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Dave Somers
County Executive

November 21, 2025

Paula Renz
Department of Social and Health Services (DSHS)
4450 10TH AVE SE,
Lacey, WA 98503

RE: DSHS Contract # 2569-65864 (Health Related Social Needs)

Dear Ms. Renz:

As you may be aware, Snohomish County, along with other local government plaintiffs, has successfully challenged unlawful grant terms and conditions that various agencies of the federal government have included in grant agreements. Pursuant to a Preliminary Injunction in *King County et al. v. Turner et al.,* 2:25-cv-00814-BJR (W.D. Wash.)(issued August 12, 2025), in which Snohomish County is a plaintiff, unlawful grant conditions from the Department of Health and Human Services have been enjoined. A copy of the Preliminary Injunction is enclosed with this letter for your reference.

Snohomish County has carefully reviewed **DSHS Contract # 2569-65864** and has not found the HHS Grant Conditions or materially similar conditions within this agreement. Snohomish County's consent to this agreement is contingent upon the absence of the HHS Grant Conditions or any materially similar terms and conditions. Because Snohomish County is not privy to the contents of Washington State Department of Social and Health Services' agreement with the Department of Health and Human Services, Snohomish County expressly refuses any enjoined term or condition that the State may attempt to impose upon the County prospectively or retroactively. Specifically, Snohomish County refuses any term or condition that is the same or materially similar to the enjoined conditions.

Very truly yours,

Mary Jane Brell Vujovic, Director
Snohomish County Human Services

Enclosure: Preliminary Injunction *King County et al. v. Turner et al.,* 2:25-cv-00814-BJR (W.D. Wash.)(issued August 12, 2025)

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARTIN LUTHER KING, JR. COUNTY, *et al*.

Plaintiffs,

vs.

SCOTT TURNER in his official capacity as Secretary of the U.S. Department of Housing and Urban Development, *et al*.,

Defendants.

NO. 2:25-cv-814

ORDER GRANTING PLAINTIFFS' THIRD MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

Congress, as the branch of government constitutionally entrusted with the power of the purse, has long made critical investments in programs to end homelessness, strengthen communities, and improve local infrastructure. These budget decisions are not mere technical exercises, they reflect difficult judgments (and compromises) about how best to allocate our nation's resources. Every dollar allocated is a deliberate decision on how to serve the public good. And under the constitution, it is Congress—not the President—that has the authority to

make those judgments. Yet that is precisely what the Plaintiffs in this case allege the current administration has attempted to override. They contend that the Trump Administration unlawfully seeks to impose hotly contested political conditions on funds that Congress has already appropriated—substituting the Executive's preferences for the will of Congress, in clear defiance of constitutional limits.

On June 3, 2025, this Court enjoined Defendants U.S. Department of Housing and Urban Development ("HUD") and U.S. Department of Transportation ("DOT") from imposing unlawful funding conditions on an estimated $4 billion in HUD Continuum of Care Program ("CoC") and DOT grants that had been awarded to the then Plaintiffs—at the time 31 local governments and agencies—to support vital programs across the country, including homelessness prevention and transportation infrastructure. This Court determined that those Plaintiffs are likely to succeed on the merits of their claims that Defendants' actions violated the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 *et seq*., as contrary to the constitution and in excess of statutory authority, and arbitrary and capricious.

On July 10, 2025, Plaintiffs filed an amended complaint in which they added approximately 30 additional local governments and agencies as plaintiffs and the U.S. Department of Health and Human Services ("HHS") as a defendant. Currently before the Court is Plaintiffs' Third Motion for Preliminary Injunction. Dkt. No. 186. Plaintiffs allege that not only is HUD attempting to impose the same unlawful funding conditions that this Court previously enjoined on CoC grants awarded to some of the newly added Plaintiffs, but it is attempting to impose the funding conditions on all HUD grants, regardless of whether they are CoC grants. Plaintiffs further claim that DOT is also attempting to impose the same previously enjoined

funding conditions on grants awarded to some of the newly added Plaintiffs. Lastly, Plaintiffs allege that HHS has begun imposing substantially similar unlawful funding conditions on its grants. Plaintiffs assert that Defendants' actions threaten more than $12 billion in funding that is needed to support essential and life-sustaining programs in their communities and seek a preliminary injunction extending the relief that this Court previously granted in June 2025 to the newly added Plaintiffs that have CoC and/or DOT grants, barring HHS from applying the unlawful funding conditions on its grants, and barring HUD from doing the same as to all of its grant programs.

Having reviewed the briefs and exhibits filed in support of and in opposition to the motion, the record of the case, and the relevant legal authority, the Court will grant the motion. The reasoning for the Court's decision follows.

II. PROCEDURAL HISTORY

This case started on May 2, 2025 when Martin Luther King, Jr. County ("King County"), Pierce County, Snohomish County, City and County of San Francisco ("San Francisco"), Santa Clara County, Boston, Columbus, and New York City (collectively, "the Original Plaintiffs") sued HUD, DOT, and the Federal Transit Administration ("FTA"), as well as the agencies' heads in their official capacities, challenging the imposition of new funding conditions on grants that the Original Plaintiffs had been conditionally awarded for fiscal year 2024.[1] Dkt. 1. Seven of the Original Plaintiffs (excluding Columbus) then moved for a temporary restraining order ("TRO") on May 5, 2025. The Court held a hearing and granted their motion two days later. Dkt. Nos. 5,

[1]The original Defendants were HUD, DOT, Scott Turner in his official capacity as Secretary of HUD, Sean Duffy in his official capacity as Secretary of DOT, FTA, and Matthew Welbes as the acting Director of FTA. Dkt. No. 1 at ¶¶ 16-21.

51–52. At the conclusion of the TRO hearing, the Original Plaintiffs stated their intent to move for a preliminary injunction on the same issues subject to the TRO, which was set to expire fourteen days later. Dkt. No. 53. The Court ordered briefing and on May 21, 2025, held a hearing on the motion for a preliminary injunction. *Id.*; Dkt. No. 73. At the conclusion of that hearing, the Court determined that good cause existed to extend the TRO by another fourteen days, to June 4, 2025, and stated that it would issue a written decision on the motion for preliminary injunction by that date. Dkt. No. 73.

Later that day the Original Plaintiffs filed an amended complaint adding 23 local governments and agencies as Plaintiffs, as well as the Federal Highway Administration ("FHWA"), the Federal Aviation Administration ("FAA"), the Federal Railroad Administration ("FRA"), and the component heads in their official capacities, as Defendants.[2] Dkt. No. 71. The 23 newly added Plaintiffs brought the same claims and challenged the same funding conditions as the Original Plaintiffs. Dkt. 71. They also sought a TRO and preliminary injunction, which the Court granted. Dkt. Nos. 72, 152. Defendants appealed the preliminary injunction order to the U.S. Court of Appeals for the Ninth Circuit, where the appeal remains pending.[3] Dkt. No. 173.

