AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Memorandum of Understanding; Colorado Department o

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Gunnison County and Colorado Department of Human Services

Term Begins: 07/01/2018 **Term Ends:** 6/30/2021 **Grant Contract #:**

Summary:

MOU for services for clients receiving Colorado Works and Child Care Assistance benefits

Fiscal Impact:

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

Finance Review: (●) Required ( ) Not Required

Comments:

No concerns, revenue from this MOU will be included in state-year allocation letter and reflected in the 2019 budget. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 5/17/2018

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

Comments:

Reveiwed by: GUNCOUNTY1\mhoyt Discharge Date: 5/29/2018 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 5/31/2018

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

Agenda Date: 6/5/2018

Revised April 2015

COLORADO
Department of Human Services

MEMORANDUM OF UNDERSTANDING

The State of Colorado Department of Human Services and the Board of County Commissioners or other elected governing body of _____ County, Colorado.

This Memorandum of Understanding (MOU) is made this 1st day of July, 2018 between the State of Colorado Department of Human Services (CDHS) and the Board of the County Commissioners or other elected governing body of _____ County, Colorado (the "County").

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

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

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

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

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

1. **MOU MEETS PERFORMANCE CONTRACT REQUIREMENT**

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

2. **TERM**

   The term of this MOU will be from July 1, 2018 through June 30, 2021

3. REQUIRED DUTIES OF THE COUNTY

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

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

c. The County will not restrict eligibility or the provisions of services, nor will it impose sanctions that are inconsistent with State or Federal law.

d. For the term of this MOU, the County's negotiated Work Participation Rate (WPR) will be held accountable only to the adjusted WPR, after the caseload reduction credit is applied, with the elimination and removal of the Two-Parent rate. The County's agreement to meet the federally required participation rate is relevant to CDHS's anticipation that CDHS will, in turn, be able to meet any work participation rates imposed by the federal government.

e. The parties acknowledge that the WPR is, as of the signing of this MOU, the only federally mandated performance goal identified specifically in CRS 26-2-712 (4). The parties also acknowledge that in an effort to help individuals prepare for and enter the workforce, they are encouraged to adopt employment focused measures, as outlined under "OPTIONAL OUTCOME MEASURES" below.

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

g. Counties shall have flexibility in determining the approaches needed to achieve federal and state requirements. The County agrees to provide CDHS with its adopted policies and any updated written information when, or if, changes to these policies are made. The County agrees to provide the information and policies specified in paragraph (h) herein, to CDHS, within thirty (30) days of adopting aforementioned policies and to update their Child Care Program County plan when changes impact the administration of such program.

h. The parties agree that information and policies provided by the County to CDHS, as described in paragraph (g) herein, are for informational purposes and are provided to assist CDHS in meeting its responsibilities, with respect to these Programs. Nothing in this MOU gives CDHS the authority to approve, deny or

require any County policies beyond what is required by statute. The County acknowledges CDHS's right to review, comment upon or request reasonable additional information or clarification of any County policies or records. Such requests will be made in writing and directed to the County Department of Human/Social Services Director. The County maintains that it will consider such comments in its implementation of these Programs, but is not obligated to incorporate them.

i. The County will utilize the technical assistance, training and reporting or tracking resource offered by CDHS in order to administer the Programs that support the four purposes of Temporary Assistance to Needy Families (TANF) and will meet the WPR.

j. The County will participate in formal expeditious vetting processes with CDHS to review, draft and recommend policies or rule changes that would have a positive impact on WPR and meet federal guidelines.

k. In order to maximize the caseload reduction credit for the State, the County will actively identify and report third party Maintenance of Effort (MOE) contributions, in accordance with the timelines and guidelines established by CDHS.

4. OPTIONAL OUTCOME MEASURES

a. Counties may submit a proposal as an attachment to this MOU, describing additional employment focused performance measures, specific to employment. Such proposals may be submitted either at the time of execution or at any time during the period of this MOU. The proposal is limited to issues regarding the pursuit of programs, strategies, and associated evaluation plans that focus on improving employment outcomes and contribute to the evidence base for effective programs. In addition, terms and conditions will require either interim targets for each performance measure or a framework for how interim goals will be set after the baseline measures are established. The terms and conditions will establish a review process for programs, strategies and metrics designed to achieve optimal outcomes.

b. Upon approval of the proposal by CDHS, the County or region will be subject to the performance measures, interim goals, and other conditions set forth in the MOU addendum, and negotiated WPR that consider employment focused outcome measures and anticipated statewide case-load credit reductions.

5. DUTIES OF CDHS

a. In consultation with the Counties, CDHS will oversee the implementation of the Works Program and the Child Care Program, statewide, and will develop standardized forms that streamline the application process, the delivery of

services and the tracking of participants.

