium, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant; and

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Types of providers means the different classes of providers under each category of care. For the purposes of the CCDF, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

Sec. 98.3 Effect on State law.

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part. (b) If a State law or constitution would prevent CCDF funds from being expended for the purposes provided in the Act, without limitation, then States shall segregate State and Federal funds.

Subpart B--General Application Procedures

Sec. 98.10 Lead Agency responsibilities.

The Lead Agency, as designated by the chief executive officer of the State (or by the appropriate Tribal leader or applicant), shall: (a) Administer the CCDF program, directly or through other governmental or non-governmental agencies, in accordance with Sec. 98.11;

(b) Apply for funding under this part, pursuant to Sec. 98.13;

(c) Consult with appropriate representatives of local government in developing a Plan to be submitted to the Secretary pursuant to Sec. 98.14(b);

(d) Hold at least one public hearing in accordance with Sec. 98.14(c); and

(e) Coordinate CCDF services pursuant to Sec. 98.12.

Sec. 98.11 Administration under contracts and agreements.

(a) The Lead Agency has broad authority to administer the program through other governmental or non-governmental agencies. In addition, the Lead Agency can use other public or private local agencies to implement the program; however:

(1) The Lead Agency shall retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;

(2) The Lead Agency shall serve as the single point of contact for issues involving the administration of the grantee's CCDF program; and

(3) Administrative and implementation responsibilities undertaken by agencies other than the Lead Agency shall be governed by written agreements that specify the mutual roles and responsibilities of the Lead Agency and the other agencies in meeting the requirements of this part.

(b) In retaining overall responsibility for the administration of the program, the Lead Agency shall:

(1) Determine the basic usage and priorities for the expenditure of CCDF funds;

(2) Promulgate all rules and regulations governing overall administration of the Plan;

(3) Submit all reports required by the Secretary;

(4) Ensure that the program complies with the approved Plan and all Federal requirements;

(5) Oversee the expenditure of funds by subgrantees and contractors;

(6) Monitor programs and services;

(7) Fulfill the responsibilities of any subgrantee in any: disallowance under subpart G; complaint or compliance action under subpart J; or hearing or appeal action under part 99 of this chapter; and

(8) Ensure that all State and local or non-governmental agencies through which the State administers the program, including agencies and contractors that determine individual eligibility, operate according to the rules established for the program.

Sec. 98.12 Coordination and consultation.

The Lead Agency shall:

(a) Coordinate the provision of services for which assistance is provided under this part with the agencies listed in Sec. 98.14(a).

(b) Consult, in accordance with Sec. 98.14(b), with representatives of general purpose local government during the development of the Plan; and

(c) Coordinate, to the maximum extent feasible, with any Indian Tribes in the State receiving CCDF funds in accordance with subpart I of this part.

Sec. 98.13 Applying for Funds.

The Lead Agency of a State or Territory shall apply for Child Care and Development funds by providing the following:

(a) The amount of funds requested at such time and in such manner as prescribed by the Secretary.

(b) The following assurances or certifications:

(1) An assurance that the Lead Agency will comply with the requirements of the Act and this part;

(2) A lobbying certification that assures that the funds will not be used for the purpose of influencing pursuant to 45 CFR part 93, and, if necessary, a Standard Form LLL (SF-LLL) that discloses lobbying payments;

(3) An assurance that the Lead Agency provides a drug-free workplace pursuant to 45 CFR 76.600, or a statement that such an assurance has already been submitted for all HHS grants;

(4) A certification that no principals have been debarred pursuant to 45 CFR 76.500;

(5) Assurances that the Lead Agency will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended), and;

(6) Assurances that the Lead Agency will comply with the applicable provisions of Public Law 103-277, Part C--Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994, regarding prohibitions on smoking.

(c) The Child Care and Development Fund Plan, at times and in such manner as required in Sec. 98.17; and

(d) Such other information as specified by the Secretary.

Sec. 98.14 Plan process.

In the development of each Plan, as required pursuant to Sec. 98.17, the Lead Agency shall:

(a)(1) Coordinate the provision of services funded under this Part with other Federal, State, and local child care and early childhood development programs, including such programs for the benefit of Indian children. The Lead Agency shall also coordinate with the State, and if applicable, tribal agencies responsible for: (A) Public health, including the agency responsible for immunizations;

(B) Employment services/workforce development;

(C) Public education; and

(D) Providing Temporary Assistance for Needy Families.

(2) Provide a description of the results of the coordination with each of these agencies in the CCDF Plan.

(b) Consult with appropriate representatives of local governments;

(c)(1) Hold at least one hearing in the State, after at least 20 days of statewide public notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

(2) The hearing required by paragraph (c)(1) shall be held before the Plan is submitted to ACF, but no earlier than nine months before the Plan becomes effective.

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(3) In advance of the hearing required by this section, the Lead Agency shall make available to the public the content of the Plan as described in Sec. 98.16 that it proposes to submit to the Secretary.

Sec. 98.15 Assurances and certifications.

(a) The Lead Agency shall include the following assurances in its CCDF Plan:

(1) Upon approval, it will have in effect a program that complies with the provisions of the CCDF Plan, and that is administered in accordance with the Child Care and Development Block Grant Act of 1990, as amended, section 418 of the Social Security Act, and all other applicable Federal laws and regulations;

(2) The parent(s) of each eligible child within the area served by the Lead Agency who receives or is offered child care services for which financial assistance is provided is given the option either:

(i) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(ii) To receive a child care certificate as defined in Sec. 98.2;

(3) In cases in which the parent(s), pursuant to Sec. 98.30, elects to enroll their child with a provider that has a grant or contract with the Lead Agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;

(4) In accordance with Sec. 98.30, the child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;

(5) With respect to State and local regulatory requirements (or tribal regulatory requirements), health and safety requirements, payment rates, and registration requirements, State or local (or tribal) rules, procedures or other requirements promulgated for the purpose of the CCDF will not significantly restrict parental choice from among categories of care or types of providers, pursuant to
Sec. 98.30(f).

(6) That if expenditures for pre-Kindergarten services are used to meet the maintenance-of-effort requirement, the State has not reduced its level of effort in full-day/full-year child care services, pursuant to Sec. 98.53(h)(1).

(b) The Lead Agency shall include the following certifications in its CCDF Plan:

(1) In accordance with Sec. 98.31, it has procedures in place to ensure that providers of child care services for which assistance is provided under the CCDF, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(2) As required by Sec. 98.32, the State maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request;

(3) It will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices, as required by Sec. 98.33;

(4) There are in effect licensing requirements applicable to child care services provided within the State (or area served by Tribal Lead Agency), pursuant to Sec. 98.40;

(5) There are in effect within the State (or other area served by the Lead Agency), under State or local (or tribal) law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the CCDF, pursuant to Sec. 98.41;

(6) In accordance with Sec. 98.41, procedures are in effect to ensure that child care providers of services for which assistance is provided under the CCDF comply with all applicable State or local (or tribal) health and safety requirements; and

(7) Payment rates for the provision of child care services, in accordance with Sec. 98.43, are sufficient to ensure equal access for eligible children to comparable child care services in the State or sub-State area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs.

Sec. 98.16 Plan provisions.

A CCDF Plan shall contain the following:

(a) Specification of the Lead Agency whose duties and responsibilities are delineated in Sec. 98.10;

(b) The assurances and certifications listed under Sec. 98.15;

(c)(1) A description of how the CCDF program will be administered and implemented, if the Lead Agency does not directly administer and implement the program;

(2) Identification of the entity designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to Sec. 98.53(f);

(d) A description of the coordination and consultation processes involved in the development of the Plan, including a description of public-private partnership activities that promote business involvement in meeting child care needs pursuant to Sec. 98.14(a) and (b);

(e) A description of the public hearing process, pursuant to Sec. 98.14(c);

(f) Definitions of the following terms for purposes of determining eligibility, pursuant to Secs. 98.20(a) and 98.44:

(1) Special needs child;

(2) Physical or mental incapacity (if applicable);

(3) Attending (a job training or educational program);

(4) Job training and educational program;

(5) Residing with;

(6) Working;

(7) Protective services (if applicable), including whether children in foster care are considered in protective services for purposes of child care eligibility; and whether respite care is provided to custodial parents of children in protective services.

(8) Very low income; and

(9) in loco parentis.

(g) For child care services pursuant to Sec. 98.50:

(1) A description of such services and activities;

(2) Any limits established for the provision of in-home care and the reasons for such limits pursuant to Sec. 98.30(e)(1)(iv);

(3) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;

(4) A description of how the Lead Agency will meet the needs of certain families specified at Sec. 98.50(e).

(5) Any additional eligibility criteria, priority rules and definitions established pursuant to Sec. 98.20(b);

(h) A description of the activities to provide comprehensive consumer education, to increase parental choice, and to improve the quality and availability of child care, pursuant to Sec. 98.51;

(i) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost sharing by the families that receive child care services for which assistance is provided under the CCDF, pursuant to Sec. 98.42;

(j) A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, in effect pursuant to Sec. 98.41;

(k) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to Sec. 98.30(c);

(l) Payment rates and a summary of the facts, including a biennial local

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market rate survey, relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to Sec. 98.43;

(m) A detailed description of how the State maintains a record of substantiated parental complaints and how it makes information regarding those complaints available to the public on request, pursuant to Sec. 98.32;

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(n) A detailed description of the procedures in effect for affording parents unlimited access to their children whenever their children are in the care of the provider, pursuant to Sec. 98.31;

(o) A detailed description of the licensing requirements applicable to child care services provided, and a description of how such licensing requirements are effectively enforced, pursuant to Sec. 98.40;

(p) Pursuant to Sec. 98.33(b), the definitions or criteria used to implement the exception, provided in section 407(e)(2) of the Social Security Act, to individual penalties in the TANF work requirement applicable to a single custodial parent caring for a child under age six;

(q)(1) When any Matching funds under Sec. 98.53(b) are claimed, a description of the efforts to ensure that pre-Kindergarten programs meet the needs of working parents;

(2) When State pre-Kindergarten expenditures are used to meet more than 10% of the amount required at Sec. 98.53(c)(1), or for more than 10% of the funds available at Sec. 98.53(b), or both, a description of how the State will coordinate its pre-Kindergarten and child care services to expand the availability of child care; and (r) Such other information as specified by the Secretary.

Sec. 98.17 Period covered by Plan.

(a) For States, Territories, and Indian Tribes the Plan shall cover a period of two years.

(b) The Lead Agency shall submit a new Plan prior to the expiration of the time period specified in paragraph (a) of this section, at such time as required by the Secretary in written instructions.

Sec. 98.18 Approval and disapproval of Plans and Plan amendments.

(a) Plan approval. The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.

(b) Plan amendments. Approved Plans shall be amended whenever a substantial change in the program occurs. A Plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured. (c) Appeal of disapproval of a Plan or Plan amendment.

(1) An applicant or Lead Agency dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Lead Agency of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Lead Agency, unless the Assistant Secretary and the applicant or Lead Agency agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

Subpart C--Eligibility for Services

Sec. 98.20 A child's eligibility for child care services.

(a) In order to be eligible for services under Sec. 98.50, a child shall:

(1)(i) Be under 13 years of age; or,

(ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;

(2) Reside with a family whose income does not exceed 85 percent of the State's median income for a family of the same size; and

(3)(i) Reside with a parent or parents (as defined in Sec. 98.2) who are working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in Sec. 98.2) other than the parent(s) described in paragraph (a)(3)(i) of this section.

(A) At grantee option, the requirements in paragraph (a)(2) of this section and in Sec. 98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis by, or in consultation with, an appropriate protective services worker.

(B) At grantee option, the provisions in (A) apply to children in foster care when defined in the Plan, pursuant to Sec. 98.16(f)(7).

(b) Pursuant to Sec. 98.16(g)(5), a grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and Sec. 98.44 so long as they do not:

(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;

(2) Limit parental rights provided under Subpart D; or

(3) Violate the provisions of this section, Sec. 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

Subpart D--Program Operations (Child Care Services)--Parental Rights and Responsibilities

Sec. 98.30 Parental choice.

(a) The parent or parents of an eligible child who receives or is offered child care services shall be offered a choice:

(1) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services, if such services are available; or

(2) To receive a child care certificate as defined in Sec. 98.2.

Such choice shall be offered any time that child care services are made available to a parent.

(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

(c) In cases in which a parent elects to use a child care certificate, such certificate:

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(1) Will be issued directly to the parent;

(2) Shall be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;

(3) May be used as a deposit for child care services if such a deposit is required of other children being cared for by the provider;

(4) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;

(5) May be expended by providers for any sectarian purpose or activity that is part of the child care services, including sectarian worship or instruction;

(6) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.

(d) Child care certificates shall be made available to any parents offered child care services.

(e)(1) For child care services, certificates under paragraph (a)(2) of this section shall permit parents to choose from a variety of child care categories, including:

(i) Center-based child care;

(ii) Group home child care;

(iii) Family child care; and

(iv) In-home child care, with limitations, if any, imposed by the Lead Agency and described in its Plan at Sec. 98.16(g)(2).

Under each of the above categories, care by a sectarian provider may not be limited or excluded.

(2) Lead Agencies shall provide information regarding the range of provider options under paragraph (e)(1) of this section, including care by sectarian providers and relatives, to families offered child care services.

(f) With respect to State and local regulatory requirements under Sec. 98.40, health and safety requirements under Sec. 98.41, and payment rates under Sec. 98.43, CCDF funds will not be available to a Lead Agency if State or local rules, procedures or other requirements promulgated for purposes of the CCDF significantly restrict parental choice by:

(1) Expressly or effectively excluding:

(i) Any category of care or type of provider, as defined in Sec. 98.2; or

(ii) Any type of provider within a category of care; or

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in Sec. 98.2; or

(3) Excluding a significant number of providers in any category of care or of any type as defined in Sec. 98.2.

Sec. 98.31 Parental access.

The Lead Agency shall have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider. The Lead Agency shall provide a detailed description of such procedures.

Sec. 98.32 Parental complaints.

The State shall:

(a) Maintain a record of substantiated parental complaints;

(b) Make information regarding such parental complaints available to the public on request; and

(c) The Lead Agency shall provide a detailed description of how such record is maintained and is made available.

Sec. 98.33 Consumer education.

The Lead Agency shall:

(a) Certify that it will collect and disseminate to parents and the general public consumer education information that will promote informed child care choices including, at a minimum, information about

(1) the full range of providers available, and

(2) health and safety requirements;

(b) Inform parents who receive TANF benefits about the requirement at section 407(e)(2) of the Social Security Act that the TANF agency make an exception to the individual penalties associated with the work requirement for any single custodial parent who has a demonstrated inability to obtain needed child care for a child under six years of age. The information may be provided directly by the Lead Agency, or, pursuant to Sec. 98.11, other entities, and shall include:

(1) The procedures the TANF agency uses to determine if the parent has a demonstrated inability to obtain needed child care;

(2) The criteria or definitions applied by the TANF agency to determine whether the parent has a demonstrated inability to obtain needed child care, including:

(i) ``Appropriate child care";

(ii) ``Reasonable distance";

(iii) ``Unsuitability of informal child care";

(iv) ``Affordable child care arrangements";

(3) The clarification that assistance received during the time an eligible parent receives the exception referred to in paragraph (b) of this section will count toward the time limit on Federal benefits required at section 408(a)(7) of the Social Security Act.

(c) Include in the biennial Plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (b) of this section.

Sec. 98.34 Parental rights and responsibilities.

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Subpart E--Program Operations (Child Care Services)--Lead Agency and Provider Requirements

Sec. 98.40 Compliance with applicable State and local regulatory requirements.

(a) Lead Agencies shall:

(1) Certify that they have in effect licensing requirements applicable to child care services provided within the area served by the Lead Agency;

(2) Provide a detailed description of the requirements under paragraph (a)(1) of this section and of how they are effectively enforced.

(b)(1) This section does not prohibit a Lead Agency from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the CCDF than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements shall be consistent with the safeguards for parental choice in Sec. 98.30(f).

Sec. 98.41 Health and safety requirements.

(a) Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute, each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided under this part. Such requirements shall include:

(1) The prevention and control of infectious diseases (including immunizations). With respect to immunizations, the following provisions apply:

(i) As part of their health and safety provisions in this area, States and Territories shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for

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childhood immunizations of the respective State or territorial public health agency.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, Lead Agencies may exempt:

(A) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles);

(B) Children who receive care in their own homes;

(C) Children whose parents object to immunization on religious grounds; and

(D) Children whose medical condition contraindicates immunization;

(iii) Lead Agencies shall establish a grace period in which children can receive services while families are taking the necessary actions to comply with the immunization requirements;

(2) Building and physical premises safety; and

(3) Minimum health and safety training appropriate to the provider setting.

(b) Lead Agencies may not set health and safety standards and requirements under paragraph (a) of this section that are inconsistent with the parental choice safeguards in Sec. 98.30(f).

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified in paragraph (e) of this section.

(d) Each Lead Agency shall certify that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements described in paragraph (a) of this section.

(e) For the purposes of this section, the term ``child care providers" does not include grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles, pursuant to Sec. 98.2.

