

Meeting Date
7/25/17



AGENDA	
Section	Consent
Item No.	II. B.3

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval of Medicaid Waiver Services Agreement and Business Associate Agreement re: Medicaid Waiver Home and Community Based Services Transportation Program (Fiscal Impact: \$225,000)			
DEPT/OFFICE:	Community Services Group / Transit Services Department			
Requested Action:	It is requested that the Board of County Commissioners approve and authorize the Chairman to sign the Medicaid Waiver Services Agreement and the Business Associate Agreement for the Home and Community Based Services Transportation Program with the Agency for Persons with Disabilities.			
Summary Explanation & Background:	<p>On June 27, 2017, we received a new agreement for the Medicaid Waiver Services for the State of Florida, Area 07, to provide transportation services for consumers served by the Developmental Disabilities Program, Home and Community-Based Services Waiver. The Agreement with the Agency for Persons with Disabilities sets the terms and conditions that Space Coast Area Transit must meet in providing the service. However, Space Coast Area Transit must invoice and receive reimbursement from the Agency for Health Care Administration under a separate agreement. This agreement will be for the period of October 1, 2017 through September 30, 2022.</p> <p>Space Coast Area Transit provides transportation for developmentally disabled citizens to and from four centers in Brevard County. The locations are:</p> <ul style="list-style-type: none"> • Brevard Achievement Center in Rockledge • East Coast Contracting, Inc. in Titusville • Easter Seals in Palm Bay • Bridges, Inc. in Rockledge <p>Space Coast Area Transit has been providing this service since 1974 and the developmentally disabled are one of Space Coast Area Transit's core customers. From October 2016 through June of this year, Space Coast Area Transit has provided 28,618 trips under the contract with Agency for Persons with Disabilities.</p> <p>The Agreement will provide Space Coast Area Transit with some of the necessary funding to provide the Medicaid Waiver transportation; Space Coast Area Transit will receive \$7.17 per trip. Please note this is a non-negotiated rate that is set by the Agency for Persons with Disabilities and does not cover the full cost of the service. Space Coast Area Transit uses Federal, State and Local operating funds to supplement the remaining cost of the trip.</p>			
Fiscal Impact Analysis:	Business Area	Cost Center	Amount	Description
FY2017-2018	4130	R30373	\$225,000	Medicaid Waiver
Contact Name:	Jim Liesenfelt, Transit Services Director			
Phone:	635-7815 ext. 601			
Clerk to the Board Instructions:				
Exhibits Attached:	(1) Medicaid Waiver Services Agreement; (1) Business Associate Agreement			
Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No
Interim County Manager	Assistant County Manager	Department Director / Extension		
Frank Abbate <i>[Signature]</i>	Venetta Valdengo <i>[Signature]</i>	James P. Liesenfelt, Transit Services Director, 321-635-7815 ext. 601 <i>[Signature]</i>		

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I - The following information must be completed on all new contracts submitted to the Board.

1. Contractor: Agency for Persons with Disabilities	
2. Fund/Account #: 4130 - R30373	Department Name: Transit Services
4. Contract Description: Medicaid Waiver Services Agreement & Business Associate Agreement	
5. Contract Monitor: Cathy Lively	6. Mail Stop #: N/A
7. Dept./Office Director: Jim Liesenfelt	8. Contract Type: ZIGS
ACTION DATE: <i>30 days from entry</i>	ACTION REQUIREMENT: <i>Need complete data</i>

SECTION II - The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	X	_____	JPL	6/27/17
Risk Management	_____	_____	_____	_____
County Attorney	✓	_____	JEG	7/13/2017

If any office denies approval, the package will be returned immediately to the User Agency.

SECTION III - CONTRACT MANAGEMENT DATABASE CHECKLIST

DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund and GL Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional renewals/extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in database (Initial Contract Form with County Attorney/Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>
Note: Insurance Certificates uploaded under collapsible/expandable <u>Monitor Bar Section</u> Change Order/Task Order uploaded under collapsible/expandable <u>Monitor Bar Section</u> Contract Renewal documents uploaded under collapsible/expandable <u>Renewal /Bar Section</u>	
NOTE: <i>This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form, Executed/Attested Contract to department for contract to be entered and uploaded into the Contract Management System. See AO-29 for additional information.</i>	

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I - The following information must be completed on all new contracts submitted to the Board.