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[2] The 23 newly added Plaintiffs were the City and County of Denver, Colorado ("Denver"), the Metropolitan government of Nashville and Davidson County, Tennessee ("Nashville"), Pima County, Arizona ("Pima County"), County of Sonoma, California ("Sonoma"), City of Bend, Oregon ("Bend"), City of Cambridge, Massachusetts ("Cambridge"), City of Chicago, Illinois ("Chicago"), City of Culver City, California, ("Culver City"), City of Minneapolis, Minnesota ("Minneapolis"), City of Pittsburgh, Pennsylvania ("Pittsburgh"), City of Portland, Oregon ("Portland"), City of San Jose, California ("San Jose"), City of Santa Monica, California ("Santa Monica"), City of Pasadena, California ("Pasadena"), City of Tucson, Arizona ("Tucson"), City of Wilsonville, Oregon ("Wilsonville"), Central Puget Sound Regional Transit Authority located in King, Pierce, and Snohomish Counties, Washington ("CPSRTA"), Intercity Transit located in Thurston County, Washington ("Intercity Transit"), Port of Seattle, Washington ("Port of Seattle"), King County Regional Homelessness Authority located in King County, Washington ("King County RHA"), Santa Monica Housing Authority, California ("Santa Monica HA"), San Francisco County Transportation Authority, located in the City and County of San Francisco, California ("SFCTA"), and Treasure Island Mobility Management Agency located in Treasure Island and Yerba Buena Island, California ("TIMMA"). Dkt. No. 71 at ¶¶ 8-38. The newly added Defendants were FHWA, Gloria M. Shepard as the acting Director of FHWA, FAA, Chris Rocheleau as acting Administrator of FAA, FRA, and Drew Feeley as acting Administrator of FRA. *Id.* at ¶¶ 39-50.

[3] In moving for leave to file the second amended complaint, Plaintiffs asserted that the "claims in the [second amended complaint] challenging new grant conditions are indistinguishable on the facts and law [from] the existing

On July 10, 2025, Plaintiffs filed a second amended complaint adding another 29 local governments and agencies as plaintiffs.[4] Dkt. No. 184. Plaintiffs continue to challenge the HUD and DOT funding conditions as before, but now have added HUD grants outside the CoC program, and have brought new claims against HHS and its agencies, including the Administration for Children and Families ("ACF"), Health Resources and Services Administration ("HRSA"), National Institutes of Health ("NIH"), Substance Abuse and Mental Health Services Administration ("SAMHSA"), and the Centers for Disease Control and Prevention ("CDC"). As before, Plaintiffs seek a preliminary injunction enjoining the imposition of the new funding conditions on their federal grants.

The new Plaintiffs challenging the imposition of the new funding conditions on HUD CoC grants are Alameda County, Albuquerque, Baltimore, Columbus, Dane County, Hennepin

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claims." Dkt. No. 181 at 4. Defendants did not oppose the motion. While the Ninth Circuit has not ruled directly on the issue of whether a district court retains jurisdiction to allow amendment of pleadings pending appeal of a preliminary injunction, district courts within this circuit have recognized that pending interlocutory appeal they retain jurisdiction over matters that would not change the issues before the appellate court. *See e.g. Center for Food Safety v. Vilsack*, 2011 WL 672802 at *2 (N.D. Cal. 2011). In light of this, the Court concluded that it retained jurisdiction to allow the requested amendment because a significant portion of the second amended complaint simply adds new Plaintiffs challenging Defendants' imposition of the previously enjoined unlawful funding conditions on CoC HUD and DOT grants. And while the second amended complaint does also challenge Defendants' imposition of funding conditions on non-COC HUD and HHS grants, the challenged conditions are either identical or substantially similar to the previously imposed conditions, and the claims implicate identical legal issues. In addition, several of the newly added Plaintiffs face a fast-approaching deadline of August 16, 2025 to submit consolidated/action plans to HUD or forfeit the formula grant funding. Dkt. No. 186 at 1; Dkt. No. 184 at ¶ 623. Nevertheless, if it is determined that this Court lacked jurisdiction because an appeal is pending, then this Court issues this order as an indicative ruling pursuant to Fed. Rule of Civ. P. 62.1(3).

[4] The 29 newly added Plaintiffs are County of Alameda ("Alameda County"), City of Albuquerque ("Albuquerque"), Mayor and City Council of Baltimore ("Baltimore"), City of Bellevue ("Bellevue"), City of Bellingham ("Bellingham"), City of Bremerton ("Bremerton"), County of Dane ("Dane County"), City of Eugene ("Eugene"), City of Healdsburg ("Healdsburg"), County of Hennepin ("Hennepin County"), Kitsap County, City of Los Angeles ("Los Angeles"), City of Milwaukee ("Milwaukee"), Milwaukee County, Multnomah County, City of Oakland ("Oakland"), City of Pacifica ("Pacifica"), City of Petaluma ("Petaluma"), Ramsey County, City of Rochester ("Rochester"), City of Rohnert Park ("Rohnert Park"), City of San Diego ("San Diego"), County of San Mateo ("San Mateo County"), City of Santa Rosa ("Santa Rosa"), City of Watsonville ("Watsonville"), Culver City Housing Authority ("CCHA"), Puget Sound Regional Council ("PSRC"), Sonoma County Transportation Authority ("SCTA"), and Sonoma County Community Development Commission (SCCDC"). Dkt. No. 184 at ¶¶ 136-253.

County, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, San Mateo County, and Sonoma County (collectively, "the New CoC Plaintiffs").

The new Plaintiffs challenging the imposition of the new funding conditions on DOT grants are Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Cambridge, Dane County, Eugene, Healdsburg, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Milwaukee County, Multnomah County, Oakland, Pacifica, Pasadena, Petaluma, PSRC, Ramsey County, Rochester, Rohnert Park, San Diego, San Mateo County, Santa Rosa, SCTA, and Watsonville (collectively, "the New DOT Plaintiffs").

The Plaintiffs challenging the new funding conditions on non-CoC HUD grants are King County, Pierce County, Snohomish County, Boston, Columbus, San Francisco, Santa Clara, NYC, Bend Cambridge, Chicago, Culver City, Minneapolis, Nashville, Pasadena, Pima County, Pittsburgh, Portland, San Jose, Santa Monica, Tucson, King County RHA, Santa Monica HA, Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Dane County, Eugene, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, Rochester, San Diego, San Mateo County, Santa Rosa, Sonoma County, Watsonville, CCHA, and SCCDC (collectively, "the Non-CoC HUD Plaintiffs").

Lastly, the Plaintiffs challenging the HHS grants are Alameda County, Baltimore, Boston, Cambridge, Chicago, Columbus, Dane County, Denver, Eugene, Hennepin County, King County, Milwaukee, Minneapolis, Multnomah County, NYC, Oakland, Pacifica, Pierce

County, Pima County, Ramsey County, Rochester, San Francisco, Santa Clara, San Mateo County, Snohomish County, and Wilsonville (collectively, "the HHS Plaintiffs").[5]

III. FACTUAL BACKGROUND[6]

As stated above, initially this lawsuit concerned the allocation of congressionally appropriated federal funds through HUD and DOT grant programs, and several DOT operating administrations. Originally the lawsuit concerned only HUD grants through its CoC program, but with the second amended complaint, while Plaintiffs still challenge the funding conditions on the CoC grants (as well as DOT grants), they now object to funding conditions that HUD seeks to impose on all of its grants. In addition, the lawsuit has expanded to include grants administered by HHS and several of its operating administrations, including ACF, HRSA, NIH, SAMHSA, and the CDC.

A. HUD CoC and DOT Grants

HUD administers the CoC program with funds appropriated by Congress through the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11301(b)(2)–(3). The CoC program is designed to assist individuals and families experiencing homelessness by providing services to help such individuals move into transitional and permanent housing, with the goal of long-term stability. Congress established DOT in 1966 "to assure the coordinated, effective administration of the transportation programs of the Federal Government" and has established by statute a wide variety of grant programs that provide federal funds to state and local governments for public transit services. *See* Department of Transportation Act, Pub. L. No. 89-670, 80 Stat. 931 (1966).

[5] Note, several Plaintiffs fall into more than one Plaintiff group.
[6] This Court assumes familiarity with the detailed fact section set forth in its June 3, 2025 order granting Plaintiffs' motions for a preliminary injunction. Dkt. No. 169.