Sec. 98.42 Sliding fee scales.

(a) Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale(s) that provides for cost sharing by families that receive CCDF child care services.

(b) A sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate.

(c) Lead Agencies may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.

Sec. 98.43 Equal access.

(a) The Lead Agency shall certify that the payment rates for the provision of child care services under this part are sufficient to ensure equal access, for eligible families in the area served by the Lead Agency, to child care services comparable to those provided to families not eligible to receive CCDF assistance or child care assistance under any other Federal, State, or tribal programs.

(b) The Lead Agency shall provide a summary of the facts relied on to determine that its payment rates ensure equal access. At a minimum, the summary shall include facts showing:

(1) How a choice of the full range of providers, e.g., center, group, family, and in-home care, is made available;

(2) How payment rates are adequate based on a local market rate survey conducted no earlier than two years prior to the effective date of the currently approved Plan;

(3) How copayments based on a sliding fee scale are affordable, as stipulated at Sec. 98.42.

(c) A Lead Agency may not establish different payment rates based on a family's eligibility status or circumstances.

(d) Payment rates under paragraph (a) of this section shall be consistent with the parental choice requirements in Sec. 98.30.

(e) Nothing in this section shall be construed to create a private right of action.

Sec. 98.44 Priority for child care services.

Lead Agencies shall give priority for services provided under Sec. 98.50(a) to:

(a) Children of families with very low family income (considering family size); and

(b) Children with special needs.

Sec. 98.45 List of Providers.

If a Lead Agency does not have a registration process for child care providers who are unlicensed or unregulated under State, local, or tribal law, it is required to maintain a list of the names and addresses of unlicensed or unregulated providers of child care services for which assistance is provided under this part.

Sec. 98.46 Nondiscrimination in admissions on the basis of religion.

(a) Child care providers (other than family child care providers, as defined in Sec. 98.2) that receive assistance through grants and contracts under the CCDF shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e., through grants or contracts to providers) with assistance provided under the CCDF because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State funds, including direct or indirect assistance under the CCDF, the Lead Agency shall assure that before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

Sec. 98.47 Nondiscrimination in employment on the basis of religion.

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulation relating to discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the CCDF shall not discriminate, on the basis of religion, in the employment of caregivers as defined in Sec. 98.2.

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a)(1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the CCDF, the Lead

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Agency shall assure that, before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as a caregiver, as defined in Sec. 98.2.

Subpart F--Use of Child Care and Development Funds

Sec. 98.50 Child care services.

(a) Of the funds remaining after applying the provisions of paragraphs (c), (d) and (e) of this section the Lead Agency shall spend a substantial portion to provide child care services to low-income working families.

(b) Child care services shall be provided:

(1) To eligible children, as described in Sec. 98.20;

(2) Using a sliding fee scale, as described in Sec. 98.42;

(3) Using funding methods provided for in Sec. 98.30; and

(4) Based on the priorities in Sec. 98.44.

(c) Of the aggregate amount of funds expended (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds), no less than four percent shall be used for activities to improve the quality of child care as described at Sec. 98.51.

(d) Of the aggregate amount of funds expended (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds), no more than five percent may be used for administrative activities as described at Sec. 98.52.

(e) Not less than 70 percent of the Mandatory and Matching Funds shall be used to meet the child care needs of families who:

(1) Are receiving assistance under a State program under Part A of title IV of the Social Security Act,

(2) Are attempting through work activities to transition off such assistance program, and

(3) Are at risk of becoming dependent on such assistance program.

(f) Pursuant to Sec. 98.16(g)(4), the Plan shall specify how the State will meet the child care needs of families described in paragraph (e) of this section.

Sec. 98.51 Activities to improve the quality of child care.

(a) No less than four percent of the aggregate funds expended by the Lead Agency for a fiscal year, and including the amounts expended in the State pursuant to Sec. 98.53(b), shall be expended for quality activities.

(1) These activities may include but are not limited to:

(i) Activities designed to provide comprehensive consumer education to parents and the public;

(ii) Activities that increase parental choice; and

(iii) Activities designed to improve the quality and availability of child care, including, but not limited to those described in paragraph (2) of this section.

(2) Activities to improve the quality of child care services may include, but are not limited to:

(i) Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care;

(ii) Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and tribal child care standards, including applicable health and safety requirements, pursuant to Secs. 98.40 and 98.41;

(iii) Improving the monitoring of compliance with, and enforcement of, applicable State, local, and tribal requirements pursuant to Secs. 98.40 and 98.41;

(iv) Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs;

(v) Improving salaries and other compensation (such as fringe benefits) for full-and part-time staff who provide child care services for which assistance is provided under this part; and

(vi) Any other activities that are consistent with the intent of this section.

(b) Pursuant to Sec. 98.16(h), the Lead Agency shall describe in its Plan the activities it will fund under this section.

(c) Non-Federal expenditures required by Sec. 98.53(c) (i.e., the maintenance-of-effort amount) are not subject to the requirement at paragraph (a) of this section.

Sec. 98.52 Administrative costs.

(a) Not more than five percent of the aggregate funds expended by the Lead Agency from each fiscal year's allotment, including the amounts expended in the State pursuant to Sec. 98.53(b), shall be expended for administrative activities. These activities may include but are not limited to:

(1) Salaries and related costs of the staff of the Lead Agency or other agencies engaged in the administration and implementation of the program pursuant to Sec. 98.11. Program administration and implementation include the following types of activities:

(i) Planning, developing, and designing the Child Care and Development Fund program;

(ii) Providing local officials and the public with information about the program, including the conduct of public hearings;

(iii) Preparing the application and Plan;

(iv) Developing agreements with administering agencies in order to carry out program activities;

(v) Monitoring program activities for compliance with program requirements;

(vi) Preparing reports and other documents related to the program for submission to the Secretary;

(vii) Maintaining substantiated complaint files in accordance with the requirements of Sec. 98.32;

(viii) Coordinating the provision of Child Care and Development Fund services with other Federal, State, and local child care, early childhood development programs, and before-and after-school care programs;

(ix) Coordinating the resolution of audit and monitoring findings;

(x) Evaluating program results; and

(xi) Managing or supervising persons with responsibilities described in paragraphs (a)(1)(i) through (x) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services, including such services as accounting services, performed by grantees or subgrantees or under agreements with third parties;

(4) Audit services as required at Sec. 98.65;

(5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to Sec. 98.55.

(b) The five percent limitation at paragraph (a) of this section applies only to the States and Territories. The amount of the limitation at paragraph (a) of this section does not apply to Tribes or tribal organizations.

(c) Non-Federal expenditures required by Sec. 98.53(c) (i.e., the maintenance-of-effort amount) are not subject to the five percent limitation at paragraph (a) of this section.

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Sec. 98.53 Matching fund requirements.

(a) Federal matching funds are available for expenditures in a State based upon the formula specified at Sec. 98.63(a).

(b) Expenditures in a State under paragraph (a) of this section will be matched at the Federal medical assistance rate for the applicable fiscal year for allowable activities, as described in the approved State Plan, that meet the goals and purposes of the Act. (c) In order to receive Federal matching funds for a fiscal year under paragraph (a) of this section:

(1) States shall also expend an amount of non-Federal funds for child care activities in the State that is at least equal to the State's share of expenditures for fiscal year 1994 or 1995 (whichever is greater) under sections 402(g) and (i) of the Social Security Act as these sections were in effect before October 1, 1995; and

(2) The expenditures shall be for allowable services or activities, as described in the approved State Plan if appropriate, that meet the goals and purposes of the Act.

(3) All Mandatory Funds are obligated in accordance with Sec. 98.60(d)(2)(i).

(d) The same expenditure may not be used to meet the requirements under both paragraphs (b) and (c) of this section in a fiscal year.

(e) An expenditure in the State for purposes of this subpart may be:

(1) Public funds when the funds are:

(i) Appropriated directly to the Lead Agency specified at Sec. 98.10, or transferred from another public agency to that Lead Agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for Federal match;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds; or

(2) Donated from private sources when the donated funds:

(i) Are donated without any restriction that would require their use for a specific individual, organization, facility or institution;

(ii) Do not revert to the donor's facility or use; and

(iii) Are not used to match other Federal funds;

(iv) Shall be certified both by the donor and by the Lead Agency as available and representing expenditures eligible for Federal match; and

(v) Shall be subject to the audit requirements in Sec. 98.65 of these regulations.

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this subsection. They may be given to the entity designated by the State to receive donated funds pursuant to Sec. 98.16(c)(2).

(g) The following are not counted as an eligible State expenditure under this Part:

(1) In-kind contributions; and

(2) Family contributions to the cost of care as required by Sec. 98.42.

(h) Public pre-kindergarten (pre-K) expenditures:

(1) May be used to meet the maintenance-of-effort requirement only if the State has not reduced its expenditures for full-day/full-year child care services; and

(2) May be eligible for Federal match if the State includes in its Plan, as provided in Sec. 98.16(q), a description of the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.

(3) In any fiscal year, a State may use public pre-K funds for up to 20% of the funds serving as maintenance-of-effort under this subsection. In any fiscal year, a State may use other public pre-K funds for up to 20% of the expenditures serving as the State's matching funds under this subsection.

(4) If applicable, the CCDF Plan shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20%, of either its maintenance-of-effort or State matching funds in a fiscal year. Also, the Plan shall describe how the State will coordinate its pre-K and child care services to expand the availability of child care.

(i) Matching funds are subject to the obligation and liquidation requirements at Sec. 98.60(d)(3).

Sec. 98.54 Restrictions on the use of funds.

(a) General. (1) Funds authorized under section 418 of the Social Security Act and section 658B of the Child Care and Development Block Grant Act, and all funds transferred to the Lead Agency pursuant to section 404(d) of the Social Security Act, shall be expended

consistent with these regulations. Funds transferred pursuant to section 404(d) of the Social Security Act shall be treated as Discretionary Funds;

(2) Funds shall be expended in accordance with applicable State and local laws, except as superseded by Sec. 98.3.

(b) Construction. (1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to Sec. 98.41.

(3) Tribes and tribal organizations are subject to the requirements at Sec. 98.84 regarding construction and renovation.

(c) Tuition. Funds may not be expended for students enrolled in grades 1 through 12 for:

(1) Any service provided to such students during the regular school day;

(2) Any service for which such students receive academic credit toward graduation; or

(3) Any instructional services that supplant or duplicate the academic program of any public or private school.

(d) Sectarian purposes and activities. Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Pursuant to Sec. 98.2, assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services.

(e) The CCDF may not be used as the non-Federal share for other Federal grant programs.

Sec. 98.55 Cost allocation.

(a) The Lead Agency and subgrantees shall keep on file cost allocation plans or indirect cost agreements, as appropriate, that have been amended to include costs allocated to the CCDF.

(b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.

(c) Approval of the cost allocation plans or indirect cost agreements is not specifically required by these regulations, but these plans and agreements are subject to review.

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Subpart G--Financial Management

Sec. 98.60 Availability of funds.

(a) The CCDF is available, subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget as follows:

(1) Discretionary Funds are available to States, Territories, and Tribes,

(2) Mandatory and Matching Funds are available to States;

(3) Tribal Mandatory Funds are available to Tribes.

(b) Subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget, the Secretary:

(1) May withhold no more than one-quarter of one percent of the CCDF funds made available for a fiscal year for the provision of technical assistance; and

(2) Will award the remaining CCDF funds to grantees that have an approved application and Plan.

(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d) The following obligation and liquidation provisions apply to States and Territories:

(1) Discretionary Fund allotments shall be obligated in the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the end of the succeeding fiscal year shall be liquidated within one year.

(2)(i) Mandatory Funds for States requesting Matching Funds per Sec. 98.53 shall be obligated in the fiscal year in which the funds are granted and are available until expended.

(ii) Mandatory Funds for States that do not request Matching Funds are available until expended.

(3) Both the Federal and non-Federal share of the Matching Fund shall be obligated in the fiscal year in which the funds are granted and liquidated no later than the end of the succeeding fiscal year.

(4) Except for paragraph (d)(5) of this section, determination of whether funds have been obligated and liquidated will be based on:

(i) State or local law; or,

(ii) If there is no applicable State or local law, the regulation at 45 CFR 92.3, Obligations and Outlays (expenditures).

(5) Obligations may include subgrants or contracts that require the payment of funds to a third party (e.g., subgrantee or contractor). However, the following are not considered third party subgrantees or contractors:

(i) A local office of the Lead Agency;

(ii) Another entity at the same level of government as the Lead Agency; or

(iii) A local office of another entity at the same level of government as the Lead Agency.

(6) For purposes of the CCDF, funds for child care services provided through a child care certificate will be considered obligated when a child care certificate is issued to a family in writing that indicates:

(i) The amount of funds that will be paid to a child care provider or family, and

(ii) The specific length of time covered by the certificate, which is limited to the date established for redetermination of the family's eligibility, but shall be no later than the end of the liquidation period.

(7) Any funds not obligated during the obligation period specified in paragraph (d) of this section will revert to the Federal government. Any funds not liquidated by the end of the applicable liquidation period specified in paragraph (d) of this section will also revert to the Federal government.

(e) The following obligation and liquidation provisions apply to Tribal Discretionary and Tribal Mandatory Funds:

(1) Tribal grantees shall obligate all funds by the end of the fiscal year following the fiscal year for which the grant is awarded. Any funds not obligated during this period will revert to the Federal government.

(2) Obligations that remain unliquidated at the end of the succeeding fiscal year shall be liquidated within the next fiscal year. Any tribal funds that remain unliquidated by the end of this period will also revert to the Federal government.

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(f) Cash advances shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the State Lead Agency, its subgrantee or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(g) Funds that are returned (e.g., loan repayments, funds deobligated by cancellation of a child care certificate, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Lead Agency or subgrantee for the cost of care where the Lead Agency or subgrantee has made a full payment to the child care provider) shall,

(1) if received by the Lead Agency during the applicable obligation period, described in paragraphs (d) and (e) of this section, be used for activities specified in the Lead Agency's approved plan and must be obligated by the end of the obligation period; or

(2) if received after the end of the applicable obligation period described at paragraphs (d) and (e) of this section, be returned to the Federal government.

(h) Repayment of loans, pursuant to Sec. 98.51(a)(2)(ii), may be made in cash or in services provided in-kind. Payment provided in-kind shall be based on fair market value. All loans shall be fully repaid.

(i) Lead Agencies shall recover child care payments that are the result of fraud. These payments shall be recovered from the party responsible for committing the fraud.

Sec. 98.61 Allotments from the Discretionary Fund.

(a) To the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico an amount equal to the funds appropriated for the Child Care and Development Block Grant, less amounts reserved for technical assistance and amounts reserved for the Territories and Tribes, pursuant to Sec. 98.60(b) and paragraphs (b) and (c) of this section, shall be allotted based upon the formula specified in section 658O(b) of the Act.

(b) For the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands an amount up to one-half of one percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Funds shall be allotted to these Territories based upon the following factors:

(i) A Young Child factor--the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor--determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(1) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(2) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (b)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

(C) If the Allotment Proportion factor determined at paragraph (b)(1)(ii) of this section:

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(1) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(2) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(2) The formula used in calculating a Territory's allotment is as follows:

(ii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term ``YCF<INF>t</INF>" means the Territory's Young Child factor as defined at paragraph (b)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term ``APF<INF>t</INF>" means the Territory's Allotment Proportion factor as defined at paragraph (b)(1)(ii) of this section.

(c) For Indian Tribes and tribal organizations, including any Alaskan Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq) an amount up to two percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Except as specified in paragraph (c)(2) of this section, grants to individual tribal grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph (c)(1)(i) of this section, by the number of all Indian children living on or near tribal reservations or other appropriate area served by the tribal grantee, pursuant to Sec. 98.80(e).

(2) Grants to Tribes with fewer than 50 Indian children that apply as part of a consortium, pursuant to Sec. 98.80(b)(1), are equal to the sum of:

(i) A portion of the base amount, pursuant to paragraph (c)(1)(i) of this section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the tribal grantee, pursuant to Sec. 98.80(e), does to 50; and

(ii) An additional amount per Indian child, pursuant to paragraph (c)(1)(ii) of this section.

(3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(d) All funds reserved for Territories at paragraph (b) of this section will be allotted to Territories, and all funds reserved for Tribes at paragraph (c) of this section will be allotted to tribal grantees. Any funds that are returned by the Territories after they have been allotted will revert to the Federal government.

(e) For other organizations, up to $2,000,000 may be reserved from the tribal funds reserved at paragraph (c) of this section. From this amount the Secretary may award a grant to a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 4909(4)) and to a private non-profit organization established for the purpose of serving youth who are Indians or Native Hawaiians. The Secretary will establish selection criteria and procedures for the award of grants under this subsection by notice in the Federal Register.

Sec. 98.62 Allotments from the Mandatory Fund.