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

c. CDHS exercises oversight of and responsibility for the development, implementation, maintenance, and enhancement of the State Benefit System and its application relative to the Works Program. Because the State Benefit System is a system that utilizes decision tables run by a rules engine for determining eligibility and amount of benefits to the extent allowed by law, the County will not be sanctioned or required to follow a remediation plan for erroneous decisions made by the State Benefit System. Without limitation, this applies to erroneous eligibility decisions, erroneous determination of amount of benefits, erroneous decisions resulting in overpayments and subsequent claims, and erroneous decisions resulting in underpayments and subsequent supplemental payments of restorative benefits.

   The State acknowledges that liability to third parties resulting from erroneous, inaccurate or inadequate State Benefits System notices to Works Program households, is properly the State's liability. CDHS will not take recovery action against the County for any claim, including a legal claim, that is defined in this paragraph as a State Benefit System caused error. This provision does not apply to any errors, claims or issues caused by the County's inaccurate data entry in the system, the County's failure to follow clear, reasonable, and lawful instruction, or failure to follow program rules formally adopted by the State Board of Human Services. This provision does apply to the State Benefit System training and data entry rules and/or any rules that are part of the State Benefit System rule engine.

d. CDHS will develop and provide training for Works Program staff, as required by CRS 26-2-712 (7).

e. CDHS will hold Contracted Agencies with cooperative agreements with the State Department responsible for providing reception and placement services for refugees, accountable to its own WPR and must not include refugees receiving Contracted Agency's services in the County's calculation of the WPR. The Contracted Agency's negotiated WPR will be held accountable only to the adjusted WPR after the case-load reduction credit is applied with the elimination and removal of the Two-Parent rate.

f. CDHS will use valid data from the State Benefit System and other sources, as necessary, to accurately calculate the County's WPR. Prior to submitting its calculation to the federal government, CDHS will provide the County the individual data variables and supporting information used in the calculations, so that the County may review the data to ensure the accuracy, validity and proper calculation of the WPR.

g. CDHS will provide technical assistance and available resources to the Counties to help Counties meet WPR and Payment Accuracy Goals.

h. CDHS will provide ongoing technical assistance, training, and reporting for tracking resources to help the County administer the program, in support of the four purposes of TANF and to meet WPR.

i. CDHS will conduct formal expeditious collaborative processes with the County to review, draft and recommend policies or rule changes that would have a positive impact on work participation rate and meet federal guidelines.

j. In order to maximize the caseload reduction credit for the State, CDHS agrees to actively identify and report third party Maintenance of Effort (MOE) contributions.

k. CDHS exercises the oversight of, and the responsibility for, the development, implementation, maintenance, and enhancement of the Child Care State Benefit System and its application relative to the Child Care Program. The State Benefit System is a system that utilizes decision tables run by a rules engine for determining eligibility, to the extent allowed by law. Counties will not be sanctioned or required to follow a remediation plan for erroneous decisions made by the State Benefit System. Without limitation, this applies to erroneous eligibility decisions, erroneous decisions resulting in overpayments and subsequent claims, or erroneous decisions resulting in underpayments and subsequent supplemental payments.

   The State acknowledges that liability to third parties resulting from erroneous, inaccurate, or inadequate State Benefits System notices to Child Care Program households is properly the State's liability. The State will not take recovery action against the County for any claim, including a legal claim, that is defined in this paragraph, as a State Benefit System caused error. This provision does not apply to any errors caused by the County's inaccurate data entry into the system, the County's failure to follow clear, reasonable, and lawful instructions, or failure to follow program rules formally adopted by the State Board of Human Services. This provision does apply to the State Benefit System training and data entry rules and/or any rules that are part of the State Benefit System rules engine.

l. CDHS will develop and provide training for Child Care Program staff and provide timely and accurate reports on County performance.

m. The amount identified for a County's level of spending shall be identified annually in the Allocation Agency Letter as required by CRS 26-2-712, et seq.

6. JOINT STATE AND COUNTY DUTIES

a. The State and Counties will work together in partnership to communicate performance expectations and results to jointly achieve federally required performance outcome measures related to the WPR and federal improper Payment Error Rate.

b. As needed, the State and Counties will convene meetings, workshops, focus groups, or other forums to share information, best process, or targeted strategies to achieve the spirit and intent of this MOU document and related federally required performance requirements.

7. REMEDIATION PLANS

a. The County, in consultation with CDHS, may develop a remediation plan if, during the term of this MOU, the County engages in any of the following actions:

i. Spending federal or state Works Program or Child Care Program funds in a manner disallowed by Federal or State law, which could include receipts or recoveries that are not reported;

ii. Failing to meet the WPR, after the caseload reduction credit is applied, as contained in this MOU and/or failing to meet the negotiated performance measures;

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

iv. Failing to meet Child Care Program federal improper payment error rate guidelines, in accordance with the federal fiscal year.