1. The Funding Conditions on HUD CoC and DOT Grants

In the first two motions for a preliminary injunction, Plaintiffs charged HUD and DOT with imposing funding conditions that are not authorized by statute on HUD CoC and DOT grants and are therefore unlawful. Plaintiffs argued that the new funding conditions sought to coerce grant recipients dependent on federal funding into implementing the Trump Administration's policy agenda. Specifically, Plaintiffs objected to the following six conditions with respect to the CoC grants:

A. The recipient "shall not use grant funds to promote 'gender ideology,' as defined in E.O. 14168 Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government";

B. The recipient "agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the U.S. Government's payment decisions for purposes of [the False Claims Act, 31 U.S.C. § 3729(b)(4)]";

C. The recipient "certifies that it does not operate any programs that violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964";

D. The recipient "shall not use any Grant Funds to fund or promote elective abortions, as required by E.O. 14182, Enforcing the Hyde Amendment";

E. "No state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation"; and

F. "Subject to the exceptions provided by [the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA")], the recipient must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States."

Dkt. No. 11 ("McSpadden Decl."), Ex. A at 3. And Plaintiffs objected to the following three conditions with respect to the DOT grants:

> A. "Pursuant to section (3)(b)(iv)(A), Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, the Recipient agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of [the False Claims Act, 31 U.S.C. § 3729(b)(4)]";
>
> B. "Pursuant to section (3)(b)(iv)(B), Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, by entering into this Agreement, Recipient certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable Federal anti-discrimination laws"; and
>
> C. "[T]he Recipient will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law."

Dkt. No. 71 at ¶¶ 164, 172. In addition, the new funding conditions also required recipients to comply with all executive orders. McSpadden Decl., Ex. A at 1, ¶ 5; Dkt. No. 71 at ¶¶ 168, 170.

Plaintiffs challenged Defendants' imposition of the foregoing conditions on the grants, arguing that the conditions are unconstitutional, violate the APA, and exceed statutory authority. They further argued that they would be irreparably harmed if the conditions were imposed on the grants and sought injunctive relief from this Court.

2. This Court Grants Injunctive Relief to Plaintiffs

This Court determined that Plaintiffs were entitled to a preliminary injunction because they satisfied the *Winter* factors. Dkt. No. 169 at 30 (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). Plaintiffs established that they are likely to succeed on the merits of their APA claim because Defendants' actions are contrary to the constitution, in excess of statutory

authority, and arbitrary and capricious. *Id*. at 30-38. Plaintiffs also demonstrated that they were likely to suffer irreparable harm in the absence of preliminary injunctive relief and that the balance of equities weighed in favor of Plaintiffs. *Id*. at 39-45. Therefore, among other relief, the Court enjoined Defendants from:

> (1) imposing or enforcing the new funding conditions, as defined in Plaintiffs' motions for preliminary injunction, or any materially similar terms or conditions with respect to any HUD CoC or DOT funds awarded to Plaintiffs;
>
> (2) with respect to Plaintiffs, rescinding, withholding, cancelling, or otherwise not processing any HUD CoC and/or DOT Agreements, or pausing, freezing, impeding, blocking, cancelling, terminating, delaying, withholding, or conditioning HUD CoC and/or DOT funds, based on such terms or conditions, including without limitation failing or refusing to process and otherwise implement grants signed with changes or other objection to conditions enjoined by this preliminary injunction;
>
> (3) requiring Plaintiffs to make any "certification" or other representation related to compliance with such terms or conditions; or
>
> (4) refusing to issue, process, or sign HUD CoC and/or DOT Agreements based on Plaintiffs' participation in this lawsuit.

Id. at 46-48.

3. New HUD CoC and DOT Plaintiffs

Plaintiffs allege that despite this Court enjoining Defendants from imposing the unlawful funding conditions on the Original Plaintiffs' HUD CoC grants, Defendants are attempting to impose the conditions on CoC grants awarded to Alameda County, Albuquerque, Baltimore, Dane County, Hennepin County, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, San Mateo County, and Sonoma County—the New CoC Plaintiffs. Dkt. No. 184 at ¶¶ 292-293. According to Plaintiffs, the CoC grants will allow the New CoC Plaintiffs "to continue homelessness assistance programs, ensuring [their] ability to serve their residents so they [will] not experience a sudden drop off in the availability of housing services, permanent and

transitional housing, and other assistance." *Id*. at ¶ 300. Plaintiffs further allege that in reliance on the awards, many of the New CoC Plaintiffs "already notified service providers of forthcoming funding and/or contracted with service providers for homelessness assistance services." *Id*. at ¶ 301.

In addition, Plaintiffs allege that Defendants also continue to impose the funding conditions on DOT grants awarded to Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Cambridge, Dane County, Eugene, Healdsburg, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Milwaukee County, Multnomah County, Oakland, Pacifica, Pasadena, Petaluma, PSRC, Ramsey County, Rochester, Rohnert Park, San Diego, San Mateo County, Santa Rosa, SCTA, and Watsonville—the New DOT Plaintiffs. According to Plaintiffs, each of the New DOT Plaintiffs "previously received, currently receive, or are otherwise eligible to receive DOT grants, directly and/or on a pass-through basis. *Id.* at ¶ 391. Plaintiffs further allege that each of the New DOT Plaintiffs rely on the DOT grants to undertake transportation-related projects for the benefit of their communities.

Plaintiffs claim that "[t]he grant conditions that Defendants seek to impose leave [the New CoC and DOT] Plaintiffs with the Hobson's choice of accepting illegal conditions that are without authority, contrary to the Constitution, and accompanied by the poison pill of heightened risk of FCA claims or forgoing the benefit of grant funds—paid for (at least partially) through local federal taxes—that are necessary for crucial local services." *Id*. at ¶ 623. Finally, Plaintiffs assert that loss of these grant funds would result in loss of billions of dollars in funding for critical services and projects for the New CoC and DOT Plaintiffs, destabilizing their

communities. *Id*. at ¶¶ 625-627. Plaintiffs request that this Court extend its injunction against Defendants to the New CoC and DOT Plaintiffs' grants.

B. Non-CoC HUD Grants

Plaintiffs allege that in addition to CoC grants, many of them receive or are otherwise eligible to receive non-CoC HUD grants—the Non-CoC HUD Plaintiffs. These grants include congressionally appropriated funding for homelessness assistance, affordable housing, community development programs, and other services that benefit the Non-CoC HUD Plaintiffs' communities, including the Community Development Block Grant ("CDBG") program, 42 U.S.C. §§ 5303–06; the Emergency Solutions Grant ("ESG") program, which funds emergency shelters and homelessness services, *id*. §§ 11371–78; the Home Investment Partnerships ("HOME") program, which supports affordable housing, *id*. §§ 12741–56; and the Housing Opportunities for Persons with AIDS ("HOPWA") program, *id*. §§ 12901–12. Dkt. No. 184 at ¶¶ 302-358.

Plaintiffs allege, and Defendants do not dispute, that HUD seeks to impose on *all* HUD grants substantially similar funding conditions to those that this Court previously enjoined. As evidence of this, Plaintiffs point to the fact that in April 2025, HUD amended its General Administrative, National, and Departmental Policy Requirements and Terms (the "HUD Policy Terms") that sets forth the "various laws and policies that may apply to recipients of" HUD grant awards. Dkt. No. 184 at ¶ 516. The amended HUD Policy Terms list President Trump's executive orders among the "laws and policies that may apply" to HUD grants as well as language materially the same as the previously enjoined funding conditions. *Id*. at ¶ 520.