(a) Each of the 50 States and the District of Columbia will be allocated from the funds appropriated under section 418(a)(3) of the Social Security Act, less the amounts reserved for technical assistance pursuant to Sec. 98.60(b)(1) and the amount reserved for Tribes

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pursuant to paragraph (b) of this section, an amount of funds equal to the greater of:

(1) the Federal share of its child care expenditures under subsections (g) and (i) of section 402 of the Social Security Act (as in effect before October 1, 1995) for fiscal year 1994 or 1995 (whichever is greater); or

(2) the average of the Federal share of its child care expenditures under the subsections referred to in subparagraph (a)(1) of this section for fiscal years 1992 through 1994.

(b) For Indian Tribes and tribal organizations up to 2 percent of the amount appropriated under section 418(a)(3) of the Social Security Act shall be allocated according to the formula at paragraph (c) of this section. In Alaska, only the following 13 entities shall receive allocations under this subpart, in accordance with the formula at paragraph (c) of this section:

(1) The Metlakatla Indian Community of the Annette Islands Reserve:

(2) Arctic Slope Native Association;

(3) Kawerak, Inc.;

(4) Maniilaq Association;

(5) Association of Village Council Presidents;

(6) Tanana Chiefs Conference;

(7) Cook Inlet Tribal Council;

(8) Bristol Bay Native Association;

(9) Aleutian and Pribilof Islands Association;

(10) Chugachmuit;

(11) Tlingit and Haida Central Council;

(12) Kodiak Area Native Association; and

(13) Copper River Native Association.

(c)(1) Grants to individual Tribes with 50 or more Indian children, and to Tribes with fewer than 50 Indian children that apply as part of a consortium pursuant to Sec. 98.80(b)(1), will be equal to an amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, by the number of Indian children in each Tribe's service area pursuant to Sec. 98.80(e).

(2) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

Sec. 98.63 Allotments from the Matching Fund.

(a) To each of the 50 States and the District of Columbia there is allocated an amount equal to its share of the total available under section 418(a)(3) of the Social Security Act. That amount is based on the same ratio as the number of children under age 13 residing in the State bears to the national total of children under age 13. The number of children under 13 is derived from the best data available to the Secretary for the second preceding fiscal year.

(b) For purposes of this subsection, the amounts available under section 418(a)(3) of the Social Security Act excludes the amounts reserved and allocated under Sec. 98.60(b)(1) for technical assistance and under Sec. 98.62(a) and (b) for the Mandatory Fund. (c) Amounts under this subsection are available pursuant to the requirements at Sec. 98.53(c).

Sec. 98.64 Reallotment and redistribution of funds.

(a) According to the provisions of this section State and Tribal Discretionary Funds are subject to reallotment, and State Matching Funds are subject to redistribution. State funds are reallotted or redistributed only to States as defined for the original allocation. Tribal funds are reallotted only to Tribes. Funds granted to the Territories are not subject to reallotment. Any funds granted to the Territories that are returned after they

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have been allotted will revert to the Federal government.

(b) Any portion of a State's Discretionary Fund allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other States in proportion to the original allotments. For purposes of this paragraph the term ``State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The other Territories and the Tribes may not receive reallotted State Discretionary Funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by States, the Secretary will reallot funds.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to States in proportion to each State's allotment for the applicable fiscal year's funds, pursuant to Sec. 98.61(a).

(ii) If the amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to a State is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a State does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that the State does not have any funds available for reallotment; or

(ii) In the case of a report postmarked after April 1st, any funds reported to be available for reallotment shall revert to the Federal government.

(4) States receiving reallotted funds shall obligate and expend these funds in accordance with Sec. 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

(c)(1) Any portion of the Matching Fund granted to a State that is not obligated in the period for which the grant is made shall be redistributed. Funds, if any, will be redistributed on the request of, and only to, those other States that have met the requirements of Sec. 98.53(c) in the period for which the grant was first made. For purposes of this paragraph the term ``State" means the 50 States and the District of Columbia. Territorial and tribal grantees may not receive redistributed Matching Funds.

(2) Matching Funds allotted to a State under Sec. 98.63(a), but not granted, shall also be redistributed in the manner described in paragraph (1) of this section.

(3) The amount of Matching Funds granted to a State that will be made available for redistribution will be based on the State's financial report to ACF for the Child Care and Development Fund (ACF-696) and is subject to the monetary limits at paragraph (b)(2) of this section.

(4) A State eligible to receive redistributed Matching Funds shall also use the ACF-696 to request its share of the redistributed funds, if any.

(5) A State's share of redistributed Matching Funds is based on the same ratio as the number of children under 13 residing in the State to the number of children residing in all States eligible to receive and that request the redistributed Matching Funds.

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(6) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.

(d) Any portion of a Tribe's allotment of Discretionary Funds that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other tribal grantees in proportion to their original allotments. States and Territories may not receive reallotted tribal funds.

(1) Each year, the Tribe shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by a deadline established by the Secretary.

(2) Based upon the reallotment reports submitted by Tribes, the Secretary will reallot Tribal Discretionary Funds among the other Tribes.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to other tribal grantees in proportion to each Tribe's original allotment for the applicable fiscal year pursuant to Sec. 98.62(c).

(ii) If the total amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to an applicant Tribe is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a Tribe does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that Tribe does not have any funds available for reallotment; or

(ii) In the case of a report received after the deadline established by the Secretary, any funds reported to be available for reallotment shall revert to the Federal government.

(4) Tribes receiving reallotted funds shall obligate and expend these funds in accordance with Sec. 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

Sec. 98.65 Audits and financial reporting.

(a) Each Lead Agency shall have an audit conducted after the close of each program period in accordance with OMB Circular A-133 and the Single Audit Act Amendments of 1996.

(b) Lead Agencies are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.

(c) Not later than 30 days after the completion of the audit, Lead Agencies shall submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal Council(s). Lead Agencies shall also submit a copy of their audit report to the HHS Inspector General for Audit Services, as well as to their cognizant agency, if applicable.

(d) Any amounts determined through an audit not to have been expended in accordance with these statutory or regulatory provisions, or with the Plan, and that are subsequently disallowed by the Department shall be repaid to the Federal government, or the Secretary will offset such amounts against any other CCDF funds to which the Lead Agency is or may be entitled.

(e) Lead Agencies shall provide access to appropriate books, documents, papers and records to allow the Secretary to verify that CCDF funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.

(f) The audit required in paragraph (a) of this section shall be conducted by an agency that is independent of the State, Territory or Tribe as defined by generally accepted government auditing standards issued by the Comptroller General, or a public accountant who meets such independent standards.

(g) The Secretary shall require financial reports as necessary.

Sec. 98.66 Disallowance procedures.

(a) Any expenditures not made in accordance with the Act, the implementing regulations, or the approved Plan, will be subject to disallowance.

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(b) If the Department, as the result of an audit or a review, finds that expenditures should be disallowed, the Department will notify the Lead Agency of this decision in writing.

(c)(1) If the Lead Agency agrees with the finding that amounts were not expended in accordance with the Act, these regulations, or the Plan, the Lead Agency shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or

(2) The Lead Agency may appeal the finding:

(i) By requesting reconsideration from the Assistant Secretary, pursuant to paragraph (f) of this section; or

(ii) By following the procedure in paragraph (d) of this section.

(d) A Lead Agency may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.

(e) The Lead Agency may appeal a disallowance of costs that the Department has determined to be unallowable under an award. A grantee may not appeal the determination of award amounts or disposition of unobligated balances.

(f) The Lead Agency's request for reconsideration in (c)(2)(i) of this section shall be postmarked no later than 30 days after the receipt of the disallowance notice. A Lead Agency may request an extension within the 30-day time frame. The request for reconsideration, pursuant to (c)(2)(i) of this section, need not follow any prescribed form, but it shall contain:

(1) The amount of the disallowance;

(2) The Lead Agency's reasons for believing that the disallowance was improper; and

(3) A copy of the disallowance decision issued pursuant to paragraph (b) of this section.

(g)(1) Upon receipt of a request for reconsideration, pursuant to (c)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Lead Agency that the request is under review.

(2) The Assistant Secretary or the designee will review any material submitted by the Lead Agency and any other necessary materials.

(3) If the reconsideration decision is adverse to the Lead Agency's position, the response will include a notification of the Lead Agency's right to appeal to the Departmental Appeals Board, pursuant to paragraph (d) of this section.

(h) If a Lead Agency refuses to repay amounts after a final decision has been made, the amounts will be offset against future payments to the Lead Agency.

(i) The appeals process in this section is not applicable if the disallowance is part of a compliance review, pursuant to Sec. 98.90, the findings of which have been appealed by the Lead Agency.

(j) Disallowances under the CCDF program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

Sec. 98.67 Fiscal requirements.

(a) Lead Agencies shall expend and account for CCDF funds in accordance with their own laws and procedures for expending and accounting for their own funds.

(b) Unless otherwise specified in this part, contracts that entail the expenditure of CCDF funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.

(c) Fiscal control and accounting procedures shall be sufficient to permit:

(1) Preparation of reports required by the Secretary under this subpart and under subpart H; and

(2) The tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

Subpart H--Program Reporting Requirements

Sec. 98.70 Reporting requirements.

(a) Quarterly Case-level Report--

(1) State and territorial Lead Agencies that receive assistance under the CCDF shall prepare and submit to the Department, in a manner specified by the Secretary, a quarterly case-level report of monthly family case-level data. Data shall be collected monthly and submitted quarterly. States may submit the data monthly if they choose to do so.

(2) The information shall be reported for the three-month federal fiscal period preceding the required report. The first report shall be submitted no later than August 31, 1998, and quarterly thereafter. The first report shall include data from the third quarter of FFY 1998 (April 1998 through June 1998). States and Territorial Lead Agencies which choose to submit case-level data monthly must submit their report for April 1998 no later than July 30, 1998. Following reports must be submitted every thirty days thereafter.

(3) State and territorial Lead Agencies choosing to submit data based on a sample shall submit a sampling plan to ACF for approval 60 days prior to the submission of the first quarterly report. States are not prohibited from submitting case-level data for the entire population receiving CCDF services.

(4) Quarterly family case-level reports to the Secretary shall include the information listed in Sec. 98.71(a).

(b) Annual Report--

(1) State and territorial Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual report. The report shall be submitted, in a manner specified by the Secretary, by December 31 of each year and shall cover the most recent federal fiscal year (October through September).

(2) The first annual aggregate report shall be submitted no later than December 31, 1997, and every twelve months thereafter.

(3) Biennial reports to Congress by the Secretary shall include the information listed in Sec. 98.71(b).

(c) Tribal Annual Report--

(1) Tribal Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual aggregate report.

(2) The report shall be submitted in the manner specified by the Secretary by December 31 of each year and shall cover services for children and families served with CCDF funds during the preceding Federal Fiscal Year.

(3) Biennial reports to Congress by the Secretary shall include the information listed in Sec. 98.71(c).

Sec. 98.71 Content of reports.

(a) At a minimum, a State or territorial Lead Agency's quarterly case-level report to the Secretary, as required in Sec. 98.70, shall include the following information on services provided under CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and Maintenance-of-Effort (MOE) Funds:

(1) The total monthly family income for determining eligibility;

(2) County of residence;

(3) Gender and month/year of birth of children;

(4) Ethnicity and race of children;

(5) Whether the head of the family is a single parent;

(6) The sources of family income, from employment (including self-employment), cash or other assistance under the Temporary Assistance for Needy Families program under Part A of title IV of the Social Security Act, cash or other assistance under a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act, housing assistance, assistance under the Food Stamp Act of 1977; and other assistance programs;

(7) The month/year child care assistance to the family started;

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(8) The type(s) of child care in which the child was enrolled (such as family child care, in-home care, or center-based child care);

(9) Whether the child care provider involved was a relative;

(10) The total monthly child care copayment by the family;

(11) The total expected dollar amount per month to be received by the provider for each child;

(12) The total hours per month of such care;

(13) Social Security Number of the head of the family unit receiving child care assistance;

(14) Reasons for receiving care; and

(15) Any additional information that the Secretary shall require.

(b) At a minimum, a State or territorial Lead Agency's annual aggregate report to the Secretary, as required in Sec. 98.70(b), shall include the following information on services provided through all CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and MOE Funds:

(1) The number of child care providers that received funding under CCDF as separately identified based on the types of providers listed in section 658P(5) of the amended Child Care and Development Block Grant Act;

(2) The number of children served by payments through certificates or vouchers, contracts or grants, and cash under public benefit programs, listed by the primary type of child care services provided during the last month of the report period (or the last month of service for those children leaving the program before the end of the report period);

(3) The manner in which consumer education information was provided to parents and the number of parents to whom such information was provided;

(4) The total number (without duplication) of children and families served under CCDF; and

(5) Any additional information that the Secretary shall require.

(c) At a minimum, a Tribal Lead Agency's annual report to the Secretary, as required in Sec. 98.70(c), shall include the following information on services provided through all CCDF tribal grant awards:

(1) Unduplicated number of families and children receiving services;

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(2) Children served by age;
(3) Children served by reason for care;
(4) Children served by payment method (certificate/voucher or contract/grants);
(5) Average number of hours of care provided per week;
(6) Average hourly amount paid for care;
(7) Children served by level of family income; and
(8) Children served by type of child care providers.

Subpart I--Indian Tribes

Sec. 98.80 General procedures and requirements.

An Indian Tribe or tribal organization (as described in Subpart G of these regulations) may be awarded grants to plan and carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood development programs subject to the following conditions:

(a) An Indian Tribe applying for or receiving CCDF funds shall be subject to all the requirements under this part, unless otherwise indicated.

(b) An Indian Tribe applying for or receiving CCDF funds shall: (1) Have at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a CCDF program. This limitation does not preclude an Indian Tribe with fewer than 50 children under 13 years of age from participating in a consortium that receives CCDF funds; and

(2) Demonstrate its current service delivery capability, including skills, personnel, resources, community support, and other necessary components to satisfactorily carry out the proposed program.

(c) A consortium representing more than one Indian Tribe may be eligible to receive CCDF funds on behalf of a particular Tribe if:

(1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive CCDF funds on behalf of each Tribe or tribal organization in the consortium; and

(2) The consortium consists of Tribes that each meet the eligibility requirements for the CCDF program as defined in this part, or that would otherwise meet the eligibility requirements if the Tribe or tribal organization had at least 50 children under 13 years of age; and

(3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and

(4) The consortium demonstrates that it has the managerial, technical and administrative staff with the ability to administer government funds, manage a CCDF program and comply with the provisions of the Act and of this part.

(d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive CCDF services provided by the State or States in which the Indian Tribe is located.

(e) For purposes of the CCDF, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, shall include Indian children living on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

(f) In determining eligibility for services pursuant to Sec. 98.20(a)(2), a tribal program may use either:

(1) 85 percent of the State median income for a family of the same size; or

(2) 85 percent of the median income for a family of the same size residing in the area served by the Tribal Lead Agency.

Sec. 98.81 Application and Plan procedures.

(a) In order to receive CCDF funds, a Tribal Lead Agency shall apply for funds pursuant to Sec. 98.13, except that the requirement at Sec. 98.13(b)(2) does not apply.

(b) A Tribal Lead Agency shall submit a CCDF Plan, as described at Sec. 98.16, with the following additions and exceptions:

(1) The Plan shall include the basis for determining family eligibility pursuant to Sec. 98.80(f).

(2) For purposes of determining eligibility, the following terms shall also be defined:

(i) Indian child; and

(ii) Indian reservation or tribal service area.

(3) The Tribal Lead Agency shall also assure that:

(i) The applicant shall coordinate, to the maximum extent feasible, with the Lead Agency in the State in which the applicant shall carry out CCDF programs or activities, pursuant to Sec. 98.82; and

(ii) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, CCDF programs and activities shall be carried out on an Indian reservation for the benefit of Indian children, pursuant to Sec. 98.83(b).

(4) The Plan shall include any information, as prescribed by the Secretary, necessary for determining the number of children in accordance with Secs. 98.61(c), 98.62(c), and 98.80(b)(1).

(5) Plans for those Tribes specified at Sec. 98.83(f) (i.e., Tribes with small grants) are not subject to the requirements in Sec. 98.16(g)(2) or Sec. 98.16(k) unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program.

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(6) The Plan is not subject to requirements in Sec. 98.16(f)(8) or Sec. 98.16(g)(4).

(7) In its initial Plan, an Indian Tribe shall describe its current service delivery capability pursuant to Sec. 98.80(b)(2).

(8) A consortium shall also provide the following:

(i) A list of participating or constituent members, including demonstrations from these members pursuant to Sec. 98.80(c)(1);

(ii) A description of how the consortium is coordinating services on behalf of its members, pursuant to Sec. 98.83(c)(1); and

(iii) As part of its initial Plan, the additional information required at Sec. 98.80(c)(4).

(c) When initially applying under paragraph (a) of this section, a Tribal Lead Agency shall include a Plan that meets the provisions of this part and shall be for a two-year period, pursuant to Sec. 98.17(a).

Sec. 98.82 Coordination.

Tribal applicants shall coordinate as required by Secs. 98.12 and 98.14 and:

(a) To the maximum extent feasible, with the Lead Agency in the State or States in which the applicant will carry out the CCDF program; and

(b) With other Federal, State, local, and tribal child care and childhood development programs.

Sec. 98.83 Requirements for tribal programs.