1. Contractor: Agency for Persons with Disabilities	
2. Fund/Account #: 4130 - R30373	Department Name: Transit Services
4. Contract Description: Medicaid Waiver Services Agreement & Business Associate Agreement	
5. Contract Monitor: Cathy Lively	6. Mail Stop #: N/A
7. Dept./Office Director: Jim Liesenfelt	8. Contract Type: ZIGS
ACTION DATE: 30 days from entry	ACTION REQUIREMENT: Need complete data

SECTION II - The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	X		JPL	6/27/17
Risk Management	✓		ML	7-5-2017
County Attorney				

If any office denies approval, the package will be returned immediately to the User Agency.

SECTION III - CONTRACT MANAGEMENT DATABASE CHECKLIST

<u>DATABASE REQUIRED FIELDS</u>	<u>Complete</u> ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund and GL Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional renewals/extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in database (Initial Contract Form with County Attorney/Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>
Note: Insurance Certificates uploaded under collapsible/expandable <u>Monitor Bar Section</u> Change Order/Task Order uploaded under collapsible/expandable <u>Monitor Bar Section</u> Contract Renewal documents uploaded under collapsible/expandable <u>Renewal /Bar Section</u>	
NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form, Executed/Attested Contract to department for contract to be entered and uploaded into the Contract Management System. See AO-29 for additional information.	



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

July 26, 2017

M E M O R A N D U M

TO: Jim Liesenfelt, Transit Services Director

RE: Item II.B.3., Medicaid Waiver Services Agreement and Business Associate Agreement with Florida Agency for Persons with Disabilities for Medicaid Waiver Home and Community Based Services Transportation Program

The Board of County Commissioners, in regular session on July 25, 2017, executed and approved the Medicaid Waiver Services Agreement and the Business Associate Agreement for the Home and Community Based Services Transportation Program with the Agency for Persons with Disabilities. Enclosed are two Medicaid Waiver Services Agreements and two Business Associate Agreements.

Upon execution by State of Florida Agency for Persons with Disabilities please return fully-executed Agreements to this office for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/kp

Encls. (4)

cc: Contracts and Administration
Finance
Budget

MEDICAID WAIVER SERVICES AGREEMENT

This Agreement is entered into between the Florida Agency for Persons with Disabilities, hereinafter referred to as "APD," and Brevard County Board of County Commissioners dba Space Coast Area Transit, hereinafter referred to as the "Provider." Pursuant to the terms and conditions of this Agreement, APD authorizes the Provider to furnish DD / iBudget Home and Community-Based Services (HCBS) Medicaid waiver services to eligible APD clients, and to receive payment for such services. Services may be authorized by multiple Region offices for multiple service types and service locations within the respective region pursuant to the standards specified in Florida's HCBS waivers. The services that may be provided in any APD region or location within a region are limited to the services that the respective Region office has authorized.

I. AGREEMENT DOCUMENTS:

A. The Medicaid Waiver Services Agreement consists of the terms and conditions specified in this Agreement, any attachments, and the following documents, which are incorporated by reference:

1. *The Developmental Disabilities Individual Budgeting Medicaid Waiver Coverage and Limitations Handbook*, dated September 2015, and any updates or replacements thereto. The Handbook can be found at the Medicaid fiscal agent's Web Portal: <http://www.mymedicaid-florida.com/>. Click on Public Information for Providers, then on Provider Support, and then on Provider Handbooks. The Handbook provides the terms and conditions by which the provider of Developmental Disabilities Individual Budgeting HCBS waiver services agrees to be bound.
2. *Attachment A & B*, providing individually negotiated unit rates of payment for services not already established and available on APD's web site: <http://www.apdcares.org>, as referenced in II.E., and any other service or data requirements, as applicable.

B. Prior to executing this Agreement and furnishing any waiver services, the Provider must have executed a Medicaid Provider Agreement with the Agency for Health Care Administration (AHCA), and be issued a Medicaid provider number by AHCA. The Provider must at all times during the term of this Agreement, maintain a current and valid Medicaid Provider Agreement with AHCA, and comply with the terms and conditions of the Medicaid Provider Agreement.

II. THE PROVIDER AGREES:

To comply with all of the terms and conditions contained within this Agreement, including all documents incorporated by reference and any attachments.