In addition, Plaintiffs note that in May 2025, HUD amended its standard Applicant and Recipient Assurances and Certifications ("the HUD Certifications") to require applicants to certify that they "[w]ill not use Federal funding to promote diversity, equity, and inclusion (DEI) mandates, policies, programs, or activities that violate any applicable Federal antidiscrimination laws." Dkt. No. 271, Amaral Decl., Ex. B; Dkt. No. 184 at ¶ 522. Local governments and agencies must submit the HUD Certifications with certain consolidated plans and/or action plans annually as a condition to receiving CDBG, ESG, HOME, and HOPWA formula funding.

Lastly, on June 5, 2025, HUD's Office of Community Planning and Development ("CPD"), which administers the CoC, CDBG, ESG, HOME, and HOPWA programs, issued a letter announcing HUD's decision to impose on all CPD formula grants funding conditions substantially similar to the previously enjoined funding conditions. Dkt. No. 184 at ¶¶ 524-525. These funding conditions include requiring recipients to certify that they: (1) "shall not use grant funds to promote 'gender ideology,'" (2) will not "use any grant funds to fund or promote elective abortions," (3) will "use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States," and (4) agree that they will not use funding to "subsidiz[e] or promot[e] … illegal immigration or [to] seek to shield illegal aliens from deportation." *Id*. at ¶¶ 527-533.

Plaintiffs claim that HUD has already notified at least three Non-CoC HUD Plaintiffs that their consolidated/action plans violate the newly imposed funding conditions. For instance, HUD threatened to disapprove Petaluma's 2025 Consolidated Action Plan for CDBG funds because it allegedly violated the DEI, gender ideology, and immigration funding conditions by including

references to "equity," "environmental justice," "transgender or gender non-conforming," and "undocumented individuals." Dkt. No. 244, Cochran Decl., Ex. B. Bellevue and King County received similar notices. Dkt. No. 195, Esparza Decl., Ex. A; Dkt. No. 222, Third Supp. Marshall Decl., Ex. B. HUD gave Petaluma, Bellevue, and King County less than 48 hours to remedy the purported violations by scrubbing their plans of the offending language. *Id.*; Cochran Decl. at ¶ 12. King County's plan was subsequently disapproved. Dkt. No. 223, Holcomb Decl., Ex. A.

Plaintiffs further allege that the Non-CoC HUD Plaintiffs face immediate and irreparable harm from imposition of the funding conditions. Several Non-CoC HUD Plaintiffs face a deadline of Saturday, August 16, 2025 to submit consolidated/action plans to HUD or forfeit the formula grant funding. Dkt. No. 186 at 1; Dkt. No. 184 at ¶ 623. Plaintiffs assert that loss of this funding would disrupt the lives of the Non-CoC HUD Plaintiffs' most vulnerable residents, likely leading to evictions and increased homelessness and further straining local resources. According to Plaintiffs, even a temporary loss of funding would set back efforts to create and preserve affordable housing, ameliorate homelessness, and house low-income individuals living with HIV/AIDS. Dkt. No. 184 at ¶ 625. Plaintiffs request that this Court enjoin Defendants from imposing the new funding conditions on the Non-CoC HUD Plaintiffs' grants.

C. HHS Grants

HHS administers both competitive grant programs and formula and block grant programs that provide funds to local governments to enhance the health and well-being of their communities. In administering grant programs, HHS often acts through its operating divisions and agencies. For instance, ACF administers discretionary and formula grants to support programs that serve children and families. HRSA awards a variety of competitive and formula

grants including Primary Care/Health Centers, Health Workforce Training, HIV/AIDS, Organ Donation, Maternal and Child Health, Rural Health, the Health Center Program, and the Ryan White HIV/AIDS program. SAMHSA administers both competitive, discretionary grant programs and noncompetitive formula grant programs to fund substance use and mental health services to advance the behavioral health and improve the lives of those living with mental and substance use disorders. The CDC provides funding to support public health systems and activities by local and state governments. It supports programs such as HIV/AIDS, Viral Hepatitis, STI, and TB Prevention; Chronic Disease Prevention and Health Promotion; Public Health Preparedness and Response; and Injury Prevention and Control.

Congress annually appropriates funding for these HHS grant programs, setting forth priorities and directives to the Secretary of HHS with respect to the funding. Examples of such appropriation legislation are: Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1523– 28, 1567–98; Consolidated Appropriations Act, 2022, Pub. L. 117-103, 136 Stat. 397–402, 441–74; Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4808–13, 4854–87; Consolidated Appropriations Act, 2024, Pub. L. 118-42, 138 Stat. 272–77, 397–419.

Plaintiffs allege that the HHS Plaintiffs have received, currently receive, or are otherwise eligible to receive federal grants administered by ACF, HRSA, SAMHSA, and CDC, among others. Collectively, HHS Plaintiffs rely on over $2 billion in appropriated federal funds from HHS grant programs which support essential health programs and services in the HHS Plaintiffs' communities, such as child welfare assistance, adoption and foster care services, and healthcare for low-income individuals and those living with HIV/AIDS. Dkt. No. 184 at ¶¶ 475.

Plaintiffs claim that like HUD and DOT, HHS has begun attaching unlawful funding conditions to HHS grants that are substantially similar to those that this Court previously enjoined, including by updating HHS's Grants Policy Statement in April 2025 ("the 2025 HHS GPS") to provide:

> [R]ecipients must comply with all applicable Federal anti-discrimination laws material to the government's payment decisions for purposes of 31 U.S.C. § 372(b)(4).
>
> (1) Definitions. As used in this clause –
> (a) DEI means "diversity, equity, and inclusion."
> (b) DEIA means "diversity, equity, inclusion, and accessibility."
>
> (c) Discriminatory equity ideology has the meaning set forth in Section 2(b) of Executive Order 14190 of January 29, 2025.
>
> . . . . .
>
> By accepting the grant award, recipients are certifying that . . . [t]hey do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws.

Dkt. No. 184 at ¶ 606.[7]

Plaintiffs further alleged that in addition to these agency-wide changes, several HHS operating divisions and agencies have issued their own general terms and conditions incorporating the 2025 HHS GPS. For instance, ACF updated its Standard Terms and Conditions that apply to both discretionary and non-discretionary awards, to add a certification that states:

[7] On July 24, 2025, after Plaintiffs filed the instant motion, HHS updated the 2025 HHS GPS, removing express references to DEI but stating: "By applying for or accepting federal funds from HHS, recipients certify compliance with all federal antidiscrimination laws and these requirements and that complying with those laws is a material condition of receiving federal funding streams." 2025 HHS GPS at 18, https://www.hhs.gov/sites/default/files/hhs-grants-policy-statement-july-2025.pdf. Thus, the foregoing certification is required even to just "apply[]" for federal funds from HHS**.** The 2025 HHS GPS also states that "[r]ecipients are responsible for ensuring subrecipients, contractors, and partners also comply." *Id.*

> *For new awards made on or after May 8, 2025*, the following is effective immediately:
>
> Recipients must comply with all applicable Federal anti-discrimination laws material to the government's payment decisions for purposes of [the FCA].
>
> (1) Definitions. As used in this clause –
>
> (a) DEI means "diversity, equity, and inclusion."
>
> (b) DEIA means "diversity, equity, inclusion, and accessibility."
>
> (c) Discriminatory equity ideology has the meaning set forth in Section 2(b) of Executive Order 14190 of January 29, 2025.
>
> (e) Federal anti-discrimination laws means Federal civil rights law that protect individual Americans from discrimination on the basis of race, color, sex, religion, and national origin.
>
> (2) Grant award certification.
>
> (a) By accepting the grant award, recipients are certifying that:
>
> (i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote the following in violation of Federal anti-discrimination laws: DEI, DEIA, or discriminatory equity ideology.

Id. at ¶ 609.[8]

Likewise, HRSA issued updated general terms and conditions applicable to all active awards. The revised HRSA terms and conditions incorporate the 2025 HHS GPS and also contain the following new provision:

[8] On July 29, 2025, ACF updated its Standard Terms and Conditions again to remove express references to DEI.