(a) The grantee shall designate an agency, department, or unit to act as the Tribal Lead Agency to administer the CCDF program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities shall be carried out on an Indian reservation for the benefit of Indian children.

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(c) In the case of a tribal grantee that is a consortium:

(1) A brief description of the direct child care services funded by CCDF for each of their participating Tribes shall be provided by the consortium in their two-year CCDF Plan; and

(2) Variations in CCDF programs or requirements and in child care licensing, regulatory and health and safety requirements shall be specified in written agreements between the consortium and the Tribe.

(3) If a Tribe elects to participate in a consortium arrangement to receive one part of the CCDF (e.g., Discretionary Funds), it may not join another consortium or apply as a direct grantee to receive the other part of the CCDF (e.g. Tribal Mandatory Funds).

(4) If a Tribe relinquishes its membership in a consortium at any time during the fiscal year, CCDF funds awarded on behalf of the member Tribe will remain with the tribal consortium to provide direct child care services to other consortium members for that fiscal year.

(d) Tribal Lead Agencies shall not be subject to the requirements at Secs. 98.41(a)(1)(i), 98.44(a), 98.50(e), 98.52(a), 98.53 and 98.63.

(e) The base amount of any tribal grant is not subject to the administrative cost limitation at paragraph (g) of this section or the quality expenditure requirement at Sec. 98.51(a). The base amount may be expended for any costs consistent with the purposes and requirements of the CCDF.

(f) Tribal Lead Agencies whose total CCDF allotment pursuant to Secs. 98.61(c) and 98.62(b) is less than an amount established by the Secretary shall not be subject to the following requirements:

(1) The assurance at Sec. 98.15(a)(2);

(2) The requirement for certificates at Sec. 98.30(a) and (d); and

(3) The requirements for quality expenditures at Sec. 98.51(a).

(g) Not more than 15 percent of the aggregate CCDF funds expended by the Tribal Lead Agency from each fiscal year's (including amounts used for construction and renovation in accordance with Sec. 98.84, but not including the base amount provided under Sec. 98.83(e)) shall be expended for administrative activities. Amounts used for construction and major renovation in accordance with Sec. 98.84 are not considered administrative costs.

(h)(1) CCDF funds are available for costs incurred by the Tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (h)(1) of this section is subject to the actual availability of the appropriation.

Sec. 98.84 Construction and renovation of child care facilities.

(a) Upon requesting and receiving approval from the Secretary, Tribal Lead Agencies may use amounts provided under Secs. 98.61(c) and 98.62(b) to make payments for construction or major renovation of child care facilities (including paying the cost of amortizing the principal and paying interest on loans).

(b) To be approved by the Secretary, a request shall be made in accordance with uniform procedures established by program instruction and, in addition, shall demonstrate that:

(1) Adequate facilities are not otherwise available to enable the Tribal Lead Agency to carry out child care programs;

(2) The lack of such facilities will inhibit the operation of child care programs in the future; and

(3) The use of funds for construction or major renovation will not result in a decrease in the level of child care services provided by the Tribal Lead Agency as compared to the level of services provided by the Tribal Lead Agency in the preceding fiscal year.

(c)(1) Tribal Lead Agency may use CCDF funds for reasonable and necessary planning costs associated with assessing the need for construction or renovation or for preparing a request, in accordance with the uniform procedures established by program instruction, to spend CCDF funds on construction or major renovation.

(2) A Tribal Lead Agency may only use CCDF funds to pay for the costs of an architect, engineer, or other consultant for a project that is subsequently approved by the Secretary. If the project later fails to gain the Secretary's approval, the Tribal Lead Agency must pay for the architectural, engineering or consultant costs using non-CCDF funds.

(d) Tribal Lead Agencies that receive approval from the Secretary to use CCDF funds for construction or major renovation shall comply with the following:

(1) Federal share requirements and use of property requirements at 45 CFR 92.31;

(2) Transfer and disposition of property requirements at 45 CFR 92.31(c);

(3) Title requirements at 45 CFR 92.31(a);

(4) Cost principles and allowable cost requirements at 45 CFR 92.22;

(5) Program income requirements at 45 CFR 92.25;

(6) Procurement procedures at 45 CFR 92.36; and;

(7) Any additional requirements established by program instruction, including requirements concerning:

(i) The recording of a Notice of Federal Interest in the property;

(ii) Rights and responsibilities in the event of a grantee's default on a mortgage;

(iii) Insurance and maintenance;

(iv) Submission of plans, specifications, inspection reports, and other legal documents; and

(v) Modular units.

(e) In lieu of obligation and liquidation requirements at Sec. 98.60(e), Tribal Lead Agencies shall liquidate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded.

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(f) Tribal Lead Agencies may expend funds, without requesting approval pursuant to paragraph (a) of this section, for minor renovation.

(g) A new tribal grantee (i.e., one that did not receive CCDF funds the preceding fiscal year) may spend no more than an amount equivalent to its Tribal Mandatory allocation on construction and renovation. A new tribal grantee must spend an amount equivalent to its Discretionary allocation on activities other than construction or renovation (i.e., direct services, quality activities, or administrative costs).

(h) A construction or renovation project that requires and receives approval by the Secretary must include as part of the construction and renovation costs:

(1) planning costs as allowed at Sec. 98.84(c);

(2) labor, materials and services necessary for the functioning of the facility; and

(3) initial equipment for the facility. Equipment means items which are tangible, nonexpendable personal property having a useful life of more than five years.

Subpart J--Monitoring, Non-compliance and Complaints

Sec. 98.90 Monitoring.

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(a) The Secretary will monitor programs funded under the CCDF for compliance with:

(1) The Act;

(2) The provisions of this part; and

(3) The provisions and requirements set forth in the CCDF Plan approved under Sec. 98.18;

(b) If a review or investigation reveals evidence that the Lead Agency, or an entity providing services under contract or agreement with the Lead Agency, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Lead Agency of possible non-compliance. The Secretary shall consider comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and the Secretary).

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Lead Agency shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

(d)(1) Lead Agencies and subgrantees shall retain all CCDF records, as specified in paragraph (c) of this section, and any other records of Lead Agencies and subgrantees that are needed to substantiate compliance with CCDF requirements, for the period of time specified in paragraph (e) of this section.

(2) Lead Agencies and subgrantees shall provide through an appropriate provision in their contracts that their contractors will retain and permit access to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract.

(e) Length of retention period. (1) Except as provided in paragraph (e)(2) of this section, records specified in paragraph (c) of this section shall be retained for three years from the day the Lead Agency or subgrantee submits the Financial Reports required by the Secretary, pursuant to Sec. 98.65(g), for the program period.

(2) If any litigation, claim, negotiation, audit, disallowance action, or other action involving the records has been started before the expiration of the three-year retention period, the records shall be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

Sec. 98.91 Non-compliance.

(a) If after reasonable notice to a Lead Agency, pursuant to Sec. 98.90 or Sec. 98.93, a final determination is made that:

(1) There has been a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision or requirement set forth in the Plan approved under Sec. 98.16; or

(2) If in the operation of any program for which funding is provided under the CCDF, there is a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision of the Act or this part, the Secretary will provide to the Lead Agency a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in Sec. 98.90(b), or within 60 days of the receipt of additional comments from the Lead Agency, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to Sec. 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to Sec. 98.92.

Sec. 98.92 Penalties and sanctions.

(a) Upon a final determination that the Lead Agency has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:

(1) The Secretary will disallow the improperly expended funds;

(2) An amount equal to or less than the improperly expended funds will be deducted from the administrative portion of the State allotment for the following fiscal year; or

(3) A combination of the above options will be applied.

(b) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including:

(1) Disqualification of the Lead Agency from the receipt of further funding under the CCDF; or

(2)(i) A penalty of not more than four percent of the funds allotted under Sec. 98.61 (i.e., the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the Lead Agency has failed to implement a provision of the Act, these regulations, or the Plan required under Sec. 98.16;

(ii) This penalty will be withheld no earlier than the second full quarter following the quarter in which the Lead Agency was notified of the proposed penalty;

(iii) This penalty will not be applied if the Lead Agency corrects the failure or violation before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary; or

(iv) The Lead Agency may show cause to the Secretary why the amount of the penalty, if applied, should be reduced.

(c) If a Lead Agency is subject to additional sanctions as provided under paragraph (b) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to Sec. 98.91.

(d) Nothing in this section, or in Sec. 98.90 or Sec. 98.91, will preclude the Lead Agency and the Department from informally resolving a possible compliance issue without following all of the steps described in Secs. 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (b) of this section, may nevertheless be

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applied, even though the issue is resolved informally.

(e) It is at the Secretary's sole discretion to choose the penalty to be imposed under paragraphs (a) and (b) of this section.

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Sec. 98.93 Complaints.

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Lead Agency has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.

(b) Complaints with respect to the CCDF shall be submitted in writing to the Assistant Secretary for Children and Families, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. The complaint shall identify the provision of the Plan, the Act, or this part that was allegedly violated, specify the basis for alleging the violation(s), and include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected Lead Agency. Any comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints that are not satisfactorily resolved through communication with the Lead Agency will be pursued through the process described in Sec. 98.90.

PART 99--PROCEDURE FOR HEARINGS FOR THE CHILD CARE AND DEVELOPMENT
FUND

2. The heading of part 99 is revised to read as set forth above:

3. The authority citation for part 99 is revised to read as follows:

Authority: 42 U.S.C. 618, 9858.

4. In part 99 make the following changes:

a. Remove the words ``Child Care and Development Block Grant" and add in their place, wherever they appear, the words ``Child Care and Development Fund."

b. Remove the word ``Grantees" and add in its place, wherever it appears, the words ``Lead Agencies."

c. Remove the word ``Grantee" and add in its place, wherever it appears, the words ``Lead Agency."

d. Remove the words ``Block Grant Plan" and add in their place, wherever they appear, the words ``CCDF Plan."

[FR Doc. 98-19418 Filed 7-23-98; 8:45 am]
BILLING CODE 4184-01-P

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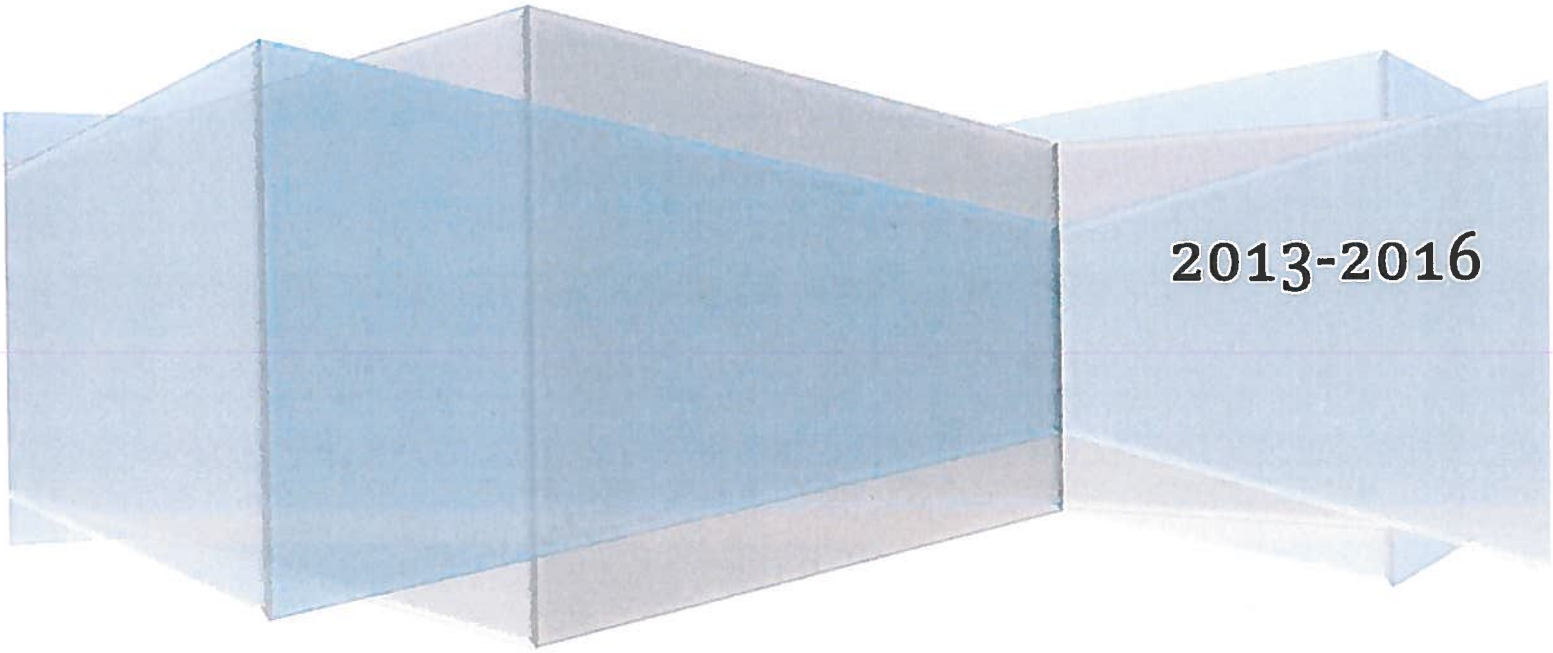
[DOCID:fr24jy98-21]

EXHIBIT F

Colorado Department of Human Services,
Office of Early Childhood

Race to the Top Early Learning Challenge Grant Sub-recipient Monitoring Plan

December 12, 2013



OFFICE of EARLY CHILDHOOD

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Introduction

The Colorado Department of Human Services (CDHS) is the lead agency responsible for planning and implementing the Race to the Top Early Learning Challenge Grant. Within the Colorado Department of Human Services, the Office of Early Childhood is specifically responsible for the day-to-day administration of the grant. Colorado is committed to the successful execution of the grant against the identified scope and performance metrics and is committed to ensuring strong accountability and fiduciary controls. Therefore the Office of Early Childhood has created this monitoring plan to provide a clear explanation and expectations for monitoring the receipt and use of all grant funds awarded from January 1st, 2013 through December 31st, 2016.

As outlined in the grant statement of work, Colorado is implementing the following projects listed in the table below and has identified if there are other state Departments involved in managing or receiving grant funds, including the grant monitor role for each project area.

Grant Project	Involved Department(s)	Grant Monitor
Project 1: Overall Grants Management	Colorado Department of Human Services	Grant Director
Project 2: Early Learning and Development Guidelines	Colorado Department of Human Services	Communications Project Manager
Project 3: Tiered Quality Rating Improvement System	Colorado Department of Human Services; Governor's Office of Information Technology	Child Care Quality Rating and Improvement Project Manager (CDHS)
Project 4: Building a Great Early Childhood Workforce	Colorado Department of Human Services; Colorado Department of Education; Governor's Office of Information Technology	Workforce Project Manager (CDE)
Project 5: Results Matter Expansion	Colorado Department of Education	Results Matter Project Manager
Project 6: Kindergarten Readiness/School Readiness	Colorado Department of Education	Kindergarten Readiness Project Manager

While several key portions of the grant are managed on a day-to-day basis by other agencies (specifically, the Colorado Department of Education), it is the Office of Early Childhood within Colorado Department of Human Services that maintains primary accountability for grant administration and adherence to the Division of Accounting and State Controller fiscal policies related to grant administration.

Grant management and progress against grant scope of work activities and

spending will be reported by the Office of Early Childhood to the Colorado Department of Human Services Executive Leadership Management Team on a monthly basis using an Executive Dashboard. This dashboard is compiled by the Grant Director with support from each Project Manager, referencing project status as reflected in the GRADS360 System. In addition, the Office of Early Childhood provides critical updates to grant progress and spending on a quarterly basis to the Early Childhood Leadership Commission, as outlined in the *Race to the Top – Early Learning Challenge Application for Initial Funding (CFDA Number: 84.412A)* submitted by the state of Colorado on October 26, 2012.

While key agency and state leadership are closely monitoring grant related activities, including spending, this plan identifies incremental practices specific to monitoring the performance of sub-recipients of the Grant.