8. SANCTIONS

a. Subject to the limitations set forth herein, if CDHS is subject to a federal sanction, and the County's remediation plan was insufficient, CDHS may impose sanctions on the County pursuant to this MOU only if during the term of this MOU, the County engages in any of the following actions:

i. Failing to meet the WPR, after the case-load reduction credit is applied, as contained in this MOU and/or not meeting negotiated performance measures;

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

iii. Failing to meet Child Care Program federal improper payment error rate guidelines, in accordance with the federal fiscal year.

b. A sanction should not be imposed on the County for failing to adhere to a state regulation that conflicts with federal law.

c. The county will not be sanctioned or required to follow a remediation plan if:

i. the County can demonstrate by a preponderance of evidence that CDHS provided inaccurate guidance, training or data with regards to performance under this MOU; and,

ii. that the County's reliance on this information is the proximate cause for the imposed sanctions. If the County can only demonstrate that it is the proximate cause for part of the sanction, the County will not be liable for that portion of the sanction.

9. PROCEDURES FOR IMPOSING REMEDIATION PLAN OR SANCTIONS

a. The process for a sanction or remediation plan against the County by CDHS will be as follows:

i. CDHS will provide the County written notice of the County's failure to meet the performance measures outlined in this MOU. This notification will include all associated documentation that supports CDHS determination of the performance failure. Upon receiving such notice, the County has sixty (60) days to contest, explain, offer evidence of mitigating factors, and/or submit a remediation plan to correct the alleged performance problem.

ii. If the County's remediation plan does not rectify the performance problem, CDHS may determine the appropriate level of sanction. CDHS shall take into consideration as a mitigating factor any violation of a state regulation that exceeds or conflicts the requirements of the federal law. CDHS will provide the County one hundred eighty (180) days written notice of the proposed sanction before imposing any sanction. This notification will include the rationale of imposing the sanction, as well as, all associated documentation, a calculation of the proposed sanction, and an indication of what constitutes a remedy or correction that will allow the County to avert the sanction, if any remedy or correction is possible. Upon receiving such notice, the County has sixty (60) days to contest, explain or offer evidence of mitigating factors, before CDHS imposes the sanction.

iii. If a sanction is imposed, the amount cannot be greater than that imposed by the federal government. If CDHS has incurred a sanction due to the failure of more than one County to meet its obligations under the terms

of this MOU, the County will only be sanctioned for its share of the sanction.

b. CDHS will provide the County with all documents received from the federal government related to any proposed or imposed federal sanction within twenty (20) days of receipt, together with all CDHS documents related to the actions giving rise to that federal sanction, or that related to the sanction process. If CDHS fails to provide the required documentation within the twenty (20) days, CDHS may not hold the County liable for that sanction.

10. CIRCUMSTANCES FOR CDHS ASSUMING ADMINISTRATION

a. If the County continues to knowingly or consistently fail to meet its obligation specified in this MOU, CDHS, at its sole discretion, may assume the County's administration and implementation of the Works Program and/or Child Care Program.

In that event, CDHS will provide the County ninety (90) days written notice before assuming these duties. Upon receipt of such notice, the County shall have the opportunity to contest, explain, offer evidence of mitigating factors, or to correct the failure before CDHS assumes the duties.

b. If the County continues to consistently fail to meet its obligation specified in this MOU, the County at its sole discretion, may ask CDHS to assume the County's administration and implementation of the Works Program and/or Child Care Program. CDHS is under no obligation to accept or assume the administration of the Works Program and/or Child Care Program.

If CDHS assumes the County's administration and implementation of the Works or Child Care Program, it may retain the unused portion of the allocation that was provided to the County, as part of the County's block grant for its administration and implementation of the Programs, in accordance with the formulas described in CRS 26-2-714. CDHS will, in consultation and in conjunction with the County, develop or modify automated systems to meet the reporting requirements of CRS 26-2-717.

11. DISCRETIONARY MATTERS

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

12. SEVERABILITY

To the extent that this MOU is executed, and the performance of the obligations of the parties may be accomplished within the intent of the MOU, the terms of the MOU are

severable. Thus, should any term or provision herein be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision herein. The waiver of any breach of term, herein shall not be construed as a waiver of any other term, or of the same term upon subsequent breach.

13. INTEGRATION OF UNDERSTANDING

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

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

14. NO THIRD-PARTY BENEFICIARY

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

15. DISPUTE RESOLUTION

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

b. Subsequent to the execution of this document, both parties will work in good faith to resolve a dispute arising from any provision of this executed MOU. If the parties are unable to resolve such dispute, any of the following non-binding mediation options are available by agreement of the parties;

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

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

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

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

REGGIE BICHA

STATE OF COLORADO DEPARTMENT OF HUMAN SERVICES

_____
Executive Director or Designee

COUNTY OF _____ COLORADO,

by and through the BOARD OF COUNTY COMMISSIONERS

_____
Chairman

ATTEST:

_____
County Clerk to the Board

Date: _____