

**FLORIDA DEPARTMENT OF ELDER AFFAIRS**  
**AND**  
**THE AREA AGENCY ON AGING**  
**CONTRACT ON GOVERNANCE**

Contract Number

**AGENDA ITEM #6C**  
**8/21/2023**

**THIS CONTRACT** is entered into between the Florida Department of Elder Affairs (Department or DOEA) and Area Agency on Aging (Contractor), collectively referred to as the "Parties."

**WITNESSETH THAT:**

**WHEREAS**, Contractor is a designated area agency on aging (AAA) under section 430.04, Florida Statutes;

**WHEREAS**, pursuant to section 430.04, Florida Statutes, the Department is responsible for ensuring that each AAA operates in a manner to ensure seniors of the State of Florida receive the best services possible; and

**WHEREAS**, the Department and the Contractor mutually agree to enter into this Agreement to set forth best practices for Contractor to ensure the provision of the best services possible to the seniors of the State of Florida.

**NOW THEREFORE**, in consideration of the mutual obligations of the parties and other valuable consideration, the Parties agree as follows:

**1. Incorporation of Documents within the Contract:**

The contract will incorporate attachments as an integral part of the contract, except to the extent that the contract explicitly provides to the contrary. In the event of conflict in language among any of the attachments referenced above, the specific provisions and requirements of this contract shall prevail.

**2. Term of Contract:**

This contract shall begin at twelve (12:00) A.M., Eastern Standard Time **December 31, 2023**, or on the date the contract has been signed by the last party required to sign it, whichever is later. It shall end at eleven fifty-nine (11:59) P.M., Eastern Standard Time **December 31, 2026**.

**3. Renewals:**

By mutual agreement of the Parties, the Department may renew the contract for a period not to exceed three years, or the term of the original contract, whichever is longer. Any renewal is subject to the same terms and conditions as the original contract and contingent upon satisfactory performance evaluations by the Department.

**4. Human Resources:**

**4.1.** To ensure fair and equitable practices for recruiting and retaining qualified employees and volunteers, the Contractor shall ensure there is a dedicated Human Resources office to administer daily activities of, and for, its personnel and volunteers. Human Resources shall establish procedures and policies as appropriate, pending approval of the executive director/chief executive officer and the Contractor's Board of Director's ("Board") review. Human Resources policies and procedures must adhere to standard best practices. Human Resources shall report to the executive director/chief executive officer.

**4.2.** Human Resources must submit to the Board, through the executive director/chief executive officer, a plan for recruitment and retention by **April 1, 2024**, and annually thereafter. The plan can be a one-page summary.

4.3. Human resources shall be in-house, and its duties will be consistent with the established procedures and policies provided herein. Human Resources that is currently outsourced shall be brought in-house no later than **December 31, 2023**. Staff may perform other duties as assigned in addition to their respective human resources duties.

4.4. The executive director/chief executive officer shall be the liaison between the Board and Human Resources.

4.5. The Contractor shall adhere to all applicable federal and state employment laws.

**5. Board Terms and Vacancies:**

5.1. The Board shall be composed of volunteers who represent the community and are committed to the best interests of the Contractor and its mission and no other party, including themselves.

5.2. The Board of Directors is defined as the group of persons vested with the management of the affairs of the corporation, who are referred to herein as Board members.

5.3. A standard Board term is three (3) years, and no member shall serve more than three (3) consecutive terms or nine (9) consecutive years. However, Board members who have exceeded the term limit, shall continue to serve until such time as a new member has been nominated and voted on by the Board, but may not serve more than three (3) months after the expiration of their term. A Board member may remain on the Board as a non-voting member for a period of six (6) months if they are nominated and elected by the Board as a non-voting member.

5.4. If a Board member has served for three (3) terms consecutively or nine (9) consecutive years, the Board member must sit out two (2) years before the Board member can be renominated for Board membership.

5.5. The Board must have a committee of at least one member dedicated to Board member recruitment. This committee shall provide comprehensive updates of its recruitment efforts to the Board during the Board meetings.