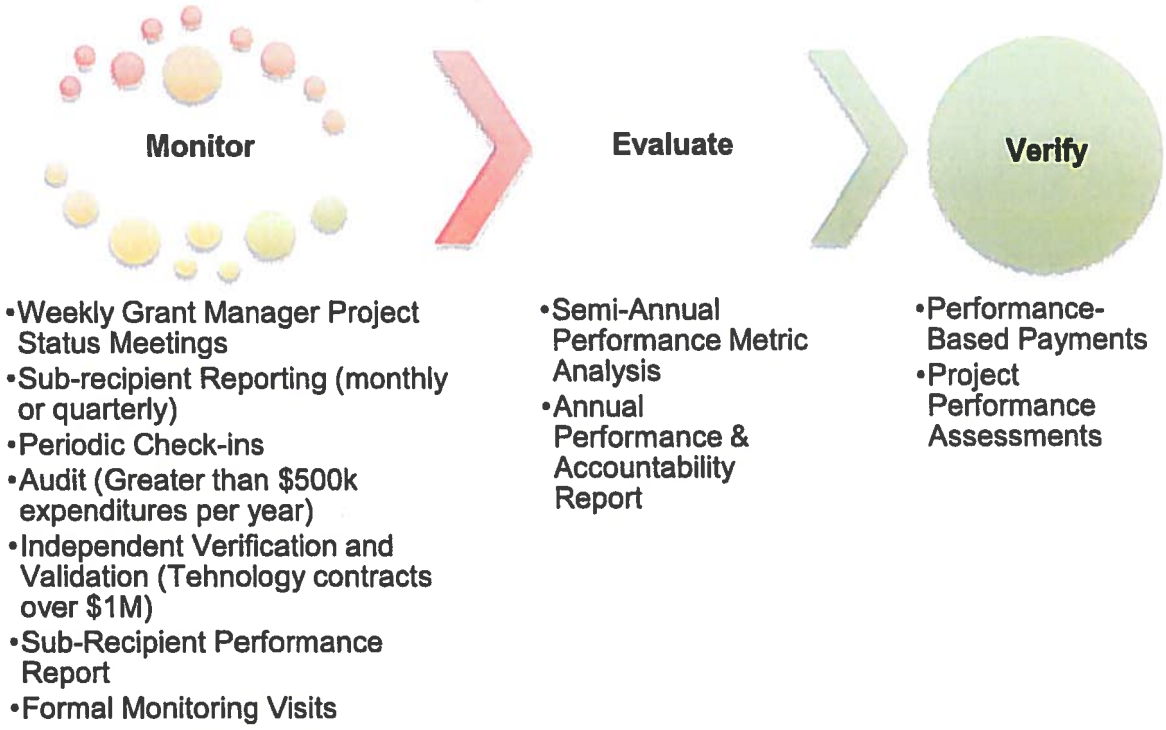
Colorado's Sub-recipient Monitoring Plan

Grant Project Managers are assigned responsibility to monitor and evaluate sub-recipient performance and compliance. Grant Project Managers receive training on the sub-recipient monitoring plan and the associated tools used to monitor and evaluate sub-recipient performance and compliance for contracts awarded within their respective grant area. These representatives are responsible for oversight of all contracts and/or purchase orders awarded within their respective grant area and use the process outlined here to ensure vendor performance meets expectations, or is noted appropriately for follow-up tracking and corrective action as required. As the agency with primary responsibility for grant administration, the Office of Early Childhood has complete oversight of Project Managers' contracts, spending and monitoring, and will act as the primary point of contact for providing documentation updates to the US Department Education.

Project Managers receive formal one hour training on the *Race to the Top Early Learning Challenge Grant Sub-recipient Monitoring Plan*, with an annual refresher training through the life of the grant. As the agency responsible for grant administration, the Office of Early Childhood provides this training to ensure each Project Manager is adhering to the informal and formal methods outlined below for sub-recipient monitoring. Project Managers will complete a *Confirmation of Training* (Appendix I) for each session, which is on file with the Office of Early Childhood.

To ensure understanding of sub-recipient monitoring, all awarded contracts include a copy of the *Race to the Top Early Learning Challenge Grant Sub-recipient Monitoring Plan* as an exhibit to the final contract. In addition, Project Managers are responsible for training sub-recipients on the *Race to the Top Early Learning Challenge Grant Sub-recipient Monitoring Plan* and expectations within one month of the contract award date. Sub-recipients sign a confirmation of training, which is on file with the Office of Early Childhood.

Recognizing effective sub-recipient monitoring occurs through formal and informal procedures, Colorado has put in place a multi-faceted plan that provides early warning opportunities before a concern becomes a problem. In addition to day to day monitoring, Colorado will complete semi-annual and annual reports outlining sub-recipient performance and actions, if necessary, to address performance. The plan addresses monitoring of activities ("Monitor"), evaluation of performance ("Evaluate") and verification of outcomes ("Verify").



Monitor. To ensure timely and complete delivery of goods and/or services, the Office of Early Childhood actively monitors each sub-recipient, and collects and confirms the results of the sub-recipient's work throughout the duration of the contract. The following are all considered to be critical aspects of this on-going monitoring. The Office of Early Childhood has specified that every sub-recipient is responsible for creating, implementing and managing a project plan that includes (at minimum): activities, tasks, milestones, deliverables, deadlines, and person(s) responsible. These plans will be provided to the Project Manager for inclusion as appropriate in the larger Race to the Top Early Learning Challenge Grant Project Plans.

Weekly Grant Manager Project Status Meeting: Project Managers meet on a weekly basis to provide updates and discuss cross collaboration opportunities to support systems building. Project Managers use the online GRADS360 System to ensure the project plans and budgets are consistently up to date and accurate. Project Managers confirm to the Grant

Director by the 20th of each month that the GRADS360 System is up to date and reflective of grant activity and spending for that month and will summarize this activity in a monthly status report to the Grant Director. The Grant Director will use the information to produce an executive dashboard (Appendix II), which will be presented to the Colorado Department of Human Services Executive Leadership Management Team. The Executive Dashboard will include updates on grant work activity, contract status, and grant spending / planned spending.

Sub-recipient Reporting: The Office of Early Childhood requires monthly or quarterly reports be submitted for each sub-recipient using the Sub-recipient / Contractor Project Status Report based on their project plan for each sub-recipient based on their project plan (see Appendix III). While each report is unique to the body of work, these reports inform the measurement of progress against the performance metrics for each sub-recipient. The Project Manager is responsible for making daily updates to the project plans to ensure progress is accurately reflected in the GRADS360 System. Status reports (Appendix III) shall be provided to the Project Manager by the sub-recipient on a monthly or quarterly basis to document total progress made against the project plan.

Periodic Check-ins: Project Managers set up periodic in person and phone check-ins with sub-recipients. The purpose of these check-ins is to gain needed clarification for information submitted in the *Sub-recipient / Contractor Project Status Report*, review status, troubleshoot problems / issues, and strategize for upcoming milestones and deliverables. Designated Project Managers are responsible for conducting in-person and phone meetings with sub-recipients. The Project Manager shall follow remedial corrective actions should s/he find the sub-recipient has substantially failed to satisfy the scope of work found in the contract. Substantial failure to satisfy the scope of work shall be defined to mean substantially insufficient, incorrect or improper activities or inaction by the part of the contractor. The Project Manager will notify the sub-recipient through certified mail regarding the concern.

Audit. Sub-recipients shall maintain a complete file of all records, documents, communications, and other materials that pertain to the operation of the program/project or the delivery of services under the contract. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services, and other costs of whatever nature for which a contract payment was made. These records shall be maintained according to generally accepted accounting principles and shall be easily searchable from other records. Sub-recipients that expend more than $500,000 in a year shall have audits conducted in accordance with OMB Circular A-133.

Independent Verification and Validation (IV&V): For any contracts over $1,000,000 that involve technology system implementation, an independent and qualified IV&V contractor will provide monitoring and evaluation for the state.

Sub-Recipient Performance Report. Minimally on the 6-month anniversary of each sub-recipient contract, and every six months thereafter, the sub-recipient must complete a *Race to the Top Early Learning Challenge Grant Report of Sub-recipient Performance* (Appendix IV) on outcomes to date and performance against contract measures. The report may be required to be submitted more frequently in cases where a contractor has been notified of a remedial corrective action plan. This report is reviewed by the Project Manager, with the sub-recipient, and then shared with the Grant Director within two weeks of completing the review. General performance of the sub-recipient and required remedial corrective action is noted. The Project Manager shall follow remedial corrective actions should s/he find the sub-recipient has substantially failed to satisfy the scope of work found in the contract. Substantial failure to satisfy the scope of work shall be defined to mean substantially insufficient, incorrect or improper activities or inaction by the part of the contractor. The Project Manager will notify the sub-recipient through certified mail regarding the concern.

If remedial corrective action is required, formal monitoring visits shall be scheduled to ensure action is taken. The Office of Early Childhood recognizes special conditions may exist from the onset of a sub-recipient contract and may require additional or unique monitoring / reporting / management. These special conditions are noted in the ***Special Conditions Section***.

Formal Monitoring Visits. A sub-recipient may be selected for a formal monitoring visit based on a special condition or as a result of a remedial corrective action plan. The Grant Director, in coordination with the Project Manager, schedules formal monitoring visits to ensure activities are occurring according to the signed contract and project plan. These visits are to assure compliance with the state or federal government's terms and/or to evaluate the sub-recipient's or contractor's performance. A contractor shall permit the State, any other governmental agency authorized by law, or an authorized designee therof, in its sole discretion to monitor all activities conducted by the contractor pursuant to the terms of the contract[1]. Monitoring may consist of internal evaluation procedures, reexamination of program data, special analysis, on-site verification, formal audit examinations, or any other procedures as deemed reasonable and relevant. All such monitoring shall be performed in a manner that will not unduly interfere with contract work. Any amounts the State paid improperly shall be immediately returned to the State or may be recovered in accordance with

[1] See EDGAR 80.40 (a) and 80.40(b); 80.40 (d)

other remedies.

Evaluate. The Grant Director and the Project Managers are responsible for active analysis of the data across the grant. The weekly evaluation of performance metrics identifies issues across project teams and ensures a higher level of program management beyond monitoring and tracking project plans.

Performance Metric Analysis: The Grant Director and the Project Managers perform evaluation of key performance metrics. This data includes, but is not limited to:

1. **Project Plan Variance.** Measuring project velocity to ensure the timelines are being met and that all projects are on track.
2. **Interdependency Tracking.** Ensuring all inter-related projects and activities are aligned. This includes identification of activities that are at risk and creating mitigation strategies.
3. **Issue and Risk Mitigation.** Understanding of how effectively identified issues and risks are resolved and mitigated.
4. **Deliverable Quality Review.** Assessing the quality of deliverables and milestones across the project.
5. **Local Funding Impact.** Understanding through surveys and other vehicles the effectiveness and impact of financial incentives to local entities.
6. **Audit and IV&V Findings.** Review of independent audit and IV&V findings and strategies to mitigate identified risks and issues.

Annual Performance and Accountability Report. In February of each year ('14, '15 and '16), the Office of Early Childhood will produce a Performance and Accountability Report for the Colorado Department of Human Services Executive Leadership Management Team, Early Childhood Leadership Commission and US Departments of Education and Health and Human Services which addresses three key areas for grant activity: 1) Progress against grant related activities including critical changes in grant plans from the original scope of work; 2) Spending against the grant budget including what amount has been encumbered through contracts and how the actual spending may differ from the original grant plan; 3) Challenges and delays in implementation.

Verify. Colorado leverages formal methods to ensure the optimal delivery of goods and/or services.

Performance- Based Payments: In order to ensure the delivery of goods and/or services as expected and required for the successful execution of the Race to the Top Early Learning Challenge Grant, each sub-recipient contract will provide for payment to be delivered upon receipt of goods and/or services delivered. Receipt of goods and/or services will be

confirmed by the Office of Early Childhood with input from supporting agencies engaged in that particular contract and project plan execution. Receipt and subsequent payment may occur in phases depending on the nature of the work and contract with each sub-recipient.

Project Performance Assessments: An annual performance review will be conducted starting Year 2 and will be measuring the overall effectiveness of the investments from the grant as well as the overall effectiveness of delivery of the grant. This will be conducted by an independent auditor.

Planned Sub-recipient Awards

Grant Project	Planned Sub-recipient
Project 1: Overall Grants Management	• Organizational Change Management (Contract) • Communications and Marketing (Contract) • Performance Auditor Contract • Local Early Childhood Councils Local Funding • Strengthening Families Contract • Healthy Child Care Colorado Contract
Project 2: Early Learning and Development Guidelines	• Communications Contractor(s) • Materials Production Contractor(s)
Project 3: Tiered Quality Rating Improvement System (TQRIS)	• TQRIS Project Management Contract • TQRIS Implementation Design Contract(s) • TQRIS Expert Review Contract(s) • TQRIS Next Generation System (Contract) • TQRIS Financial Incentives (Local Funding) • Universal Application Implementation Contract(s) • Early Childhood Shared Services Model Contract(s) • TQRIS Evaluation Design Contract • TQRIS Evaluation Contract • Training and Coaching Contract(s) • Data Integration Contract • Data Reporting Contract
Project 4: Building a Great Early Childhood Workforce	• Professional Development and Information System Contract • Workforce Evaluation Contract • Competencies Framework

Grant Project	Planned Sub-recipient
	Development Contract • Communications Plan Contract • Professional Development Model Contract • Coaching Network Contract • Workforce Incentives Local Funding / Contract(s)
Project 5: Results Matter Expansion	• IT Systems Architecture Contract • Training Contract(s)
Project 6: Kindergarten Readiness/School Readiness	• IT Systems Architecture Contract • Training Contract(s)

Special Conditions or Restrictions

The following special conditions or restrictions may require the Office of Early Childhood grant/contract monitor and sub-recipient to revise monitoring and reporting to address unique situations in a manner consistent with sub-recipient monitoring by the State of Colorado, and the agreed upon contractual terms of the sub-recipient grant / contract.

1. A grantee or sub grantee may be considered high risk if an awarding agency determines that a grantee or sub grantee:
    a. Has a history of unsatisfactory performance, or
    b. Is not financially stable, or
    c. Has a management system which does not meet the management standards set forth in this part, or
    d. Has not conformed to terms and conditions of previous awards, or
    e. Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

2. Special conditions or restrictions may include:
    a. A remedial corrective action plan;
    b. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
    c. Requiring additional, more detailed financial reports;
    d. Additional project monitoring;
    e. Requiring the grantee or sub grantee to obtain technical or management assistance; or
    f. Establishing additional prior approvals.

3. The Office of Early Childhood shall notify the sub-recipient as early as possible, in writing, of:
    a. The nature of the special conditions/restrictions;
    b. The reason(s) for imposing them;
    c. The corrective actions which must be taken within a specified timeframe before they will be removed and the time allowed for completing the corrective actions; and
    d. The successful resolution of the remedial corrective action plan.

Disputes and Remedies

Disputes concerning the performance of a sub-recipient or contractor, which cannot be resolved by the designated representatives, shall be referred in writing to the to a senior departmental management staff designated by the department and a senior manager designated by the contractor for resolution. Failing resolution at that level, disputes shall be presented in writing to the Executive Director and the Contractor's chief executive officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.

Acceptance of resolution is dependent upon completion of all applicable inspection procedures. Without limitation, the State has the right to:

1. Withhold payment until performance is cured,

2. Require the vendor to take necessary action to ensure that the future performance conforms to contract requirements,

3. Request removal of a Contractor's agent from contract work,

4. Equitably reduce the payment due the vendor to reflect the reduced value of the services performed,

5. Recover payment for work that due to the Contractor cannot be performed or would be of no value to the State,

6. Modify or recover payments (from payments under the contract or other contracts between the State and the vendor as a debt due to the State) to correct an error due to omission, error, fraud and/or defalcation,

7. Terminate the contract.

These remedies in no way limit the remedies available to the State in the termination provisions of a contract, or remedies otherwise available at law.

Termination

1. **Termination for Default:** The State may terminate the contract for cause. If the State terminates the contract for cause, it will first give ten (10) days prior written notice to the sub-recipient, statin the reasons for the cancellation, procedures to correct problems, if any, and the date the contract will be terminated in the event problems have not been corrected. In the event the contract is terminated for cause, the State will only reimburse the sub-recipient for accepted work or deliverables received up to the date of termination. In the event the contract is terminated for cause, final payment to the sub-recipient may be withheld at the discretion of the State until completion of final audit. Notwithstanding the above, the sub-recipient may be liable to the State for the State's damages. If it is determined that the sub-recipient was not in default then such termination shall be treated as a termination for convenience as described within the contract.

2. **Termination for Convenience:** The State shall have the right to terminate this contract by giving the sub-recipient at least twenty (20) days prior written notice. If notice is so given, the contract shall terminate on the expiration of the specified time period, and the liability of the parties hereunder for further performance of the terms of this contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination.

3. **Immediate – Termination:** The contract is subject to immediate termination by the State in the event that the State determines that the health, safety, or welfare of persons receiving services may be in jeopardy. Additionally, the State may immediately terminate this contract upon verifying that the sub-recipient engaged in or is about to participate in fraudulent or other illegal acts.

4. **Termination for Financial Exigency:** The State shall have the right to terminate the contract for financial exigency by giving the sub-recipient at least thirty (30) days prior written notice. For the purposes of this provision, a financial exigency shall be a determination made by the Colorado legislature or its Joint Budget Committee that the financial circumstance s of the State are such that it is the best interest of the State to terminate the contract. If notice of such termination is so given, this

contract shall terminate on the expiration of the time period specified in the notice, and the liability of the parties for further performance of the terms of the contract shall not be released from the duty to perform their obligations up to the date of termination.

In the event that the State terminates the contract under the Termination for Convenience or Termination for Financial Exigency provisions, the Contractor is entitled to submit a termination claim within ten (10) days of the effective date of termination. The termination claim shall address and the State shall consider paying the following costs:

1. The contract price for performance of work, which is accepted by the State, up to the effective date of termination.

2. Reasonable and necessary costs incurred in preparing to perform the terminated portion of the contract.

3. Reasonable profit on the completed by undelivered work up to the date of termination.

4. The costs of settling claims arising out of the termination of subcontracts or orders, not to exceed 30 days pay for each subcontractor.