A. Monitoring, Audits, Inspections, and Investigations

To permit persons duly authorized by APD, the Agency for Health Care Administration (AHCA), or representatives of either, to monitor, audit, inspect, and investigate any recipient records, payroll and expenditure records (including electronic storage media), papers, documents, facilities, goods and services of the Provider which are relevant to this Agreement, and to interview any recipients receiving services and employees of the Provider to assure APD of the satisfactory performance of the terms and conditions of this Agreement.

1. Following such monitoring, audit, inspection, or investigation, APD or its authorized representative, will furnish to the Provider a written report of its findings and, if deficiencies are found, request for development, by the Provider, a Plan of Remediation for needed corrections. The Provider hereby agrees to correct all noted deficiencies identified by APD, AHCA, or their authorized representatives within the specified period of time identified within the report documentation. Failure to correct noted deficiencies within stated time frames may result in termination of this Agreement.
2. Upon demand, and at no additional cost to the APD, AHCA, or their authorized representatives, the Provider will facilitate the duplication and transfer of any records or documents (including electronic storage media), during the required retention period of six years after termination of the Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of six years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to APD.
3. To comply and cooperate immediately with APD requests for information, records, reports, and documents deemed necessary to review the rate setting process to ensure that provider rates are based on accurate information and reflect the existing operational requirements of each service.

Any individual who knowingly misrepresents the information required in rate setting commits a felony of the third degree punishable as provided in sections 775.082 and 775.083, F.S.

4. To comply and cooperate immediately with any inspections, reviews, investigations or audits deemed necessary by APD's Office of the Inspector General pursuant to section 20.055, F.S.
5. To include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments.

B. Confidentiality of Client Information

Not to use or disclose any information concerning a client receiving services under this Agreement for any purpose prohibited by state or federal law or regulation, except with the written consent of a person legally authorized to give that consent or when authorized by law. This includes compliance with: the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d and all applicable regulations provided in 45 CFR Parts 160, 162, and 164; and 42 CFR, Part 431, Subpart F, relating to the disclosure of information concerning Medicaid applicants and recipients.

The computer hard drives used by APD Waiver Support Coordinators shall implement Full Disk Encryption software. For other types of electronic data storage devices that store confidential APD consumer data, such data shall be encrypted using a minimum of a 128-bit encryption algorithm.

C. Indemnification

1. To be liable for and indemnify, defend, and hold APD, AHCA and all of their officers, agents, and employees harmless from all claims, suits, judgments, or damages, including attorneys' fees and costs, arising out of any act, actions, neglect, or omissions by the Provider, its agents, employees or subcontractors during the performance or operation of this Agreement or any subsequent modifications thereof, whether direct or indirect, and whether to any person or tangible or intangible property. The Provider shall not be liable for that portion of any loss or damages proximately caused by the negligent act or omission of APD or AHCA.
2. That its inability to evaluate its liability or its evaluation of liability shall not excuse the Provider's duty to defend and to indemnify within 7 days after notice by APD or AHCA by certified mail. After the highest appeal taken is exhausted, only an adjudication or judgment specifically finding the Provider not liable shall excuse performance of this provision. The Provider shall pay all costs and fees, including attorneys' fees related to these obligations and their enforcement by APD or AHCA. APD or AHCA's failure to notify the Provider of a claim shall not release the Provider of these duties.
3. If the Provider is an agency or subdivision of the State, its obligation to indemnify, defend, and hold harmless shall be to the extent permitted by section 768.28, F.S. or other applicable law, and without waiving the limits of sovereign immunity.

D. Insurance

To obtain and maintain at all times continuous and adequate liability insurance coverage during the term of this Agreement. The Provider accepts full responsibility for identifying and determining the type and extent of liability insurance necessary to provide reasonable financial protection for the Provider and APD clients served by the Provider. At all times, the Provider shall maintain with APD a current certificate of insurance describing the types and extent of liability insurance obtained pursuant to this Agreement. The Provider shall cause APD to be named as a certificate holder under each policy of liability insurance maintained by the Provider pursuant to this Agreement. The limits of coverage under each such policy shall not be interpreted as limiting the Provider's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in Florida. Such coverage may be provided by a self-insurance program established and operating under Florida law.