5.6. Any Board member may be removed by a majority vote of the Board with or without cause prior to the expiration of their term, pursuant to section 617.0808, Florida Statutes.

5.7. Members of the Board shall be nominated and elected by the Board.

5.8. Vacancies occurring during a term will be filled for the unexpired portion in the manner provided above.

5.9. Vacancies that are filled with less than one (1) year of the term remaining will not be counted as a term for the purpose of eligibility to serve three (3) terms consecutively.

5.10. All Board members shall hold office until the expiration of their terms and until their successors have been elected (subject to Section 5.3), or until their earlier resignation, removal, or death.

5.11. Any member who shall become incapacitated or become unable to carry on his/her duties, shall resign or be replaced in accordance with the Contractor's bylaws. The Board shall nominate and vote on a new member in accordance with the Contractor's bylaws.

**5.12.** The Board shall create staggered terms for Board members pursuant to section 617.0806, Florida Statutes.

**5.13.** The Board, in consultation with the executive director/chief executive officer, shall establish an orientation process for new Board members to commence after a satisfactory level 2 background check has been completed pursuant to section 430.0402, Florida Statutes, and Chapter 435, Florida Statutes.

**5.14.** The Contractor shall agree to amend their respective bylaws no later than December 31, 2023, to incorporate conforming language of the provisions 5.3 through 9 as set forth in this Agreement into their bylaws, if the bylaws do not already contain such language. If this contract is signed by September 30, 2023, the deadline to amend the contractor's bylaws accordingly, is no later than June 30, 2024.

**6. Board Attendance and Quorum:**

**6.1.** The requirement of attendance at Board meetings shall be enforced. Any member who fails to attend three (3) consecutive meetings of the Board, unless excused by the Board, shall be removed by a majority of the directors in office voting for the removal. Any member absent from four (4) meetings in any twelve (12) month period, whether excused or unexcused, shall be removed by a majority of the directors in office voting for the removal.

**6.2.** The presence of not less than fifty percent plus one of the members, in person, shall constitute a quorum, which shall be necessary to conduct the business of the organization. If the meetings allow for attendance other than in person, the presence of not less than sixty percent of the members shall constitute a quorum.

**6.3.** A quorum is required for the rescheduled meeting.

**7. The Board:**

**7.1.** The Board shall review and revise procedures to define the parameters of the oversight, responsibilities, and duties of the Board. The plan should also include defined roles for the Board, its officers, and the executive director/chief executive officer, who will oversee the staff and the day-to-day operations.

**7.2.** The Board shall adhere to the position descriptions for Board members attached hereto as Attachment I. These descriptions provide a minimum of the duties required of the Board members and are not exhaustive.

**7.3.** The Board shall establish a process to assess their performance as individuals and as a Board. The assessment shall be completed annually and can be one page in length. This performance measure and the assessment shall also be submitted annually to the Secretary of DOEA.

**7.4.** No Board member shall serve concomitantly as an elected state or federal official. This is to avoid an actual breach of the Code of Ethics found in sections 112.311-112.318, Florida Statutes, and to also avoid any appearance of such a violation.

**7.5.** The Contractor shall publish and maintain a current list of all Board members on its website.

**8. Officers:**

**8.1.** The Board shall elect officers from among its membership.

**8.2.** The Board shall have a chair and a treasurer and should have a vice-chair and secretary.

**8.3.** Officers shall be elected to serve a term of two (2) years. No officer shall serve more than two (2) successive terms in the same office.

**8.4.** An officer, except for the treasurer, shall serve until their successor is installed in office but may not serve more than three (3) months after the expiration of their second term. A treasurer may serve up to nine (9) months after the expiration of their second term.

**8.5.** There shall be no grandfathering clause for officers who have exceeded the term limits described in paragraph 8.3 and have served four (4) or more years at the time of the execution of this contract, whether or not the Board previously had term limits in place. Any current officer, other than a treasurer, who has already served four (4) consecutive years in the same office must be replaced within three (3) months from the date this contract is executed. A current treasurer who has already served four (4) consecutive years in that office must be replaced within nine (9) months from the date this contract is executed.