> By accepting this award, including the obligation, expenditure, or drawdown of award funds, recipients, whose programs, are covered by Title IX certify as follows:
>
> - Recipient is compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain compliant for the duration of the Agreement.
>
> - The above requirements are conditions of payment that go to the essence of the Agreement and are therefore material terms of the Agreement.
>
> - Payments under the Agreement are predicated on compliance with the above requirements, and therefore Recipient is not eligible for funding under the Agreement or to retain any funding under the Agreement absent compliance with the above requirements.
>
> - Recipient acknowledges that this certification reflects a change in the government's position regarding the materiality of the foregoing requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this Agreement.
>
> - Recipient acknowledges that a knowing false statement relating to Recipient's compliance with the above requirements and/or eligibility for the Agreement may subject Recipient to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001.

Dkt. No. 184 at ¶ 611. Plaintiffs allege that SAMHSA and the CDC have also updated their terms to contain funding conditions that require recipients not to promote gender ideology. *Id*. at ¶¶ 607-08.

Plaintiffs argue that foregoing funding conditions are unconstitutional, violate the APA, exceed statutory authority, and are President Trump's attempt to coerce grant recipients that rely on federal funds into implementing his political agenda. According to Plaintiffs, withholding "HHS grants from the HHS Plaintiffs would threaten or eliminate critical individual and public health services for millions of residents. Loss of funding could decimate public health budgets

and cause residents, including those most vulnerable, to lose access to meals, medical care, housing and lifesaving social safety net services. Loss of funding could also devastate local public health and child welfare agencies, who may be forced to conduct significant layoffs and operational reductions." *Id*. at ¶ 628. Therefore, Plaintiffs request that this Court enjoin HHS and/or its operating agencies from imposing the new funding conditions on the HHS Plaintiffs' grants.

IV. DISCUSSION

A. Legal Standard

A preliminary injunction is a matter of equitable discretion and is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). "A plaintiff seeking preliminary injunctive relief must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *Id.* at 20. Alternatively, an injunction may issue where "the likelihood of success is such that serious questions going to the merits were raised and the balance of hardships tips sharply in [the plaintiff's] favor," provided that the plaintiff can also demonstrate the other two *Winter* factors. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011) (citation and internal quotation marks omitted). Under either standard, Plaintiffs bear the burden of making a clear showing that they are entitled to this extraordinary remedy. *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). The most important *Winter* factor is likelihood of success on the merits. *See Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

B. Plaintiffs' Claims Are Reviewable under the APA

As they did when they opposed Plaintiffs' first two motions for a preliminary injunction, Defendants argue that Plaintiffs' claims are not reviewable by this Court because the actions at issue are committed to the agencies' discretion. While "the APA establishes a basic presumption of judicial review for one suffering legal wrong because of agency action, that presumption can be rebutted by a showing that . . . the agency action is committed to agency discretion by law." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1905 (2020) (cleaned up); 5 U.S.C. § 701(a)(2). Where that is the case, courts have no authority to review or set aside the agency's action.

However, as this Court previously concluded, this exception to the "basic presumption of judicial review" does not apply in this case. Agency action is committed to agency discretion only in those "rare instances where statutes are drawn in such broad terms that in a given case there is no law to apply, thereby leaving the court with no meaningful standard against which to judge the agency's exercise of discretion." *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1068 (9th Cir. 2015); *Texas v. United States*, 809 F.3d 134, 168 (5th Cir. 2015), as revised (Nov. 25, 2015). Once again, Defendants have failed to demonstrate that the contested conditions fall within "[t]his limited category of unreviewable actions." *Regents*, 140 S. Ct. at 1905 (citing *Weyerhaeuser Co. v. United States Fish and Wildlife Serv.*, 139 S. Ct. 361, 370 (2018). As before, Defendants rely on *Lincoln v. Vigil*, 508 U.S. 182 (1993) for the principle that an agency's decision to cancel a program is unreviewable because how to allocate funds "'from a lump-sum appropriation' is an 'administrative decision traditionally regarded as committed to agency discretion.'" Dkt. No. 334 at 11 (citing 508 U.S. at 192). This Court previously concluded that the agency action in *Lincoln*

differed materially from the actions at issue in this case, namely that the funds at issue in this case are not appropriate in undifferentiated "lump sums" as they were in *Lincoln*. Dkt. No. 169 at 28. Rather, the grants at issue here "abound with specific directives" that provide substantial guidance as to how the agencies' discretion should be exercised in implementing these programs. *Id*. at 28-29. Defendants ignore entirely this Court's previous conclusion, and the Court once again concludes that Plaintiffs' claims do not involve the "narrow category" of agency actions that are unreviewable under the APA.

C. Plaintiffs Are Likely to Succeed on the Merits of Their APA Claims

The Court has already determined that Defendants' attempt to impose the challenged funding conditions on the CoC and DOT grants violated the APA. *See generally* Dkt. No. 169. Defendants present no argument as to why this conclusion should not apply equally to the New CoC and DOT Plaintiffs; thus, the Court concludes that the New CoC and DOT Plaintiffs are also likely to succeed on the merits of their APA claim and focuses the remainder of its analysis on the Defendants' actions with respect to the non-CoC HUD and HHS grants.

The APA broadly "sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts." *Regents*, 140 S. Ct. at 1905 (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992)). Under the APA, agencies must "engage in reasoned decisionmaking," and courts are empowered to "hold unlawful and set aside agency action . . . found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right; [or] (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2). As stated above, Plaintiffs challenge Defendants' actions as "contrary to constitutional right" and "in excess

of statutory authority," and as arbitrary and capricious. *See* Dkt. No. 184, Counts 5, 6, and 7, ¶¶ 670-703.

1. Defendants' Actions Violate the APA as Contrary to the Constitution and in Excess of Statutory Authority (Counts 6 & 7)

(a) Separation of Powers Doctrine

Under the APA, a court may set aside an agency action that is "contrary to constitutional right, power, privilege, or immunity" or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(B), (C). Plaintiffs challenge Defendants' conditions as both contrary to the Constitution's Separation of Powers doctrine and in excess of any authority conferred by Congress. Dkt. No. 184 at ¶¶ 690-703. As with this Court's prior order enjoining Defendants' actions, because the Separation of Powers doctrine and the APA's "in excess of statutory authority" standard both turn on the same essential question—whether the agency acted within the bounds of its authority, either as conferred by the Constitution or delegated by Congress—the Court addresses the claims in a single analysis.

The Separation of Powers doctrine recognizes that the "United States Constitution exclusively grants the power of the purse to Congress, not the President." *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018) (citing the Appropriations Clause, U.S. Const. art. I, § 9, cl. 7 ("No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.")). "The [Appropriations] Clause has a 'fundamental and comprehensive purpose . . . to assure that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good and not according to the individual favor of Government agents.'" *United States v. McIntosh*, 833 F.3d 1163, 1175 (9th Cir. 2016) (quoting *Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 427–28, 2473 (1990)).

In contrast, "[t]here is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes." *Clinton v. City of New York*, 524 U.S. 417, 438 (1998). "Aside from the power of veto, the President is without authority to thwart congressional will by canceling appropriations passed by Congress." *San Francisco*, 897 F.3d at 1231. Quite the contrary, it is well-established that an executive agency "literally has no power to act . . . unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986); *see California v. Trump*, 379 F. Supp. 3d 928, 941 (N.D. Cal. 2019), *aff'd*, 963 F.3d 926 (9th Cir. 2020). When an agency is charged with administering a statute, "both [its] power to act and how [it is] to act [are] authoritatively prescribed by Congress." *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013). "Absent congressional authorization, the Administration may not redistribute or withhold properly appropriated funds in order to effectuate its own policy goals." *San Francisco*, 897 F.3d at 1235.