5. Reasonable accounting, legal, clerical, and other costs arising out of the termination settlement.

In no event shall reimbursement under this clause exceed the contract amount reduced by amounts previously paid by the State to the sub-recipient or contractor.

Financial Management

1. A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its sub grantees and cost-type contractors, must be sufficient to:
    a. Permit preparation of reports required by this part and the statutes authorizing the grant, and
    b. Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

2. The financial management systems of sub-recipients shall meet the following standards:

a. **Financial reporting**. Accurate, current, and complete disclosure of the financial results of financially assisted activities shall be made in accordance with the financial reporting requirements of the grant or sub grant as outlined in the contract.
b. **Accounting records.** Sub-recipients shall maintain records, which adequately identify the source and application of funds provided for financially assisted activities, for three years[2] after the end of the grant (December 31, 2016). These records must contain information pertaining to the sub-recipient awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
c. **Internal control.** Effective control and accountability shall be maintained for all sub-recipient grant fund purchased real and personal property, and other assets. Sub-recipients shall adequately safeguard all such property and must assure that it is used solely for authorized purposes.
d. **Budget control.** Actual expenditures or outlays shall be compared with budgeted amounts for each sub-recipient. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the contract agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
e. **Allowable cost.** Applicable cost principles[3], agency program regulations, and the terms of sub-recipient agreements shall be followed in determining the reasonableness, allowability, and allocability of costs.
f. **Source documentation.** Accounting records shall be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and sub recipient award documents, etc.

3. The Office of Early Childhood may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to award.

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[2] See Retention and Access Requirements for Records (EDGAR 80.42(b)) - http://www.p12.nysed.gov/sss/EDGAR-Parts-76-80-81.pdf
[3] See Cost Principles for Educational Institutions (OMB Circular A-21) - http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/2005/083105_a21.pdf

4. **Internal controls.** The institution's financial management system shall ensure that no one person has complete control over all aspects of a financial transaction.

Allowable Costs

There is a limitation on use of funds. Grant funds may be used only for:

1. The allowable costs of the grantees, sub-grantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors;
2. Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or sub-grantee; and
3. For each kind of organization, there is a set of federal principles for determining allowable costs. For the costs of a State, local, or Indian tribal government, the Secretary applies the cost principles in OMB Circular A-87, as amended on June 9, 1987[4].

For the costs of a...	Use the principles in...
State, local or Indian tribal government	OMB Circular A-87[5]
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular	OMB Circular A-122[6]
Educational institutions	OMB Circular A-21[7]
For-profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular	48 CFR part 31[8]. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

Disallowed Costs

Contractors shall not use Grant funds to pay for snacks, food or beverage without prior approval from the Office of Early Childhood.

[4] http://www.gpo.gov/fdsys/pkg/CFR-2011-title34-vol1/pdf/CFR-2011-title34-vol1-sec80-23.pdf
[5] http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/2005/083105_a87.pdf
[6] http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/2005/083105_a122.pdf
[7] http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/2005/083105_a21.pdf
[8] http://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-part31.pdf

Right to Refuse Payment

While the Office of Early Childhood works with sub-recipients to support the successful completion of the contract deliverables, the Office is prepared to take necessary actions if deliverables, milestones are not met and/or the submitted expenses are disallowed. All sub-recipient contracts are performance-based and the Office of Early Childhood retains the right to refuse payments to a sub-recipient if requirements are not met.

Amendments

Grantees and sub-grantees are permitted to shift up to ten percent of the direct cost budget between line items, not to exceed the total contract amount, to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the Office of Early Childhood, all other changes in budgets shall require the prior written approval of the Office.

Except as stated in other regulations or an award document, grantees or sub-grantees shall obtain the prior approval of the awarding agency whenever any of the following changes are anticipated:

1. Any revision, which would result in the need for additional funding.

2. Unless waived by the Office of Early Childhood, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed amounts set by the Office.

3. Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

Programmatic changes

A sub-recipient shall obtain the prior approval of the awarding agency whenever any of the following actions are anticipated:

1. Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

2. Need to extend the period of availability of funds.

3. Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

Sub-contracts

Sub-recipients shall notify the Project Manager in writing prior to sub-contracting any porting of the grant to another entity. If the sub-recipient sub-contracts any portion of the grant award to another entity, for example, if the sub-recipient received an award for oversight of a specific project, with whom are they contracting to actually perform the duties of the project). This can, and should, include any agreements with Minority Business Enterprises.

1. Ensure that every sub-contract includes a provision for compliance with all requirements set forth by the Project Manager;

2. Ensure that every sub-contract includes any clauses required by the Project Manager and their implementing regulations; and

3. Ensure that sub-contractors are aware of requirements imposed upon them by the Project Manager statutes and regulations.

Sub-recipients are responsible for managing the day-to-day operations of grant-supported activities and monitor grant and sub-grant supported activities to assure compliance with the *Colorado Race to the Top Early Learning Challenge Grant Sub-recipient Monitoring Plan*.

Equipment and Supplies

1. Property records shall be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

2. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

3. A control system shall be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

4. Adequate maintenance procedures must be developed to keep the property in good condition.

5. If the grantee or sub grantee is authorized or required to sell the property, proper sales procedures shall be established to ensure the highest possible return.

If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other Office of Early Childhood sponsored programs or projects, the grantee or sub-grantee shall compensate the awarding agency for its share.

Rights in Data, Documents and Computer Software or Other Intellectual Property[9]

The Office of Early Childhood reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for the Office purposes:

1. The copyright in any work developed under a sub-grant, contract or purchase order; and

2. Any rights of copyright to which a sub-recipient or contractor purchases ownership with grant support.

[9] Authority: 20 U.S.C. 3474; OMB Circular A-102 (http://www.p12.nysed.gov/sss/EDGAR-Parts-76-80-81.pdf)

APPENDIX I: Confirmation of Training

Race to the Top Early Learning Challenge Grant
Sub-recipient Monitoring Plan
Confirmation of Training

The State of Colorado Department of Human Services, Office of Early Childhood has developed an the *Race to the Top Early Learning Challenge Grant Sub-recipient Monitoring Plan* to support the implementation required by the Grant and any contracts administered under this grant. The *Race to the Top Early Learning Challenge Grant Monitoring Plan* identifies practices, processes and policies designed to ensure adherence to the fiscal management requirements of the Early Learning Challenge Grant. Adherence to the *Race to the Top Early Learning Challenge Grant Monitoring Plan* is required by any sub-recipients and will be monitored by the Grant Project Manager from either the Colorado Department of Human Services or Colorado Department of Education depending on the contract with regular reporting to the Office of Early Childhood and the US Department of Education.

Signing this document confirms you have been trained on Colorado's *Race to the Top Early Learning Challenge Grant Sub-recipient Monitoring Plan*. A copy of this signed confirmation will be kept on file at the Office of Early Childhood. Any questions regarding sub-recipient monitoring shall be directed to the Grant Project Manager responsible for the contract, and / or the Early Learning Challenge Grant Director at the Office of Early Childhood.

_____ _____
SIGNATURE DATE

_____
NAME (PRINTED)

_____
TITLE / ORGANIZATION

APPENDIX II: Executive Dashboard Report

RACE TO THE TOP EARLY LEARNING CHALLENGE GRANT

ACCOMPLISHMENTS

- Design work completed on the Early Learning and Development Guidelines
- Learning Management System RFP complete – in clearance with goal of posting by mid July
- Key grant positions filled (Communications, Business Analyst, Results Matter Expansion Project Lead, Learning Management System Project Lead)
- Tiered Quality Rating Improvement System (TQRIS) Design 90% complete
- Cross project team leads officially engaged and working collaboratively to implement project management software / budget tracking / communications planning with the goal of identifying cross-project dependencies, mitigating risk and creating efficiencies in planning & execution
- Completed needs assessment and developed rolled up budget for $15 million dollar RTT-ELC Grant Supplemental Funding which will be included as an attachment to the assurance letter

KEY ACTIVITIES / UPCOMING DEADLINES

Activity	Due Date
Sub Recipient Monitoring Plan	6/22
Supplemental Funds Assurance Letter	7/8
Evaluation Summit to take best practices as groundwork for RFP	mid July
Complete TQRIS Design	7/15
Complete hiring process for Grant personnel	7/31
Supplemental funding detailed scope of work to US Department of Education	8/31
TQRIS Implementation Plan	8/31

CRITICAL ISSUES

- Universal Application technical requirements under revision to address concerns from CMS/HCPF re: Medicaid policy; new SOW targeted for January
- Finalizing governance structure for grant – identifying Executive Steering Committee and Advisory Board members and roles
- RTT-ELC Grant Interagency Agreement between the Departments of Education and Human Services to be signed by CDHS by 7/1/2013
- Supplemental funding scope of work to be developed within the next 60 days

COMMUNICATIONS

- Early Learning Professionals Faculty Institute, June 26-27 – ½ day dedicated to RTT-ELC Grant with specific focus on Early Learning Development Guidelines Competencies which will be embedded in higher education curriculum for the Early Childhood Educator bachelor degree
- Listening Tours scheduled for late July / early August – 9 stops – to discuss RTT with specific focus on TQRIS and Workforce Registry
- Office of Early Childhood Website launch targeted for 7/31 which embeds RCC-ELC Grant information

RACE TO THE TOP EARLY LEARNING CHALLENGE GRANT

Contracts

- TQRIS Project Management & Implementation Plan (Rebound) - $90K encumbered
- Licensing Organizational Design & Business Process (enVision) - $50K encumbered $25 expended
- QRIS Design (Oldham) - $25K encumbered
- Informal Expert Reviewers - $22.5K encumbered
- [illegible]

Posted with Procurement

- Cost Model - Sole source with APA ($85K encumbered)

In Queue

- Early Childhood Professional Development System ($750K – 2yrs)
- Senior Outreach Coordinator – ($60K – 1yr)

Pending (July – September)

- Early Learning Developmental Guidelines Communication Deployment Plan and Material Development – ($125K – 1yr)
- Senior Outreach Coordinator – ($60K – 1yr)

Pending (October - December)

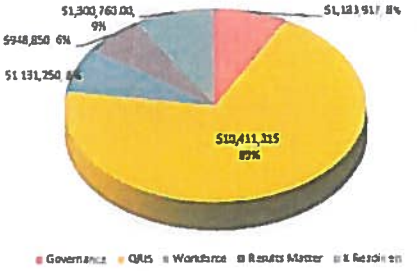
- QRIS Ratings Contractor ($2.6M + $2.25M – 4yr)
- Training / Tech Assistance for Strengthening Colorado Families ($200K - 4yrs)
- Healthy Childcare Colorado Contract Support ($175K - 4yrs)
- Inter-rater reliability tools ($150K – 1yr)
- Shared Services Evaluation ($500K – 4yrs)
- Non-licensed Org Support ($200K – 4yrs)
- Workforce Communication Plan ($200K – 1yr)
- Coaching Consortium ($500K – 4yrs)
- Results Matter Training ($100K – 4yrs)
- Kindergarten Readiness Training ($45K – 4yrs)

Current Grant Budget

Project Area	Budgeted	Actual	Balance
Governance - CDHS			
Grant Funds	$6,242,694	$49,000	$6,193,694
Early Childhood Standards and Guidelines - CDHS			
Grant Funds	$515,000	0	$515,000
Tiered Quality Rating and Improvement System (TQRIS) - CDHS			
Grant Funds	$12,525,994	$187,500	$12,338,494
Developing a Great Early Childhood Education Workforce – CDE*			
Grant Funds	$5,128,093	$82,485	$5,045,611
Results Matter Expansion – CDE*			
Grant Funds	$2,507,726	$129,526	$2,378,200
Kindergarten Readiness - CDE*			
Grant Funds	$2,987,402	$129,686	$2,857,716
TOTAL	$29,907,915	$578,197	$29,329,718

*CDE expenditures based on funds encumbered in April – June 2013 IA project budgets

Proposed Supplemental Funding Amounts By Project Area



APPENDIX III: Race to the Top Early Learning Challenge Grant Sub-recipient / Contractor Monthly Project Status Report

Vendor Name:
PO or Contract #:
For week:
Team Lead:

Activities completed this month:

Activities planned for next month:

Key Meetings/Events

Activity	Date

Major Milestones and Progress

Milestone	Progress / Status (Due Date)

Issues and Risks

Issue / Risk	Mitigation Strategies / Actions

Budgetary Tracking

Budget Total	Expenditures to Date	Balance

APPENDIX IV: Race to the Top Early Learning Challenge Grant Report of Sub-recipient / Contractor Performance

This form is to be completed by the Project Manager responsible for the sub-recipient contract / purchase order. The completed report will be submitted to the Office of Early Childhood, with copies provided to the sub-recipient. General performance of the sub-recipient will be noted and required corrective action will also be noted. If corrective action is required, additional monitoring visits may be scheduled to ensure action is taken.

Sub-Recipient: _____ **Date of Report:** _____

RTT-ELC Project: _____ **RTT-ELC Project Manager:** _____

Contract Amount: _____ **Local Funding:** Yes ◯ No ◯

IV&V Eligible: Yes ◯ No ◯

I. Special Conditions

1.1	Is the sub-recipient under special conditions?	Yes ◯ No ◯
1.11	Has the special conditions determination been reviewed?	Yes ◯ No ◯
1.12	Has the plan of action been reviewed?	Yes ◯ No ◯
1.12a	Steps are being taken and progress documented so the special conditions requirements are being satisfied.	Yes ◯ No ◯

Comments:

II. Adherence to RTT-ELC Sub-Recipient Monitoring Guidelines

2.1	Monthly or Quarterly Status Reports are generated for Project Manager to review on a timely and consistent basis.	Yes ◯ No ◯
2.2	A project plan is maintained by sub-recipient that accurately accounts for key milestones, project velocity, interdependencies and critical tasks.	Yes ◯ No ◯
2.3	Check-Ins are occurring as agreed upon between Project Manager and sub-recipient to track progress, identify issues and mitigate risks.	Yes ◯ No ◯
2.4	Deliverables are on time and judged to be quality work by the Project Manager, consistent with expectations identified in the contract / agreement dictating the use of funds by the sub-recipient.	Yes ◯ No ◯
2.5	Issues are identified with plenty of lead time and risks are mitigated through thoughtful, collaborative work between sub-recipient, Project Manager and associated parties as identified in the contract / agreement dictating the use of funds by the sub-recipient.	Yes ◯ No ◯
2.6	Independent Verification and Validation has been established and is occurring according to the plan established in the contract / agreement dictating the use of funds by the sub-recipient.	Yes ◯ No ◯ N/A ◯

Comments:

III. Financial Management

3.1	Records are being maintained which adequately identify application of funds provided by Race to the Top Early Learning Challenge Grant / Local Funding. These records contain information pertaining to grant or sub grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.	Yes ◯ No ◯
3.2	Effective control and accountability is being maintained for all cash, real and personal property, and other assets. Sub-recipient is adequately safeguarding all such property and assures that it is used solely for authorized purposes.	Yes ◯ No ◯
3.3	Actual expenditures or outlays are compared with budgeted amounts. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the agreement.	Yes ◯ No ◯
3.4	Accounting records are supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and sub grant award documents, etc.	Yes ◯ No ◯
3.5	Sub-recipient has developed a financial management system that ensures no one person has complete control over all aspects of a financial transaction.	Yes ◯ No ◯
3.6	Sub-recipient is using applicable cost principles, agency program regulations, and the terms of the contract / agreement to determine the reasonableness, allowability, and allocability of costs.	Yes ◯ No ◯
Comments:		

IV. Summary & Action Steps

Based on findings from previous sections, as well as general performance and work quality, the following is a summary of the Project Manager's evaluation of the sub-recipient's performance against their contract or agreement, and the *Colorado Race to the Top Early Learning Challenge Grant Sub-recipient Monitoring Guidelines*. Information within this section may also include assessment of progress against the Project Manager's expectations and timelines to resolve any corrective action findings.

Comments:

Exhibit G

Quality Rubric and Guidance

Universal Any Qualified Quality Improvement (QQI) Minimum Assignments per Grant

The Coaching Assessment (including ERS observation in at least one classroom of each age group) must be completed for each site prior to spending Any QQI assets.