**8.6.** No Board member should occupy more than one (1) officer position at the same time.

**8.7.** The Board shall adhere to the position descriptions for its Board officers attached hereto as Attachment II. These descriptions provide a minimum of the duties required of the Board officers, and are not exhaustive.

**8.8.** All Board members and officers are responsible for adhering to the DOEA's standards as set forth in, but not limited to, this governance contract with Attachments I and II, and the service contracts.

**9. Executive Director/Chief Executive Officer:**

**9.1.** The Board shall notify the Secretary of DOEA of any proposed employment actions involving the executive director/chief executive officer. Any such employment actions must be taken at a public meeting. The Board shall consult with the Secretary of DOEA in the hiring or dismissal of the executive director/chief executive officer prior to any action being taken. Consultations require Contractor, prior to taking any action, to confer with the Secretary and to consider the Secretary's assessment. The contractor shall periodically inform the Secretary regarding actions taken.

**9.2.** When the executive director/chief executive officer position is vacant, the Board shall provide a detailed briefing on the steps it will take to secure an interim or acting executive director/chief executive officer; and an outline defining the search process for the hiring of an executive director/chief executive officer to the Secretary of DOEA. Additionally, the Board shall provide status updates on the search process every two weeks.

**9.3.** The executive director/chief executive officer shall be the point of contact between Contractor's staff and the Board.

**9.4.** The Board shall develop a succession plan for the executive director/chief executive officer in the event the position is vacant. The Board shall provide the names and qualifications of the prospective candidates for the executive director/chief executive officer position to the Secretary of DOEA for review and consultation prior to a vote.

**10. Access to Records:**

**10.1.** Board members shall have access to records of the organization in accordance with Chapter 617, Florida Statutes. Board members shall not have unfettered access to records and/or protected or confidential information of clients (recipients of services) unless specifically authorized by law. Protected health information and/or confidential information (e.g., information involving a victim of

abuse, sexual assault, crime) should not be shared with Board members, or any other individuals, unless such disclosure is specifically authorized by law and necessary to the performance of their specific duties.

**10.2.** Areas that intake or store protected health information and/or confidential information shall have restricted access limited to those employees/volunteers who are authorized by law to access such information.

**10.3.** The Contractor shall secure all protected and/or confidential information, and shall implement appropriate safeguards to protect unauthorized disclosure of such information in accordance with this Agreement.

**11. Florida Sunshine Law and Public Records:**

**11.1.** The Contractor's Board shall hold all meetings in accordance with Chapters 286, Florida Statutes. No formal actions shall be considered binding except as taken or made at a meeting that has been properly noticed.

**11.2.** The Contractor shall notice all Board meetings on their respective websites two weeks in advance of the scheduled meeting. In the case of emergency or special meetings, emergency or special meetings should be afforded the most appropriate and effective notice under the circumstances.

**11.3.** The Contractor shall also provide a notice, agenda, and copies of any related meeting materials to the DOEA Division Director for Statewide Community Based Services.

**11.4.** The Contractor shall comply with all applicable Florida and federal laws, including but not limited to, Chapters 119, 286, and 617, Florida Statutes.

**12. Florida Government in the Florida Public Records Law, and HIPAA:**

The Contractor acknowledges that Department or other state business conducted by any means, including electronic forms of communication, social media, or through personal cellular communication, is subject to Florida's Public Records Law, Chapter 119, Florida Statutes, and the Health Insurance Portability and Accountability Act (HIPAA).

**13. No Waiver of Sovereign Immunity:**

Nothing contained in this contract is intended to serve as a waiver of sovereign immunity by any entity to which sovereign immunity may be applicable.

**14. Venue:**

If any dispute arises out of this contract, the venue of such legal recourse shall be Leon County, Florida.

**15. Entire Contract:**

This contract contains all the terms and conditions agreed upon by the Parties. No oral agreements or representations shall be valid or binding upon the Department or the Contractor unless expressly contained herein or by a written amendment to this contract signed by both Parties.