Plaintiffs argue that in attempting to condition disbursement of funds in part on grounds not authorized by Congress, but rather on Executive Branch policy, Defendants are acting in violation of the Separation of Powers principle and "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(B), (C). Plaintiffs argue that the statutes authorizing the grants at issue do not confer on Defendants the kind of authority they are attempting to assert. For the reasons explained below, and in its June 3, 2025 order, the Court agrees.

(b) The Non-CoC HUD Funding Conditions

Plaintiffs contend that the contested conditions must be set aside because the statute's underlying the non-CoC HUD grants do not give HUD the authority to impose "conditions that

prohibit DEI or promotion of 'gender ideology' or 'elective abortion' or require participation in federal immigration enforcement, immigration status verification, or adherence to EOs unrelated to the grant's purpose." Dkt. No. 186 at 9. Defendants counter that they do have the authority to impose the challenged conditions, citing to HUD regulations that require "federal agencies [to] incorporate 'statutory, executive order, other Presidential directive, or regulatory requirements' into the terms and conditions" of HUD grants. Dkt. No. 334 at 8 citing 2 C.F.R. § 200.211(c)(1)(ii). However, as this Court noted in rejecting this argument the first time Defendants raised it, "an agency *regulation* cannot create *statutory* authority; only Congress can do that." Dkt. No. 169 at 33 (emphasis in original). Defendants must point to a *statutory* source that confers the authority. Without such a source, the agency action violates the separation of powers principle.

Next Defendants argue that the challenged conditions "merely require grant recipients to agree to comply with existing federal laws, like federal antidiscrimination laws" and "Congress has expressly authorized HUD to require that grantees comply with federal laws." Dkt. No. 334 at 8 (citing 42 U.S.C. § 5304(b)(6) ("Any [CDBG] grant … shall be made only if the grantee certifies to the satisfaction of the Secretary that … the grantee will comply with the other provisions of this chapter and with other applicable laws.")). The problem with Defendants' argument is that they fail to acknowledge the evidence in the record that demonstrates that Defendants interpret federal antidiscrimination laws in a manner that is inconsistent with well-established legal precedent. For example, on April 4, 2025, DOT Secretary Duffy issued a letter "To All Recipients of U.S. Department of Transportation Funding" in which he stated that "*any* policy, program, or activity" that is "designed to achieve so called "diversity, equity, and

inclusion,' or 'DEI[]' goals[] presumptively violates Federal law" even if the policy, program, or activity is "described in neutral terms." Dkt. No. 6 at 346 (emphasis added). Secretary Duffy's statement can easily be interpreted to mean that a federal grant recipient that has a "policy" to accommodate individuals with disabilities so that those individuals can participate in an "activity" has "presumptively violate[d] Federal law." This, of course, is inconsistent with well-established federal precedent that requires entities that receive federal funds to provide reasonable accommodations for qualified individuals with disabilities so that they can participate in their programs. *See e.g., U.S. Dept. of Transp. v. Paralyzed Veterans of America*, 477 U.S. 597, 604 (1986) ("Section 504 prohibits discrimination against any qualified handicapped individual under 'any program or activity receiving Federal financial assistance.'"); *Muir v. United States Dept. of Homeland Security*, 2025 WL 2088450, *6 (D.C. Cir. July 25, 2025) ("Section 504 of the Rehabilitation Act prohibits discrimination against disabled persons by recipients of federal funds."); *Ward v. McDonald*, 762 F.3d 24, 28 (D.C. Cir. 2014) (It is a basic tenet of the Rehabilitation Act of 1973 "that the government must take reasonable affirmative steps to accommodate the handicapped, except where undue hardship would result").

Likewise, on May 19, 2025, U.S. Deputy Attorney General Todd Blanche sent a memorandum to all United States Attorneys, among others, in which he stated that federal fund recipients may run afoul of the False Claims Act if they allow transgender individuals to use bathrooms consistent with their gender identities (*i.e.*, "allow[] men to intrude into women's bathrooms"). Dkt. No. 65 at 5. Deputy Attorney General Blanche's statement contradicts the decisions of multiple appellate courts that have held that federal law forbids discrimination based on transgender status. *See e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616–17 (4th

Cir. 2020) (transgender student's exclusion from bathroom constituted Title IX discrimination); *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 769 (7th Cir. 2023) ("[D]iscrimination against transgender persons is sex discrimination for Title IX purposes . . . ."). And as recently as July 29, 2025, U.S. Attorney General Pam Bondi issued a memorandum titled "Guidance for Recipients of Federal Funds regarding Unlawful Discrimination" in which she purports to "clarif[y] the application of federal antidiscrimination laws to programs or initiatives that may involve discriminatory practices, including those labeled as Diversity, Equity, and Inclusion ("DEI") programs." Dkt. No. 331, Ex. A at 1. Among other "clarifications", Attorney General Bondi states that the use of "[f]acially neutral criteria (e.g., 'cultural competence,' 'lived experience,' geographic targeting) that function as proxies for protected characteristics violate federal law if designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics." *Id*. at 2. This "clarification," however, is inconsistent with Supreme Court precedent that has "consistently declined to find constitutionally suspect" the adoption of race-neutral criteria "out of a desire . . . to improve racial diversity and inclusion"—even where the decision-maker was "well aware" the race-neutral criteria "correlated with race." *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 885–86 (4th Cir. 2023) (internal quotation marks and citation omitted) (citing, *inter alia*, *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 545 (2015). Nor does Supreme Court precedent prohibit the use of diversity statements for the purpose of advancing racial diversity goals; to the contrary, in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, the Court described these goals as "commendable" and "worthy" (though insufficient to justify race-based admissions). 600 U.S. 181, 214-15, 230

(2023) ("[N]othing in this opinion should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise."); *United States v. Skrmetti*, 145 S. Ct. 1816, 1854 (2025) (Thomas, J., concurring) (suggesting strict scrutiny does not apply to "a university's decision to credit 'an applicant's discussion of how race affected his or her life'" simply because it is "inextricably bound up with" the applicant's race) (cleaned up).

The above demonstrates that Plaintiffs are at the mercy of Defendants' interpretation of federal antidiscrimination laws, regardless of how those laws are interpreted by the courts. Indeed, this has already played out in this case where HUD recently informed King County that it was rejecting King County's CDBG Consolidated Plan submission for Program Year 2025 because HUD "is questioning the accuracy of King County's … certification that the [CDBG] funds described in [the plan] will be administered in conformity with applicable laws, including Executive Orders." Dkt. No. 223 at 5-6. Among other reasons HUD expressed concern was King County's use of words such as "equity," "migrant," and "immigrant" throughout the plan. *Id*. at 6-8. In order to assuage HUD's concerns, King County was instructed to replace "all 'equity' references" throughout the plan with "activities and actions that do not violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964" and to replace all references to "migrant" and "immigrant" with "legal/documented migrant/immigrant." *Id*. at 8. However, as Plaintiffs aptly point out, "[n]o case law … suggests that using words like 'equity' or 'migrant' violates *any* law." dkt. no. 335 at 3, thus refuting Defendants' claim that the challenged funding requirements "merely require grant recipients to

agree to comply with existing federal laws, like federal antidiscrimination laws," dkt. no. 334 at 8.[9]

Moreover, Defendants' ability to impose the challenged conditions on the non-CoC HUD grants is further constrained by 42 U.S.C. § 12711, which prohibits HUD from "denying funds made available under [HUD] programs . . . based on the adoption, continuation, or discontinuation" of any lawful local policies. Stated differently, "HUD may not … *condition* funding on changes to local policies." *Cnty. of Westchester v. U.S. Dep't of Housing and Urban Dev.*, 802 F.3d 413, 433 (2d Cir. 2015) (emphasis in original). Yet that is exactly what Defendants attempt to do here; they are leveraging the Non-CoC HUD Plaintiffs' dependence on federal funding to coerce them into replacing their own local policies with the Trump Administration's political agenda.