E. Payment

Current rate information is available on the Medicaid fiscal agent's Web site at www.mymedicaid-florida.com. Select Public Information for Providers, Provider Support, and then select Fee Schedules. The signatories recognize that APD is limited by appropriation and acknowledge that Florida law requires AHCA and APD to make any adjustment necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, including but not limited to adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or limiting enrollment. (See sections 393.0661, 409.906, 409.908, F.S.)

F. Return of Funds

To be responsible for the timely correction of all billing or reimbursement errors resulting in an overpayment, including reimbursement for services not properly authorized or documented. Reimbursement will be made pursuant to the Florida Medicaid Provider Reimbursement Handbook, CMS-1500. Federal regulations, 42 CFR § 433.312, require refund of overpayments within 60 days of discovery. AHCA will be the final authority regarding the timeliness of the reimbursement process.

G. Independent Status

That the Provider acts at all times in the capacity of an independent service provider and not as an officer, employee, or agent of APD, AHCA, or the State of Florida. The Provider shall not represent to others that it has the authority to bind the

APD or AHCA unless specifically authorized in writing to do so. In addition to the Provider, this is also applicable to the Provider's officers, agents, employees, or subcontractors in performance of this Agreement.

H. Revocation of Licenses

In the event the Provider or any employee of the Provider is the holder of any license required to render the services that are subject to this Agreement, the Provider must immediately notify APD if any such license is suspended or revoked.

I. Change of Name or Ownership

The Provider shall notify APD and clients served of any change of name, or change, sale, or transfer of ownership at least sixty (60) days prior to the change, sale, or transfer. Prior to the change, sale, or transfer, the Provider shall complete the change of ownership process with Medicaid. Prior to, or contemporaneously with, the change, sale, or transfer, the Provider must execute a new Medicaid Waiver Services Agreement to ensure no lapse in service delivery. Clients receiving services will be given an opportunity to receive services from the new owner, purchaser, or transferee, or to select another provider.

J. Public Records

The Provider shall: keep and maintain public records that ordinarily and necessarily would be required by APD in order to perform the service under this Agreement; provide the public with access to public records on the same terms and conditions that APD would provide the records, and at a cost that does not exceed the cost provided by law; ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and, meet all requirements for retaining public records and transfer, at no cost, to APD all public records in possession of the Provider upon termination of this Agreement, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements (all records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency). If the Provider does not comply with a public records request, APD shall enforce the contract provisions in accordance with the Agreement.

III. TERMINATION:

A. Termination of Agreement Without Cause

This Agreement may be terminated by either party without cause, upon no less than 30 calendar days' notice in writing to the other party unless a lesser time is mutually agreed upon in writing by both parties. Said notice shall be delivered by certified mail return receipt requested, or in person with proof of delivery.

B. Termination of Agreement With Cause

This Agreement may be terminated for the Provider's unacceptable performance, non-performance or misconduct upon no less than 24 hours' notice in writing to the Provider. Waiver by either party of any breach of any term or condition of this Agreement shall not be construed as a waiver of any subsequent breach of any term or condition of this Agreement. If APD determines that the Provider is not performing in accordance with any term or condition in this Agreement, APD may, at its exclusive option, allow the Provider a period of time to achieve compliance. The provisions herein do not limit APD's right to any other remedies at law or in equity.

C. Termination of Service Regions or Service Locations

When a Provider has been authorized to provide multiple service types within a region, or to provide services in multiple regions, or at multiple locations within a region, the Provider's authorization for any individual service type, region, or location may be revoked, without cause, upon 30 days' prior written notice, without terminating this Agreement.

IV. GOVERNING LAW:

This Agreement shall be construed, performed, and enforced in all respects in accordance with all the laws and rules of the State of Florida, and any applicable federal laws and regulations.

V. AGREEMENT DURATION:

This Agreement shall be effective 10/1/17 or the date on which it has been signed by both parties, whichever is later, and shall terminate on 9/30/22 which is no later than five years from the effective date.

VI. OFFICIAL REPRESENTATIVES:

1. The Provider's contact person and street address where financial and administrative records are maintained is:

Name: James Liesenfelt
Telephone Number: 321-635-7815
Address: 401 S. Varr Ave Cocoa, FL 32922
E-mail Address: jim.liesenfelt@brevardfl.gov

2. The representative of the Provider responsible for administration of the services under this Agreement is:

Name: James Liesenfelt
Telephone Number: 321-635-7815
Address: 401 S. Varr Ave Cocoa, FL 32922
E-mail Address: Jim.Liesenfelt@brevardfl.gov

3. The Agency for Persons with Disabilities contact person for this Agreement is:

Name: Clarence H. Lewis
Telephone: (407) 245-0440
Address: 400 W. Robinson St., Suite 5430, Orlando, FL 32801
E-mail Address: Clarence.Lewis@apdcares.org

4. Upon change of the representative's names, addresses, telephone numbers, and e-mail addresses, by either party, notice shall be provided in writing to the other party and the notification attached to the originals of this Agreement.