Use funds in accordance with Funding Hierarchy

Scenario 1: If RTT Funding is Applied for First (Must Have a Level 2) or at the Same Time as Other QI Funding

Must be Level 2 & in Good Standing with Licensing

RTT QI Any QQI	Classrooms 1	2	3	4 or more
Base/Site Allocation	$300			
Level 1	Not Eligible			
Level 2	$300	$600	$900	$1,200
Level 3	$300	$600	$900	$1,200
Level 4 or 5	$300	$600	$900	$1,200
Min Any QQI $	$600		Max Any QQI $	$1,500

SRQIP/ITQA/CCAP QI Coaching Hours (For Each Grant)	Classrooms 1	2	3	4 or more
Base/Site Allocation	$1,000			
Level 1	NA Scenario 1			
Level 2	$750	$1,000	$1,250	$1,500
Level 3	$500	$750	$1,000	$1,250
Level 4 or 5	$250	$500	$750	$1,000
Min Any QQI $	$1,000		Max Any QQI $	$2,500

If Participating in ALL OEC QI Funding	Classrooms 1	2	3	4 or more
Min Any QQI $	$3,800		Max Any QQI $	$9,000

Scenario 2: If SRQIP, ITQA, CCAP or other QI Funding Participant applies for RTT QI

Not Required to be Level 2 for SRQIP, ITQA, & CCAP; Once Level 2, eligible for RTT QI

SRQIP Any QQI Hours	Classrooms 1	2	3	4 or more
Base/Site Allocation	$1,000.00	$250.00	per additional Classroom	
Level 1	$1,500	$1,750	$2,000	$2,250
Level 2	$750	$1,000	$1,250	$1,500
Level 3	$500	$750	$1,000	$1,250
Level 4 or 5	$250	$500	$750	$1,000
Min Any QQI $	$1,250		Max Any QQI $	$3,250

RTT QI Any QQI	Classrooms 1	2	3	4 or more
Base/Site Allocation	$0	$300.00	per additional Classroom	
Level 1	Not Eligible			
Level 2	$300	$600	$900	$1,200
Level 3	$300	$600	$900	$1,200
Level 4 or 5	$300	$600	$900	$1,200
Min Any QQI $	$300		Max Any QQI $	$1,200

ITQA Any QQI (Infant/Toddler Classrooms Serving CCAP ONLY)	Classrooms 1	2	3	4 or more
Base/Site Allocation	$1,500	$500	per additional Classroom	
Level 1	$2,000	$2,500	$3,000	$3,500
Level 2	$1,000	$1,500	$2,000	$2,500
Level 3	$750	$1,250	$1,750	$2,250
Level 4 or 5	$500	$1,000	$1,500	$2,000
Min Any QQI $	$2,000		Max Any QQI $	$5,000

$3,500

If Participating in ALL OEC QI Funding	Classrooms 1	2	3	4 or more
Min Any QQI $	$750		Max Any QQI $	$19,950

CCAP QI Any QQI (Serving CCAP Only)	Classrooms 1	2	3	4 or more
L1-2 Base/Site Allocation	$1,500	$500	per additional Classroom	
High Priority Mean CCAP Enrollment of over 36 Level 1	$7,500	$8,000	$8,500	$9,000
High Priority Mean CCAP Enrollment of 13 - 36 Level 1	$5,000	$5,500	$6,000	$6,500
High Priority Mean CCAP Enrollment of over 36 Level 2	$6,000	$6,500	$7,000	$7,500
High Priority Mean CCAP Enrollment of 13 - 36 Level 2	$3,500	$4,000	$4,500	$5,000
Mean CCAP Enrollment 1-13 Levels 1-2	$500	$1,000	$1,500	$2,000
L3-5 Base/Site Allocation	$500	250	per additional Classroom	
Mean CCAP Enrollment Over 13 Levels 3-5	$500	$750	$1,000	$1,250
Mean CCAP Enrollment 1-13 Levels 3-5	$250	$500	$750	$1,000
Min Any QQI $	$750		Max Any QQI $	$10,500

Exhibit G

Universal Coaching Minimum Assignments per Grant

The Coaching Assessment (including ERS observation in at least one classroom of each age group) must be completed for each site prior to spending Any QQI assets.
If RTT QI Coaching hours are available, use those coaching hours FIRST for any QRIS related coaching including the Coaching Assessment.

Scenario 1: If RTT Funding is Applied for First (Must Have a Level 2) or at the Same Time as Other QI Funding

Must be Level 2 & in Good Standing with Licensing

RTT QI Coaching Hours	Classrooms 1	2	3	4 or more
Rule of Diminishing Hours	=5	=5/2	=5/2	=5/5
Infant Toddler Hours/Classroom	5	7.5	10	11
Preschool Hours/Classroom	5	7.5	10	11
Family Childcare Home Hours/Classroom	5	7.5	NA	NA
Min Hours	5	**Max Hours**		22

SRQIP/ITQA/CCAP QI Coaching Hours (For Each Grant)	Classrooms 1	2	3	4 or more
Rule of Diminishing Hours	=5	=5/2	=5/2	=5/5
Classrooms (Some Funding Is Restricted to Classrooms Serving Specific Ages)	5	7.5	10	11
Min Hours	5	**Max Hours**		11

If Participating In ALL OEC QI Funding	Classrooms 1	2	3	4 or more
Rule of Diminishing Hours	=5	=5/2	=5/2	=5/5
Min Hours	20	**Max Hours**		55
Avg/Month (10 Months)	2			5.5

Scenario 2: If SRQIP, ITQA, CCAP or other QI Funding Participant applies for RTT QI

Not Required to be Level 2 for SRQIP, ITQA, & CCAP; Once Level 2, eligible for RTT QI

SRQIP Coaching Hours	Classrooms 1	2	3	4 or more
Rule of Diminishing Hours	=4	=4/2	=4/2	=4/4
Infant Toddler Hours/Classroom	4	6	8	9
Preschool Hours/Classroom	4	6	8	9
Family Childcare Home Hours/Classroom	4	6	NA	NA
Min Hours	4	**Max Hours**		18

ITQA Coaching Hours	Classrooms 1	2	3	4 or more
Rule of Diminishing Hours	=4	=4/2	=4/2	=4/4
Infant Toddler Hours/Classroom	4	6	8	9
Family Childcare Home Hours/Classroom	4	6	NA	NA
Min	4 hours	**Max**		9 hours

CCAP QI Coaching Hours	Classrooms 1	2	3	4 or more
Rule of Diminishing Hours	=4	=4/2	=4/2	=4/4
Infant Toddler Hours/Classroom	4	6	8	9
Preschool Hours/Classroom	4	6	8	9
Family Childcare Home Hours/Classroom	4	6	NA	NA
Min Hours	4	**Max Hours**		18

RTT QI Coaching Hours	Classrooms Any # of Classrooms
Infant Toddler Hours/Classroom	5
Preschool Hours/Classroom	5
Family Childcare Home Hours/Classroom	5
Min Hours	5 **Max Hours** 10

If Participating In ALL OEC QI Funding	Classrooms 1	2	3	4 or more
Min Hours	17	**Max Hours**		55
Avg/Month (10 Months)	1.7			5.5

Expectations for All QI Outreach and Funding Streams

1. Outreach to all Eligible Providers (field in Sugar with notes)
2. Checklist (to assess business viability, capacity and commitment to change)
3. Use the Universal Rubric to Score/Award New Providers. FY17 awarded providers are allowed to re-apply without completing scoring rubric. FY17 awarded providers can begin QI activities upon completion of QRIS coaching assessment.

ITQA	SRQIP	CCCAP QI
Legislative Requirements: 1. Increase slots 2. Increase quality 3. Increase famiy engagement 4. Provide tied reimbursement Recruitment Guidance: 1. Quality Improvement sites: Low/no quality and high CCCAP 2. Maintenance sites: Medium/High Quality and high CCCAP (can they increase CCCAP) 3. Expansion sites: can they expand slots, increase CCCAP *CCCAP data will be provided by OEC	Legislative Requirements: 1. Eligible Programs are feeding Low Performing and Turn Around Schools Recruitment Guidance: 1. Transition of current SRQIP sites who are no longer in the boundaries for Low Performing Schools AND sites who are closing out their 6th funding year in the program. This is to be done on an individual basis and the plan should be provided to the Program Officer upon completion. 2. OEC will provide a list of Potential Sites in the identified boundary area for Low Performing Schools. 3. Connect with current sites who remain eligible for funds through school readiness to determine best fit and establish if services will continue. 4. For Councils with a high number of Potential Providers, priority is to be placed Quality Improvement Sites and High CCCAP. These high priority sites should be a personal reach and the remainder can be an email invitation to apply. (Will be provided by OEC)	State Requirements: 1. Programs must be serving children in CCCAP Recruitment Guidance: 1. This funding can be used to support the 3-5 year old classrooms that are enrolled in ITQA. 2. An eligible list of providers will be sent to councils from the OEC.

4. Providers **must** complete QRIS Coarching Assessment (both to determine level of support and inform funding allocations)
5. Sign MOU's with Providers
6. Finalize list of provider for each grant
7. Funding Rubrics will be provided by OEC (see attached)
8. Begin QI Activities

EXHIBIT H - Supplemental Provisions for Federal Awards

This Contract has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions for Federal Awards, the Special Provisions, the Contract or any attachments or exhibits incorporated into and made a part of the Contract, the Supplemental Provisions for Federal Awards shall control. In the event of a conflict between the Supplemental Provisions for Federal Awards and the FFATA Supplemental Provisions (if any), the FFATA Supplemental Provisions shall control.

1) Federal Award Identification
   i. Contractor: Gunnison County;
   ii. Contractor DUNS number: 133115220;
   iii. The Federal Award Identification Number (FAIN) is :CCDF - G1501COCCDF; RTT - S412A130004-13A;
   iv. The Federal award date is CCDF - April 1, 2015; RTT - January 1, 2013;
   v. The subaward period of performance start date is CCDF - October 1, 2014; RTT - January 1, 2013 and end date is CCDF - September 30, 2017; RTT - December 31, 2016;
   vi. Federal Funds:

Contract or Fiscal Year	Amount of Federal funds obligated by this Contract	Total amount of Federal funds obligated to the Contractor	Total amount of the Federal award
FY17	$69,602	$59,202 - G1501COCCDF $10,400 - RTT	$23,195,146 $44,888,832

   vii. Federal award project description: Child Care and Development Block Grant (CCDF) / Race to the Top Early Learning Challenge Grant (RTT);
   viii. The name of the Federal awarding agency is CCDF - Administration for Children & Families / RTT - US Department of Education; the name of the pass-through entity is the State of Colorado, Department of Human Services (CDHS); and the contact information for the awarding official is CCDF - Patrick A. Wells, Director, Division of Mandatory Grants / RTT - Kla Weems, Authorizing Official;
   ix. The Catalog of Federal Domestic Assistance (CFDA) number is CCDF - 93.575 / RTT - 84.412A, name is CCDF - Child Care and Development Block Grant Act of 1990 / RTT - Race to the Top - Early Learning Challenge Grant, and dollar amount is CCDF - G1501COCCDF - $23,195,146 / RTT - $44,888,832;
   x. This award is not for research & development;
   xi. The indirect cost rate for the Federal award (including if the de minimis rate is charged per 2 CFR §200.414 Indirect (F&A) costs) is pre-determined based upon the State of Colorado and CDHS cost allocation plan.
2) All requirements imposed by CDHS on Contractor so that the Federal award is used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award, are stated in the General Provisions and Exhibit B - Statement of Work.
3) Any additional requirements that CDHS imposes on Contractor in order for CDHS to meet its own responsibility to the Federal awarding agency, including identification of any required financial and performance reports, are stated in the General Provisions and Exhibit B - Statement of Work.
4) The approved federally recognized indirect cost rate negotiated between Contractor and the Federal government or, if no such rate exists, either a rate negotiated between CDHS and Contractor (in compliance with this Part), or a de minimis indirect cost rate as defined in 2 CFR §200.414 Indirect (F&A) costs, paragraph (b) of this Part, is CCDF - G1501COCCDF - 5% de minimus rate / RTT - 5% as capped by the grant.
5) Contractor must permit CDHS and auditors to have access to Contractor's records and financial statements as necessary for CDHS to meet the requirements of 2 CFR §200.331 Requirements for pass-through entities, §§ 200.300 Statutory and National Policy Requirements through §200.309 Period of performance, and Subpart F—Audit Requirements of this Part.
6) The appropriate terms and conditions concerning closeout of the subaward are listed in Section 16 of this Exhibit and Exhibit B - Statement of Work.

7) **Performance and Final Status.** Contractor shall submit all financial, performance, and other reports to CDHS no later than 30 calendar days after the period of performance end date or sooner termination of this Contract containing an evaluation and review of Contractor's performance and the final status of Contractor's obligations hereunder.

8) Matching Funds

If a box below is checked, the accompanying provision applies.

i. ☑ Contractor is not required to provide matching funds.

ii. ☐ Contractor shall provide matching funds as stated in N/A. Contractor shall have raised the full amount of matching funds prior to the Effective Date and shall report to CDHS regarding the status of such funds upon request. Contractor's obligation to pay all or any part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Contract by the authorized representatives of the Contractor and paid into the Contractor's treasury or bank account. Contractor represents to CDHS that the amount designated as matching funds has been legally appropriated for the purposes of this Contract by its authorized representatives and paid into its treasury or bank account. Contractor does not by this Contract irrevocably pledge present cash reserves for payments in future fiscal years, and this Contract is not intended to create a multiple-fiscal year debt of the Contractor. Contractor shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Contractor's laws or policies.

9) **Record Retention Period.** The record retention period previously stated in this Contract is replaced with the record retention period prescribed in 2 CFR §200.333.

10) **Single Audit Requirements.** If Contractor expends $750,000 or more in Federal Awards during Contractor's fiscal year, Contractor shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.

i. Election. Contractor shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Contractor may elect to have a program-specific audit if Contractor expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of CDHS. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from CDHS and CDHS approves in advance a program-specific audit.

ii. Exemption. If Contractor expends less than $750,000 in Federal Awards during its fiscal year, Contractor shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.

iii. Contractor Compliance Responsibility. Contractor shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Contractor shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by 2 CFR Part F-Audit Requirements.

11) **Contract Provisions**. Contractor shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Contract:

i. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by

Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

"During the performance of this contract, the contractor agrees as follows:

a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

ii. 4.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as

supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

iii. Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

iv. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

v. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

vi. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C.1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

12) **Compliance.** Contractor shall comply with all applicable provisions of The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), including but not limited to these Supplemental Provisions for Federal Awards. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. CDHS may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

13) **Procurement Procedures.** Contractor shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
14) **Certifications.** Unless prohibited by Federal statutes or regulations, CDHS may require Contractor to submit certifications and representations required by Federal statutes or regulations on an annual basis (2 CFR §200.208). Submission may be required more frequently if Contractor fails to meet a requirement of the Federal award. Contractor shall certify in writing to CDHS at the end of the Contract that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(b)(3). If the required level of activity or effort was not carried out, the amount of the Contract must be adjusted.
15) **Event of Default.** Failure to comply with the Uniform Guidance or these Supplemental Provisions for Federal Awards shall constitute an event of default under the Contract pursuant to 2 CFR §200.339 and CDHS may terminate the Contract in accordance with the termination provisions in the Contract.
16) **Close Out.** Contractor shall close out this Contract within 90 days after the End Date. Contract close out entails submission to CDHS by Contractor of all documentation defined as a deliverable in this Contract, and Contractor's final reimbursement request. CDHS shall withhold 5% of the allowable costs until all final project documentation has been submitted and accepted by State as substantially complete. If the project has not been closed by the Federal awarding agency within 1 year and 90 days after the End Date due to Contractor's failure to submit required documentation that CDHS has requested from Contractor, then Contractor may be prohibited from applying for new Federal awards through the State until such documentation has been submitted and accepted.
17) **Erroneous Payments.** The closeout of a Federal award does not affect the right of the Federal awarding agency or CDHS to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the record retention period.

EXHIBIT END

Exhibit I

SAMPLE OPTION LETTER

Date:	Original Contract CMS #:	Option Letter #	CMS Routing #

1) **OPTIONS:** Choose all applicable options listed in §1 and in §2 and delete the rest.
   - **a.** Option to renew only *(for an additional term)*
   - **b.** Change in the amount of goods within current term
   - **c.** Change in amount of goods in conjunction with renewal for additional term
   - **d.** Level of service change within current term
   - **e.** Level of service change in conjunction with renewal for additional term

2) **REQUIRED PROVISIONS**. All Option Letters shall contain the appropriate provisions set forth below:
   - **a. For use with Options 1(a-e):** In accordance with Section(s) of the Original Contract between the State of Colorado, Insert Name of Department or Higher Ed Institution **,** and Contractor's Name, the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date at a cost/price specified in Section , AND/OR an increase/decrease in the amount of goods/services at the same rate(s) as specified in Identify the Section, Schedule, Attachment, Exhibit etc.
   - **b. For use with all Options 1(a-f):** The amount of the current Fiscal Year contract value is increased/decreased by $ amount of change to a new contract value of Insert New $ Amt to as consideration for services/goods ordered under the contract for the current fiscal year indicate Fiscal Year. The first sentence in Section is hereby modified accordingly. The total contract value including all previous amendments, option letters, etc. is Insert New $ Amt.

3) **Effective Date**. The effective date of this Option Letter is upon approval of the State Controller or , whichever is later.

STATE OF COLORADO
John W. Hickenlooper, Governor
Department of Human Services
Reggie Bicha, Executive Director

_____
By: Insert Name & Title of Person Signing for Agency or IHE

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State contracts. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Insert Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval

Date: _____

Exhibit I

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STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Insert Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval

Date: _____

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("Addendum") is a part of the Contract dated March 28, 2016 between the Department of Human Services, Office of Early Childhood and Gunnison County, contract number 17 IHIA 90547. For purposes of this Addendum, the State is referred to as "Covered Entity" or "CE" and the Contractor is referred to as "Associate". Unless the context clearly requires a distinction between the Contract document and this Addendum, all references herein to "the Contract" or "this Contract" include this Addendum.