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[9] Nor are the new funding conditions authorized by PRWORA or the Hyde Amendment as Defendants claim. The challenged funding conditions purport to require non-CoC HUD Plaintiffs to "use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States." Dkt. No. 184 at ¶¶ 492, 517. While PRWORA does provide that noncitizens without qualifying immigration status are ineligible for certain "Federal public benefit[s]," 8 U.S.C. § 1611(a), it does not require grant recipients to verify eligibility *until* the U.S. Attorney General has promulgated regulations implementing a verification requirement. *See id*. § 1642(a); § 1642(b) ("Not later than 24 months after the date the regulations described in subsection (a) are adopted, a State that administers a program that provides a Federal public benefit shall have in effect a verification system that complies with the regulations."). The Attorney General is yet to promulgate a final regulation implementing a verification requirement. *See* Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 (Nov. 17, 1997); Verification of Eligibility for Public Benefits, 63 Fed. Reg. 41662 (Aug. 4, 1998) (proposed rule). By requiring grant recipients to verify eligibility by using SAVE (or an equivalent system) without the benefit of implementing regulations and/or the two-year ramp-up period, Defendants are attempting to rewrite PRWORA, not implement it.

The Hyde Amendment also does not authorize the challenged funding condition that requires the Non-CoC HUD Plaintiffs to certify that no grant funds will be used "to promote elective abortions." Dkt. No. 1854 at ¶¶ 494, 520. The Hyde Amendment bars use of federal funds to pay for or to require a person to facilitate an abortion; it does not prohibit federally funded programs from promoting elective abortions, which could be read to include providing program participants with information about lawful abortions. Pub. L. 118-42, §§ 202–03, 138 Stat. 153.

Lastly, the challenged funding conditions conflict with statutory provisions authorizing the HUD grant programs. Far from barring diversity-related "inclusion," Congress *requires* consideration of diversity when allocating HUD funds. For instance, the HUD Secretary is required to set aside CDBG funds for "[s]pecial purpose grants," including grants to "historically Black colleges." 42 U.S.C. § 5307(b)(2); *see also id*. § 5307(c) (requiring CDBG funds be allocated to provide "assistance to economically disadvantaged and minority students"). And in authorizing the HOME and HOPWA programs, Congress acted to "improve housing opportunities for all residents of the United States, particularly members of disadvantaged minorities, on a nondiscriminatory basis." 42 U.S.C. § 12702(3). Congress also requires HOME recipients "to establish and oversee a minority outreach program . . . to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women . . . in all contracts[] entered into by the participating jurisdiction." 42 U.S.C. § 12831(a).

Based on the foregoing, the Court concludes that the Non-CoC HUD Plaintiffs are likely to prevail on their claim that in attempting to impose the challenged funding conditions on the recipients of non-CoC funds, Defendants have run afoul of the Separation of Powers doctrine, and are acting in excess of statutory authority, and that under the APA, those conditions must be set aside.

(c) The HHS Grants Funding Conditions

Defendants' attempts to identify statutory authority for imposing the contested conditions on the HHS grants suffer from similar deficiencies. As an initial matter, Defendants once again rely on agency regulations for the authority to impose the conditions, but as noted above, agency regulations are not the equivalent of statutory authority, and HHS' attempt to rely on them also

fails. Nor does Defendants' reliance on generic statutory provisions authorizing the HHS Secretary to prescribe the "form and manner" for grant applications and the "information" it must "contain" fair any better. Dkt. No. 335 at 6 (citing 42 U.S.C. §§ 254b(k)(1), 300ff-15(a), (b), 290ee-1(b)(1)(B)). These provisions only encompass prescriptions as to form, manner, and information, and Defendants' claim that such ministerial provision authorize wide-ranging substantive conditions on hotly debated policy choices runs afoul of the well-established principle that "Congress … does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001).

Defendants also invoke Title IX of the Education Amendments Act of 1972, which prohibits sex discrimination by federal education funding recipients, as authority for requiring HHS grant recipients to comply with Presidential Executive Order 14168 "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government." This Executive Order mandates that "[f]ederal funds shall not be used to promote gender ideology" and requires grant recipients to "recognize two sexes, male and female" and that "[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality." But nothing in Title IX mandates such understandings. To the contrary, as cited above courts have concluded that failure to recognize an individual's transgender status constituted discrimination under Title IX. *See e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616–17 (4th Cir. 2020) (transgender student's exclusion from bathroom constituted Title IX discrimination); *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 769 (7th Cir. 2023) ("[D]iscrimination against transgender persons is sex discrimination for Title IX purposes

. . . .”). As such, far from enforcing Title IX, Defendants seek to graft new requirements into the statute.

Accordingly, the Court concludes that the HHS Plaintiffs are likely to prevail on their claim that in attempting to impose the conditions in the 2025 HHS GPS and the various operating agencies and divisions’ terms and conditions, Defendants have acted in a manner that violates the Separation of Powers doctrine and exceeds statutory authority, and that under the APA those conditions must be set aside.

2. Defendants’ Actions Were “Arbitrary and Capricious,” 5 U.S.C. § 702(2)(A) (Count 5)

Plaintiffs also assert that the challenged conditions must be set aside as “arbitrary” and “capricious.” 5 U.S.C. § 706(2)(A); Dkt. No. 184 at ¶¶ 671-688. The APA requires agencies to engage in “reasoned decisionmaking,” and their actions must be “reasonable and reasonably explained.” *Michigan v. EPA*, 576 U.S. 743, 750 (2015); *Ohio v. EPA*, 603 U.S. 279, 292 (2024) (cleaned up). An agency must offer “a satisfactory explanation for its action,” and cannot rely on “factors which Congress has not intended it to consider.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Plaintiffs maintain that Defendants have not followed these prescriptions and have failed to provide reasonable explanations for any of the challenged funding conditions.

Defendants do not dispute that they have not offered contemporary, reasoned explanations for the imposition of the challenged funding conditions; rather, they argue that they are not required to do so because the conditions are not subject to notice-and-comment rulemaking. Defendants are mistaken. “The APA, by its terms, provides a right to judicial review of all ‘final agency action for which there is no other adequate remedy in a court,’” *Bennett v.*

Spear, 520 U.S. 154, 175 (1997) (quoting 5 U.S.C. § 704), whether or not that action is subject to notice-and-comment rulemaking. *See Cal. Communities Against Toxics v. EPA*, 934 F.3d 627, 635–36 (D.C. Cir. 2019). Defendants do not contest that the challenged funding conditions are final agency actions. As such, each agency must have "reasonably considered the relevant issues and reasonably explained its decision" to impose the challenged conditions. *Barton v. Off. of Navajo*, 125 F.4th 978, 982 (9th Cir. 2025) (cleaned up).