VII. INTEGRATED AGREEMENT:

Only this Agreement, any attachments referenced, the Medicaid Provider Agreement, the *Developmental Disabilities Individual Budgeting Medicaid Waiver Coverage and Limitations Handbook*, which is incorporated into this Agreement by reference, contain all the terms and conditions agreed upon by the parties.

There are no provisions, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of the Agreement is found to be illegal or unenforceable, the remainder of the Agreement shall remain in full force and effect and such term or provision shall be stricken.

The Provider, by signing below, attests that the Provider has received and read the entire Agreement, inclusive of its attachments and documents as referenced in Section I, A, including the service-specific requirements and for enrolled providers contained in the *Developmental Disabilities Individual Budgeting Medicaid Waiver Coverage and Limitations Handbook Waiver Services Coverage and Limitations Handbook*, and understands each section and paragraph.

IN WITNESS THEREOF, the parties hereto have caused this page 7 Agreement to be executed by their undersigned officials as duly authorized.

PROVIDER:
Brevard County Board of County Commissioners
dba Space Coast Area Transit

STATE OF FLORIDA,
AGENCY FOR PERSONS WITH DISABILITIES

SIGNED
BY:



NAME: Curt Smith

TITLE: Chairman

DATE: As Approved by the Board on 7/25/17

SIGNED
BY:

Clarence H. Lewis

TITLE: Regional Operations Manager

DATE: _____

MEDICAID PROVIDER ID: 099882696
(DD WAIVER)

Reviewed for Legal Form and Content by

Diana E. Yuan, Asst County Attorney - Date

ATTEST:



SCOTT ELLIS, CLERK

ATTACHMENT A TO THE
MEDICAID WAIVER SERVICES AGREEMENT
BETWEEN
AGENCY FOR PERSONS WITH DISABILITIES
AND

Brevard County Board of County Commissioners dba Space Coast Transit

This Attachment A ("Attachment") is to the Medicaid Waiver Services Agreement ("Agreement") between the Florida Agency for Persons with Disabilities ("APD") and Brevard County Board of County Commissioners dba Space Coast Area Transit ("Provider") dated June 26, 2017.

1. Article I, Section A of the Agreement is modified by adding a new Subsection 3 thereto. The new Subsection 3 shall read:

3. **Attachment A**, setting forth Provider's legal responsibilities with respect to Florida's public records law, chapter 119, Florida Statutes.

2. Article II, Section J is hereby deleted in its entirety, and the following Section J is substituted in lieu thereof:

J. Public Records—Section 119.0701, Florida Statutes

The Provider shall keep and maintain public records required by APD to perform the service under this Agreement.

Upon request from APD's Custodian of Public Records, the Provider shall provide APD with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.

The Provider shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement if the Provider does not transfer the records to APD.

Upon completion of the Agreement, the Provider shall transfer, at no cost, to APD all public records in possession of the Provider or keep and maintain public records required by APD to perform the service under this Agreement. If the Provider transfers all public records to APD upon completion of the Agreement, the Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Provider keeps and maintains public records upon completion of the Agreement, the Provider shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to APD, upon request from APD's Custodian of Public Records, in a format that is compatible with the information technology systems of APD.

A request to inspect or copy public records relating to the Agreement must be made directly to APD. If APD does not possess the requested records, APD shall immediately notify the Provider of the request, and the Provider must provide the records to APD or

allow the records to be inspected or copied within a reasonable time. If the Provider does not comply with APD's request for records, APD shall enforce the contract provisions in accordance with the Agreement. If the Provider fails to provide the public records to APD within a reasonable time, the Provider may be subject to penalties under section 119.10, F.S.