RECITALS

A. CE wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below).

B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to this Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d – 1320d-8 ("HIPAA") as amended by the American Recovery and Reinvestment Act of 2009 ("ARRA")/HITECH Act (P.L. 111-005), and its implementing regulations promulgated by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160, 162 and 164 (the "HIPAA Rules") and other applicable laws, as amended.

C. As part of the HIPAA Rules, the CE is required to enter into a written contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Addendum.

The parties agree as follows:

1. Definitions.

a. Except as otherwise defined herein, capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Rules at 45 C.F.R. Parts 160, 162 and 164, as amended. In the event of any conflict between the mandatory provisions of the HIPAA Rules and the provisions of this Contract, the HIPAA Rules shall control. Where the provisions of this Contract differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Contract shall control.

b. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be

used to identify the individual, and shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.501.

c. "Protected Information" shall mean PHI provided by CE to Associate or created received, maintained or transmitted by Associate on CE's behalf. To the extent Associate is a covered entity under HIPAA and creates or obtains its own PHI for treatment, payment and health care operations, Protected Information under this Contract does not include any PHI created or obtained by Associate as a covered entity and Associate shall follow its own policies and procedures for accounting, access and amendment of Associate's PHI.

d. "Subcontractor" shall mean a third party to whom Associate delegates a function, activity, or service that involves CE's Protected Information, in order to carry out the responsibilities of this Agreement.

2. Obligations of Associate.

a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate's obligations under this Contract and as permitted under this Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the HIPAA Rules if so used by CE, except that Associate may use Protected Information: (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Attachment A to this Addendum. Associate accepts full responsibility for any penalties incurred as a result of Associate's breach of the HIPAA Rules.

b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the HIPAA Rules if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted pursuant to this Contract; (ii) for the proper management and administration of Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 C.F.R. Section 164.502(j)(1). To the extent that Associate discloses Protected Information to a third party Subcontractor, Associate must obtain, prior to making any such disclosure: (i) reasonable assurances through execution of a written agreement with such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and that such third party will notify Associate within two (2) business days of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in Attachment A.

c. Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information other than as permitted by this Contract. Associate shall comply with the requirements of the HIPAA Security Rule at 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316. Associate shall maintain a

comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities. Associate shall review, modify, and update documentation of, its safeguards as needed to ensure continued provision of reasonable and appropriate protection of Protected Information.

d. Reporting of Improper Use or Disclosure. Associate shall report to CE in writing any use or disclosure of Protected Information other than as provided for by this Contract within five (5) business days of becoming aware of such use or disclosure.

e. Associate's Agents. If Associate uses one or more Subcontractors or agents to provide services under the Contract, and such Subcontractors or agents receive or have access to Protected Information, each Subcontractor or agent shall sign an agreement with Associate containing the same provisions as this Addendum and further identifying CE as a third party beneficiary with rights of enforcement and indemnification from such Subcontractors or agents in the event of any violation of such Subcontractor or agent agreement. The Agreement between the Associate and Subcontractor or agent shall ensure that the Subcontractor or agent agrees to at least the same restrictions and conditions that apply to Associate with respect to such Protected Information. Associate shall implement and maintain sanctions against agents and Subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

f. Access to Protected Information. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate shall make Protected Information maintained by Associate or its agents or Subcontractors in such Designated Record Sets available to CE for inspection and copying within ten (10) business days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.524. If such Protected Information is maintained by Associate in an electronic form or format, Associate must make such Protected Information available to CE in a mutually agreed upon electronic form or format.

g. Amendment of PHI. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate or its agents or Subcontractors shall make such Protected Information available to CE for amendment within ten (10) business days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, and shall incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or Subcontractors, Associate must notify CE in writing within five (5) business days of receipt of the request. Any denial of amendment of Protected Information maintained by Associate or its agents or Subcontractors shall be the responsibility of CE.

h. Accounting Rights. If Associate maintains Protected Information contained within CE's Designated Record Set, Associate and its agents or Subcontractors shall make available to CE within ten (10) business days of notice by CE, the information required to

provide an accounting of disclosures to enable CE to fulfill its obligations under the HIPAA Rules, including, but not limited to, 45 C.F.R. Section 164.528. In the event that the request for an accounting is delivered directly to Associate or its agents or Subcontractors, Associate shall within five (5) business days of the receipt of the request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.

i. Governmental Access to Records. Associate shall keep records and make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's or Associate's compliance with the HIPAA Rules. Associate shall provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary when the Secretary is investigating CE. Associate shall cooperate with the Secretary if the Secretary undertakes an investigation or compliance review of Associate's policies, procedures or practices to determine whether Associate is complying with the HIPAA Rules, and permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, including Protected Information, that are pertinent to ascertaining compliance.

j. Minimum Necessary. Associate (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure, in accordance with the Minimum Necessary requirements of the HIPAA Rules including, but not limited to 45 C.F.R. Sections 164.502(b) and 164.514(d).

k. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.

l. Retention of Protected Information. Except upon termination of the Contract as provided in Section 4(d) of this Addendum, Associate and its Subcontractors or agents shall retain all Protected Information throughout the term of this Contract and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years.

m. Associate's Insurance. Associate shall maintain insurance to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed the minimum insurance requirements of the Contract (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status and notice of cancellation).

n. Notice of Privacy Practices. Associate shall be responsible for reviewing CE's Notice of Privacy Practices, available on CE's external website, to determine any requirements applicable to Associate per this Contract.

o. Notification of Breach. During the term of this Contract, Associate shall notify CE within two (2) business days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall not initiate notification to affected individuals per the HIPAA Rules without prior notification and approval of CE. Information provided to CE shall include the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been accessed, acquired or disclosed during the breach. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

p. Audits, Inspection and Enforcement. Within ten (10) business days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection; and (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract.

q. Safeguards During Transmission. Associate shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity and security of Protected Information transmitted pursuant to the Contract, in accordance with the standards and requirements of the HIPAA Rules.

r. Restrictions and Confidential Communications. Within ten (10) business days of notice by CE of a restriction upon uses or disclosures or request for confidential communications pursuant to 45 C.F.R. Section 164.522, Associate will restrict the use or disclosure of an individual's Protected Information. Associate will not respond directly to an individual's requests to restrict the use or disclosure of Protected Information or to send all communication of Protect Information to an alternate address. Associate will refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to Associate.

3. Obligations of CE.

a. Safeguards During Transmission. CE shall be responsible for using appropriate safeguards, including encryption of PHI, to maintain and ensure the confidentiality, integrity and security of Protected Information transmitted pursuant to the Contract, in accordance with the standards and requirements of the HIPAA Rules.

b. Notice of Changes. CE maintains a copy of its Notice of Privacy Practices on its website. CE shall provide Associate with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent that it may affect Associate's permitted or required uses or disclosures. To the extent that it may affect Associate's permitted use or disclosure of PHI, CE shall notify Associate of any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 C.F.R. Section 164.522.

4. Termination.

a. Material Breach. In addition to any other provisions in the Contract regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of this Contract and shall provide grounds for immediate termination of this Contract by CE pursuant to the provisions of the Contract covering termination for cause, if any. If the Contract contains no express provisions regarding termination for cause, the following terms and conditions shall apply:

(1) Default. If Associate refuses or fails to timely perform any of the provisions of this Contract, CE may notify Associate in writing of the non-performance, and if not promptly corrected within the time specified, CE may terminate this Contract. Associate shall continue performance of this Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

(2) Associate's Duties. Notwithstanding termination of this Contract, and subject to any directions from CE, Associate shall take timely, reasonable and necessary action to protect and preserve property in the possession of Associate in which CE has an interest.

(3) Compensation. Payment for completed supplies delivered and accepted by CE shall be at the Contract price. In the event of a material breach under paragraph 4a, CE may withhold amounts due Associate as CE deems necessary to protect CE against loss from third party claims of improper use or disclosure and to reimburse CE for the excess costs incurred in procuring similar goods and services elsewhere.

(4) Erroneous Termination for Default. If after such termination it is determined, for any reason, that Associate was not in default, or that Associate's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if this Contract had been terminated for convenience, as described in this Contract.

b. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Contract pursuant to Section 4(a), then CE shall take reasonable steps to cure such breach or end such violation.. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall either (i) terminate the Contract, if feasible or (ii) if termination of this Contract is not feasible, CE shall report Associate's breach or violation to the Secretary of the Department of Health and Human Services. If Associate knows of a pattern of activity or practice of a Subcontractor or

agent that constitutes a material breach or violation of the Subcontractor's or agent's obligations under the written agreement between Associate and the Subcontractor or agent, Associate shall take reasonable steps to cure such breach or end such violation, if feasible.

c. Judicial or Administrative Proceedings. Either party may terminate the Contract, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of the HIPAA Rules or other security or privacy laws or (ii) a finding or stipulation that the other party has violated any standard or requirement of the HIPAA Rules or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

d. Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, upon termination of this Contract, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or Subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If Associate elects to destroy the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.

(2) If Associate believes that returning or destroying the Protected Information is not feasible, Associate shall promptly provide CE notice of the conditions making return or destruction infeasible. Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d) and 2(e) of this Addendum to such Protected Information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. Injunctive Relief. CE shall have the right to injunctive and other equitable and legal relief against Associate or any of its Subcontractors or agents in the event of any use or disclosure of Protected Information in violation of this Contract or applicable law.

6. No Waiver of Immunity. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS 24-10-101 *et seq.* or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.* as applicable, as now in effect or hereafter amended.

7. Limitation of Liability. Any limitation of Associate's liability in the Contract shall be inapplicable to the terms and conditions of this Addendum.

8. Disclaimer. CE makes no warranty or representation that compliance by Associate with this Contractor the HIPAA Rules will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

9. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations pursuant to the HIPAA Rules relating to certification of its

security practices, CE or its authorized agents or contractors, may, at CE's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with the HIPAA Rules or this Addendum.

10. Amendment.

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of the HIPAA Rules and other applicable laws relating to the confidentiality, integrity, availability and security of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information and that it is Associate's responsibility to receive satisfactory written assurances from Associate's Subcontractors and agents. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of the HIPAA Rules or other applicable laws. CE may terminate this Contract upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this Contract when requested by CE pursuant to this Section, or (ii) Associate does not enter into an amendment to this Contract providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of the HIPAA Rules.

b. Amendment of Attachment A. Attachment A may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.

11. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any Subcontractors, employees or agents assisting Associate in the performance of its obligations under the Contract, available to CE, at no cost to CE up to a maximum of 30 hours, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of the HIPAA Rules or other laws relating to security and privacy or PHI, except where Associate or its Subcontractor, employee or agent is a named adverse party.

12. No Third Party Beneficiaries. Nothing express or implied in this Contract is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

13. Interpretation and Order of Precedence. The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. Together, the Contract and this Addendum shall be interpreted as broadly as necessary to implement and comply with the HIPAA Rules. The parties agree that any ambiguity in this Contract shall be resolved in favor of a meaning that complies and is consistent

with the HIPAA Rules. This Contract supercedes and replaces any previous separately executed HIPAA addendum between the parties.

14. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, Associate's obligations under Section 4(d) ("Effect of Termination") and Section 12 ("No Third Party Beneficiaries") shall survive termination of this Contract and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate. This Addendum shall remain in effect during the term of the Contract including any extensions.

15. Representatives and Notice.

a. Representatives. For the purpose of the Contract, the individuals identified elsewhere in this Contract shall be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are hereby designated as the parties' respective representatives for purposes of this Contract. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. All required notices shall be in writing and shall be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

State/Covered Entity Representative:

Name: Stacey Kennedy
Title: Quality Child Care Initiatives Director
Department and Division: Colorado Department of Human Services
Office of Early Childhood
Address: 1575 Sherman Street, 1st Floor
Denver, CO 80203

Contractor/Business Associate Representative:

Name: Matthew Birnie
Title: Gunnison County Manager
Department and Division: Gunnison County
Address: 225 North Pine Street, Suite E
Gunnison, CO 81230

ATTACHMENT A

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum, which is part of the Contract dated March 28, 2016, between the Department of Human Services, Office of Early Childhood and Gunnison County, contract number 17 IHIA 90547 ("Contract") and is effective as of July 1, 2016 (the "Attachment Effective Date"). This Attachment may be amended from time to time as provided in Section 10(b) of the Addendum.

1. Additional Permitted Uses. In addition to those purposes set forth in Section 2(a) of the Addendum, Associate may use Protected Information as follows: _____
None except as otherwise directed in writing by the State.

2. Additional Permitted Disclosures. In addition to those purposes set forth in Section 2(b) of the Addendum, Associate may disclose Protected Information as follows:
None except as otherwise directed in writing by the State.

3. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under this Contract:
None except as otherwise directed in writing by the State.

4. Receipt. Associate's receipt of Protected Information pursuant to this Contract shall be deemed to occur as follows, and Associate's obligations under the Addendum shall commence with respect to such PHI upon such receipt: _____
Upon the effective date of the contract.

5. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information:
As may be directed in writing by the State.

6. Additional Terms. *[This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.]*
None.

State of Colorado
Contract Management Information
Vendor Disclosure Statement
Colorado Revised Statutes § 24-102-206

Contract Performance Outside of the United States or Colorado

***Prior to contracting*, or as a requirement for the solicitation of any contract for services from the State of Colorado, a prospective vendor is required to disclose the following information in a statement of work**.

Completing this Form

- To the extent the following information has **not previously disclosed** in a statement of work, a prospective vendor shall complete this Vendor Disclosure Statement and return it to the contracting state agency or institution of higher education (IHE).

- This Disclosure Statement is not required for contracts under Medicare, the "Colorado Medical Assistance Act", Articles 4 to 6 of Title 25.5, CRS, the "Children's Basic Health Plan Act", Article 8 of Title 25.5, CRS, or the "Colorado Indigent Care Program", Part I of Article 3 of Title 25.5, CRS.

- This Disclosure Statement is not required for Construction contracts.

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1. Solicitation or Contract Routing Number: _____

   Vendor Name: _____

   State Agency/IHE Name: Colorado Department of Human Services, Office of Early Childhood

2. Where will the services under the contract, including any subcontracts, be performed? List all country(ies) and state(s).

   _____

3. If it is anticipated that services under the contract, or any subcontracts, will be performed outside of the United States or the State of Colorado, explain why it is necessary or advantageous to go outside the United States or the State of Colorado to perform the contract or any subcontracts.

   _____

_____ _____
Signature Date

_____ _____
Printed Name Title

NOTICE OF PARTICIPATION
IN THE
DEPARTMENT PROGRAM
FOR PUBLIC CONTRACTS FOR SERVICES

Colorado Division of Labor
633 17th Street, Suite 200
Denver, Colorado 80202-3660
Telephone: (303) 318-8441
Toll-Free: 1-888-390-7936
www.coworkforce.com/lab

Effective May 13, 2008, contractors who enter into or renew a public contract for services with Colorado state agencies or political subdivisions must participate in either the federal E-Verify program, OR the newly created Colorado Department of Labor and Employment Program. The option to enroll in the new Department Program was created by Colorado State Senate Bill 08-193, which amended 8-17.5-101 and 102, C.R.S.

If a contractor wishes to participate in the Colorado Department of Labor and Employment Program in lieu of utilizing the federal E-Verify program, the contractor or contractor's representative must (among other requirements):

1) Sign and complete this form in its entirety and submit this form to the Colorado Division of Labor via mail or in-person to the address noted above, AND

2) Include this form with the contract to the contracting State agency or political subdivision.

Notice is hereby given of participation in the Colorado Department of Labor and Employment Program established pursuant to 8-17.5-102(5)(c)(I), C.R.S. The undersigned agrees to abide by all applicable provisions of this law, including consent to undergo random audits by the Department pursuant to 8-17.5-102(5)(c)(III), C.R.S.

Contractor Contact Information

CONTRACTOR / BUSINESS NAME		
ADDRESS	CITY, STATE, ZIP	
PHONE ( )	FAX ( )	E-MAIL ADDRESS

Contracting State Agency or Political Subdivision Contact Information

STATE AGENCY OR POLITICAL SUBDIVISION NAME Colorado Department of Human Services, Office of Early Childhood		
CONTACT NAME AT AGENCY OR SUBDIVISION Lisa Vaughn	TITLE Contract Manager	
ADDRESS 1575 Sherman Street, 1st Floor	CITY, STATE, ZIP Denver, CO 80203	
PHONE (303) 866-6821	FAX (303) 866-4453	E-MAIL ADDRESS Lisa.Vaughn@state.co.us

Contract Information

CONTRACT NUMBER	APPROXIMATE CONTRACT DOLLAR AMOUNT ($)
CONTRACT EFFECTIVE DATE	CONTRACT END DATE

Contractor OR Contractor Representative Information (Individual Signing this Notification)

NAME	TITLE	
PHONE ( )	FAX ( )	E-MAIL ADDRESS

CONTRACTOR / REPRESENTATIVE SIGNATURE **DATE SIGNED**

For official use only:
Claim # _____ Assigned to _____

For more information on this law, visit: www.coworkforce.com/lab/pcs