**16. Force Majeure:**

The Parties will not be liable for any delays or failures in performance due to circumstances beyond their control, provided the party experiencing the force majeure condition provides immediate written notification to the other party and takes all reasonable efforts to cure the condition.

**17. Severability Clause:**

The Parties agree that if a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable and shall remain in full force and effect.

**18. Waiver:**

The delay or failure by the Department to exercise or enforce any of its rights under this contract will not constitute or be deemed a waiver of the Department's right thereafter to enforce those rights, nor will any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

**19. Compliance:**

The Contractor shall abide by all applicable current federal statutes, laws, rules, and regulations as well as applicable current state statutes, laws, rules, and regulations. The Parties agree that failure of the Contractor to abide by these laws shall be deemed an event of default of the Contractor and subject the contract to immediate unilateral cancellation of the contract at the discretion of the Department.

**20. Termination:**

**20.1 Termination for Convenience.** The Department, by written notice to the Contractor, may terminate this contract in whole or in part when the Department determines in its sole discretion that it is in the State's interest to do so with 30 days' notice.

**20.2 Termination for Cause.** The Department may immediately terminate this contract if the Contractor fails to: (1) honor any term of the contract or (2) abide by any statutory or regulatory requirement.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their officials as duly authorized and agree to abide by the terms, conditions, and provisions. This Contract is effective on the last date it has been duly signed by both Parties.

**CONTRACTOR: «Contractor\_Name»**

**STATE OF FLORIDA,  
DEPARTMENT OF ELDER AFFAIRS**

SIGNED BY: \_\_\_\_\_

SIGNED BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: MICHELLE BRANHAM

TITLE: \_\_\_\_\_

TITLE: SECRETARY

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

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**ATTACHMENT I**

**POSITION DESCRIPTIONS OF BOARD MEMBERS**

Board members shall conduct an annual performance review of the Executive Director.

Board members shall conduct annual assessments of the Board and its work.

Board members shall conduct annual assessments and or surveys of its officers' performance.

Board members shall sign an annual conflict-of-interest disclosure and update the disclosure during the year, if necessary, as well as disclose potential conflicts before meetings and actual conflicts during meetings.

## ATTACHMENT II

### POSITION DESCRIPTIONS OF BOARD OFFICERS

#### **President or Chair**

Preside at all meetings of the Board and must use Robert's Rules of Order.

Be a member ex-officio of all committees except the Nominating Committee.

Act as a liaison between the Board and the Executive Director or Chief Executive Officer to help ensure the Board's directives and resolutions are carried out.

Ensure ongoing recruitment, development, and contributions of Board members.

Review any issues of concern with the Executive Director or Chief Executive Officer.

Work closely with the vice president or vice chair to ensure seamless transition of officers.

#### **The Vice-President or Vice Chair**

The Vice-President or Vice Chair shall perform the administrative duties and responsibilities of the president in the absence of the president.

The Vice-President or Vice Chair shall work closely with the President to ensure smooth transition of officers.

#### **Treasurer**

The Treasurer shall coordinate the preparation of financial reports as requested by the Board of Directors or the president.

He or she will act as Board liaison with the corporation's fiscal officer in managing the Board's account(s).

#### **Secretary**

The Secretary shall ensure the following is created and maintained: an accurate record of all proceedings of the organization, and a current list of all Board Members.

#### **Executive Director or Chief Executive Officer**

The Board of Directors shall employ an Executive Director or Chief Executive Officer, who shall execute the affairs of the organization.

The Executive Director or Chief Executive Officer shall be responsible to the Board of Directors, and for the performance of the duties connected to his/her office.

The Executive Director or Chief Executive Officer shall be responsible for the efficient operation of the organization to include: all operations, implementing fiscal and other policy decisions of the Board, supervision of staff, development of plans, grants and other new programs, and other such duties as the Board shall delegate.

All other staff members, to include the Human Resources office, shall be responsible to the Executive Director.