If a civil action is filed against the Provider to compel the production of public records relating to the Agreement, the court shall assess and award against the Provider the reasonable costs of enforcement, including reasonable attorney fees, if (i) the court determines that the Provider unlawfully refused to comply with the public records request within a reasonable time; and (ii) at least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Provider has not complied with the request, to APD and to the Provider. A Provider who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S. TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**Agency's Public Records Coordination Office
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 335
Tallahassee, FL 32399-0950
(850) 410-1309
publicrecords@apdcares.org**

This Attachment is hereby incorporated into and made a part of the Agreement.

PROVIDER:

STATE OF FLORIDA
AGENCY FOR PERSONS WITH DISABILITIES

Brevard County Board of County Commissioners
dba Space Coast Area Transit

By: 

By: _____

Printed Name: Curt Smith, Chairman

Printed Name: Clarence Lewis

Date: As approved by the Board on 7/25/17

Date: _____

Reviewed for Legal Form and Content By

Medicaid Provider ID: 099882696

 7/13/2017
Diana E. Yuan, Asst County Attorney - Date

ATTEST:


SCOTT ELLIS, CLERK

Attachment B
Medicaid Waiver Services Agreement
Transportation Services

The following rates have been approved for use by the Provider. In order for the Provider to bill for individual transportation services, the Providers must be in receipt of a current Service Authorization form from a client's waiver support coordinator. The Service Authorization form will indicate the rate approved for transportation services, as well as the frequency and intensity of the service provision.

Approved Transportation Rates for Area 7:

Billing Method	Wheelchair Accessible Rate	Non-Wheelchair Accessible Rate	Non-Specified Rate
Trip	N/A	N/A	\$7.17
Mile	N/A	N/A	N/A
Month	N/A	N/A	N/A



agency for persons with disabilities
State of Florida

BUSINESS ASSOCIATE AGREEMENT
BETWEEN
FLORIDA AGENCY FOR PERSONS WITH DISABILITIES ("AGENCY")
AND
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS
DBA SPACE COAST AREA TRANSIT ("PROVIDER")

The parties agree that the following provisions constitute a Business Associate Agreement ("Agreement") for purposes of complying with the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). This Agreement is applicable if the Provider is a business associate as defined in 45 CFR 160.103.

The Provider certifies and agrees to abide by the following:

1. **Definitions.** Unless specifically stated in this Agreement, the definition of the terms contained herein shall have the same meaning and effect as defined in 45 CFR 160 and 164.
 - 1a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Provider.
 - 1b. **Covered Entity.** "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Agency.
 - 1c. **HIPAA Rules.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.
 - 1d. **Protected Health Information.** "Protected Health information" shall have the same meaning and effect as defined in 45 CFR 160 and 164, limited to the information created, received, maintained or transmitted by the Provider from, or on behalf of, the Agency.
 - 1e. **Security Incident.** "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system and includes any event resulting in computer systems, networks, or data being viewed, manipulated, damaged, destroyed, or made inaccessible by

an unauthorized activity.

2. Applicability of HITECH and HIPAA Privacy Rule and Security Rule Provisions.

As provided by federal law, Title XIII of the American Recovery and Reinvestment Act of 2009 (ARRA), also known as the Health Information Technology Economic and Clinical Health (HITECH) Act, requires a Business Associate (Provider) that has access to protected health information from the Agency, a HIPAA Covered Entity, to comply with the provisions of the HIPAA Rules (45 CFR 160 and 164).

3. Permitted Uses and Disclosure by Provider. The Provider may only use or disclose Protected Health Information as necessary to perform the functions, services, or activities on behalf of the Covered Entity. The Provider shall comply with the provisions of 45 CFR 164.504(e)(2)(ii). The Provider shall not use or disclose Protected Health Information other than as permitted by the Covered Entity or by federal or state law. The sale of Protected Health Information or any components thereof is prohibited except as provided in 45 CFR 164.502(a)(5). The Provider will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent the use or disclosure of Protected Health Information for any purpose not in conformity with the functions, service, or activities provided on behalf of the Covered Entity, this Agreement, or federal or state law. The Provider will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic Protected Health Information the Provider creates, receives, maintains, or transmits on behalf of the Agency. The Provider may only use or disclose Protected Health Information as necessary to perform the functions, services or activities on behalf of the Covered Entity.

4. Use and Disclosure of Information for Management, Administration, and Legal Responsibilities. The Provider may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Agency, except for the specific uses and disclosures set forth below. Only the specific uses and disclosures set forth below are permitted. The Provider is permitted to use and disclose Protected Health Information received from the Agency for the proper management and administration of the Provider or to carry out the legal responsibilities of the Provider, in accordance with 45 CFR 164.504(e)(4). Such disclosure is only permissible where required by law, or where the Provider obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that: (1) the Protected Health Information will be held confidentially; (2) the Protected Health Information will be used or further disclosed only as required by law or for the purposes for which it was disclosed to the person; and (3) the person notifies the Provider of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.

5. Disclosure to Third Parties. The Provider will not divulge, disclose, or communicate Protected Health Information to any third party for any purpose not in conformity with this Agreement without prior written approval from the Agency. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, the Provider shall ensure that any agent, including a subcontractor, to whom it provides Protected

Health Information received from, or created or received by the Provider on behalf of the Agency agrees to the same terms, conditions, and restrictions that apply to the Provider with respect to Protected Health Information. The Provider's subcontracts shall fully comply with the requirements of 45 CFR 164.314(a)(2)(iii).

6. Access to Protected Health Information. The Provider shall make available Protected Health Information in a designated record set to the Agency as necessary to satisfy the Agency's obligations under 45 CFR 164.524.
7. Amendment and Incorporation of Amendments. The Provider shall make any amendment(s) to Protected Health Information in a designated record set as directed or agreed by the Agency pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR 164.526.
8. Accounting of Disclosures. The Provider shall make Protected Health Information available as required to provide an accounting of disclosures in accordance with 45 CFR 164.528. The Provider shall document all disclosures of Protected Health Information as needed for the Agency to respond to a request for an accounting of disclosures in accordance with 45 CFR 164.528.
9. Procedures for Hearings. To the extent the Provider is to carry out one or more of the Agency's obligation(s) under Subpart E of 45 CFR Part 164, the Provider shall comply with the requirements of Subpart E that apply to the Agency in the performance of such obligations.
10. Access to Books and Records. The Provider shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Provider on behalf of the Agency, available to the Secretary of the Department of Health and Human Services ("HHS") or the Secretary's designee for purposes of determining compliance with the HHS HIPAA Rules.
11. Reporting. The Provider shall make a good faith effort to identify any use or disclosure of Protected Health Information not provided for in this Agreement.
 - 11a. To the Agency. The Provider will report to the Agency, within ten (10) business days of discovery, any use or disclosure of Protected Health Information not provided for in this Agreement of which the Provider is aware. The Provider will report to the Agency, within twenty-four (24) hours of discovery, any Security Incident of which the Provider is aware. A violation of this paragraph shall be a material violation of this Agreement. Such notice shall include the identification of each individual whose unsecured Protected Health Information has been, or is reasonably believed by the Provider to have been, accessed, acquired, used, or disclosed during such breach.
 - 11b. To Individuals. In the case of a breach of this Agreement discovered by the Provider, the Provider shall first notify the Agency of the pertinent details of the breach and upon prior approval of the Agency shall notify each

individual whose unsecured Protected Health Information has been, or is reasonably believed by the Provider to have been, accessed, acquired, used or disclosed as a result of such breach. Such notification shall be in writing by first-class mail to the individual (or the next of kin if the individual is deceased) at the last known address of the individual or next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. Where there is insufficient, or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes written (or, if specifically requested, electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are ten (10) or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting on the web site of the Covered Entity involved or notice in major print of broadcast media, including major media in the geographic areas where the individuals affected by the breach likely reside. In any case deemed by the Provider to require urgency because of possible imminent misuse of unsecured Protected Health Information, the Provider may also provide information to individuals by telephone or other means, as appropriate.

11c. To Media. In the case of a breach of this Agreement discovered by the Provider where the unsecured Protected Health Information of more than 500 persons is reasonably believed to have been accessed, acquired, used, or disclosed after prior approval by the Agency, the Provider shall provide notice to prominent media outlets serving the state or relevant portion of the state involved.

11d. To Secretary of Health and Human Services.

(i) The Provider shall cooperate with the Agency to provide notice to the Secretary of HHS of unsecured Protected Health Information that has been acquired or disclosed in a breach.

(ii) Providers Who Are Covered Entities. In the event of a breach by a contractor or subcontractor of the Provider, and the Provider is a HIPAA covered entity, the Provider shall be considered the Covered Entity for purposes of notification to the Secretary of HHS pursuant to 45 CFR 164.408. The Provider shall be responsible for filing the notification to the Secretary of HHS and will identify itself as the Covered Entity in the notice. If the breach was with respect to 500 or more individuals, the Provider shall provide a copy of the notice to the Agency, along with the Provider's breach risk assessment for review at least fifteen (15) business days prior to the date required by 45 CFR 164.408(b) for the Provider to file the notice with the Secretary of HHS. If the breach was with respect to less than 500 individuals, the Provider shall notify the Secretary of HHS within the notification timeframe imposed by 45 CFR 164.408(c) and shall contemporaneously submit copies of said notifications to the Agency.

11e. Content of Notices. All notices required under this Agreement shall include the

content set forth in Section 13402(f), Title XIII of the American Recovery and Reinvestment Act of 2009 and 45 CFR 164.404(c), except that references therein to a "Covered Entity" shall be read as references to the Provider.

- 11f. Financial Responsibility. The Provider shall be responsible for all costs related to the notices required under this Agreement.
12. Mitigation. The Provider shall mitigate, to the extent practicable, any harmful effect that is known to the Provider of a use or disclosure of Protected Health Information in violation of this Agreement.
13. Term and Termination.
 - 13a. Term. The Term of this Agreement shall be in effect upon the Provider's signature on this Agreement, and may be terminated according to paragraphs b. or c. of this Section 13.
 - 13b. Termination Without Cause. Either party may terminate this Agreement without cause upon no less than thirty (30) calendar days' notice in writing to the other party, unless a lesser time is mutually agreed upon by both parties in writing. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery.
 - 13c. Termination for Cause. If the Agency determines the Provider has violated a material term of this Agreement, the Agency may terminate this Agreement upon twenty-four (24) hours written notice to Provider.
 - 13d. Obligations of Business Associate Upon Termination. At the termination of this Agreement, the Provider shall return all Protected Health Information that the Provider still maintains in any form, including any copies or hybrid or merged databases made by the Provider; or with prior written approval of the Agency, the Protected Health Information may be destroyed by the Provider after its use. The Provider shall retain no copies of the Protected Health Information unless approved by the Agency. If the Protected Health Information is destroyed pursuant to the Agency's prior written approval, the Provider must provide a written confirmation of such destruction to the Agency. If return or destruction of the Protected Health Information is determined not feasible by the Agency, the Provider agrees to protect the Protected Health Information and treat it as strictly confidential.
 - 13e. Survival. The obligations of Provider under paragraph (d) of this Section 13 shall survive the termination of this Agreement.
14. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as is currently in effect or as amended in the future.
15. Amendment. This Agreement may only be amended in writing signed by both parties. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

16. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. If any term or provision of this Agreement is legally determined unlawful or unenforceable, the remainder of the Agreement shall remain in full force and effect, and such term or provision shall be stricken.
17. All Terms and Conditions Included. This Agreement contains all the terms and conditions agreed by the parties with respect to the matters set forth herein, and supersedes all previous communications, representations, or agreements, either verbal or written, between the parties.
18. Miscellaneous. Waiver by either party of any breach of any term or condition of this Agreement shall not be construed as a waiver of any subsequent breach of any term or condition of this Agreement. If the Agency determines that the Provider is not performing in accordance with any term or condition in this Agreement, the Agency may, at its exclusive option, allow the Provider a period of time to achieve compliance. The provisions herein do not limit the Agency's right to any other remedies at law or in equity.

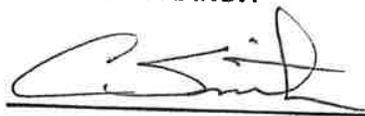
BY SIGNING THIS AGREEMENT THE PARTIES ACKNOWLEDGE THEY HAVE READ AND AGREE TO THE ENTIRE AGREEMENT.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR UNDERSIGNED OFFICIALS AS DULY AUTHORIZED.

**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS
DBA SPACE COAST TRANSIT**

FLORIDA AGENCY FOR PERSONS WITH DISABILITIES

Signature: _____



Signature: _____

Curt Smith

Printed Name _____

Title: Chairman

Printed Name _____

Title: _____

Date: As approved by the Board on 7/25/17

Date: _____

Reviewed for Legal Form and Content By

Diana E. Yuan, Asst County Attorney - Date

ATTEST:

SCOTT ELLIS, CLERK