At most, the Defendants rely on reference to the Trump Administration's executive orders to justify the imposition of the challenged funding conditions, but as this Court previously stated "rote incorporation of executive orders—especially ones involving politically charged policy matters that are the subject of intense disagreement and bear no substantive relations to the agency's underlying action—does not constitute 'reasoned decisionmaking.'" Dkt. No. 169 at 38. Thus, the Court concludes that Plaintiffs are likely to succeed on the merit of their claim that Defendants' imposition of the challenged funding conditions is arbitrary and capricious, which is an independent ground for setting aide those conditions.[10]

[10] Plaintiffs have asserted several other claims both under the APA and under the Constitution. See Dkt. No. 184 at ¶¶ 630-669, 704-724. The Court does not reach these claims at this stage, in part because "[t]he Court need only find that Plaintiffs are likely to succeed on one of [their] claims for [the likelihood-of-success] factor to weigh in favor of a preliminary injunction," and a ruling on Plaintiffs' additional claims would not affect the relief afforded. *Aids Vaccine Advoc. Coal. v. United States Dep't of State*, No. CV 25-00400 (AHA), 2025 WL 752378, at *7 (D.D.C. Mar. 10, 2025). Furthermore, the Court adheres to the "fundamental and longstanding principle of judicial restraint" that requires courts to "avoid reaching constitutional questions in advance of the necessity of deciding them." *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, No. 22-55988, 2024 WL 5692756, at *14 (9th Cir. May 14, 2025) (vacating district court's "entry of judgment for Plaintiffs on the constitutional due process claim" where judgment was granted in Plaintiffs' favor on APA claim) (citing *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988)); *see also Washington v. Trump*, 441 F. Supp. 3d 1101, 1125 (W.D. Wash. 2020) ("[A] court should not reach a constitutional question if there is some other ground upon which to dispose of the case. Given that this Court has already determined that Defendants' [action] violates the APA and, therefore, can dispose of the case on that basis, the Court exercises restraint and declines to reach the constitutional claims raised by Washington.") (cleaned up, citing *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 205 (2009); *Harmon v. Brucker*, 355 U.S. 579, 581 (1958)). Because Plaintiffs are likely to prevail on Counts 5, 6 and 7 of their Second Amended Complaint—that the challenged actions were arbitrary and capricious, contrary to the constitutional Separation of

D. Irreparable Injury

A plaintiff seeking a preliminary injunction must establish that it is likely to suffer irreparable harm in the absence of preliminary relief. *Winter*, 555 U.S. at 20. Such harm "is traditionally defined as harm for which there is no adequate legal remedy, such as an award of damages." *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (citing *Rent–A–Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir.1991)).

The Court addressed this issue when previously granting preliminary relief, stating:

> Plaintiffs allege several forms of irreparable harm that are either presently occurring, or are likely to occur, in the absence of injunctive relief. They are facing a choice between two untenable options; as this Court has already determined, 'Defendants have put Plaintiffs in the position of having to choose between accepting conditions that they believe are unconstitutional and risking the loss of hundreds of millions of dollars in federal grant funding, including funding that they have already budgeted and are committed to spending.' On the one hand, being forced to accept conditions that are contrary either to statute or to the Constitution (or both) is a constitutional injury, and constitutional injuries are 'unquestionably' irreparable. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017).
>
> On the other hand, avoiding the constitutional offense by refusing to agree to the new funding conditions may very well result in the loss of access to promised grant funds. And indeed, Defendants have not denied that Plaintiffs would be assuming this risk by not signing the agreements. They merely complain that Plaintiffs have not provided details as to when exactly that loss will occur. But this argument misses the point. It is this looming risk itself that is the injury, and one that Plaintiffs are already suffering. Courts evaluating similar circumstances have recognized that this injury of acute budgetary uncertainty is irreparable; '[w]ithout clarification regarding the Order's scope or legality, the Counties will be obligated to take steps to mitigate the risk of losing millions of dollars in federal funding, which will include placing funds in reserve and making cuts to services. These mitigating steps will cause the Counties irreparable harm.' *Santa Clara v. Trump*, 250 F. Supp. 3d 497, 537 (N.D. Cal. 2017). While a preliminary injunction will not eliminate these risks entirely, Plaintiffs have demonstrated it will at least mitigate them pending

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Powers doctrine, and in excess of Defendants' statutory authority, and must therefore be set aside under the APA—the Court's inquiry into the likelihood-of-success factor is at an end.

> resolution of this case on its merits.
>
> Furthermore, Plaintiffs have submitted substantive and detailed evidence illustrating the ways in which a loss of grant funds would be devastating and irreparable if these risks in fact materialize. . . . . The administration's attempt to compel Plaintiffs' compliance with unrelated policy objectives by leveraging the needs of our most vulnerable fellow human beings is breathtaking in its callousness. Defendants' argument that these harms are not irreparable is simply wrong.

Dkt. No. 169 at 39-42 (some internal citations omitted).

Plaintiffs have once again provided comprehensive evidence (in the form of nearly 100 declarations from local government and agency administrators, *see* dkt. nos. 187-282) demonstrating that should the loss of the grant funds come to pass, the resulting harm would be severe and irreparable. In addition, Plaintiffs have provided substantial evidence demonstrating that this harm is not, as Defendants suggest, merely monetary in nature. Adequate financial compensation for the destabilization of immediate and future budgets, reductions in workforce, hundreds of shelter-unstable families losing access to housing, loss of access to health care services to vulnerable populations, and the termination of transportation projects simply does not exist. Therefore, the Court concludes that the harms Plaintiffs have alleged are quintessentially irreparable in nature and can be avoided only by entry of the requested injunction.

E. The Balance of Equities and Public Interest Favor Plaintiffs

In deciding whether to grant an injunction, "courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Disney Enters*, 869 F.3d at 866 (quoting *Winter*, 555 U.S. at 24). Courts "explore the relative harms to applicant and respondent, as well as the interests of the public at large." *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991) (internal quotation marks and citation omitted). Where the government is a party, the balance of equities

and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

Defendants once again argue that the balance of equities and the public interest favor Defendants because "[en]suring compliance with federal laws is assuredly in the public interest." Dkt. No. 334 at 14. But as discussed *supra*, the contested funding conditions are not congressionally authorized, nor do they merely seek compliance with federal law. Defendants do not have a legitimate interest in ensuring that funds are spent pursuant to conditions that were likely imposed in violation of the APA and/or the Constitution. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (there is no legitimate government interest in violating federal law). Defendants also contend that "Plaintiffs could be compensated for any lost money after a ruling on the merits" in this case. Dkt. No. 334 at 14. The Court has already rejected the notion that Plaintiffs could be adequately compensated for the devastation that would result from the loss of the federal funding. Thus, for the reasons outlined above, the irreparable harms Plaintiffs face in the absence of an injunction tip the balance of equities sharply in their favor.

F. The Court Denies Defendants' Request for a Bond and Request to Stay

Defendants request that if this Court issues an injunction, it be stayed pending any appeal and further requests that this Court require Plaintiffs to post a bond for the value of the specific grants subject to the injunction pursuant to Fed. R. Civ. P. 65(c). The Court denies both requests. Defendants have not met the standard for a stay. *See*, *e.g.*, *Maryland v. Dep't of Agriculture*, JKB-25-0748, 2025 WL 800216, at *26 (D. Md. Mar. 13, 2025) ("It is generally logically inconsistent for a court to issue a TRO or preliminary injunction and then stay that order, as the findings on which those decisions are premised are almost perfect opposites."). Nor have Defendants argued,

let alone demonstrated, that they will suffer any material harm from the injunction the Court issues today. "Despite the seemingly mandatory language, Rule 65(c) invests the district court with discretion as to the amount of security required, if any." *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (citations and internal quotation marks omitted). "In particular, the district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Id.* (cleaned up).

V. CONCLUSION

For the foregoing reasons,

1. Plaintiffs' Third Motion for Preliminary Injunction is GRANTED;

2. HUD and its officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them (collectively "Enjoined HUD CoC Parties"), are enjoined from (1) imposing or enforcing the CoC Grant Conditions, as defined in the Appendix II to this Order, or any materially similar terms or conditions at any stage of the grantmaking process, including but not limited to in new grant applications, notices of funding availability or opportunity, certifications, grant agreements, or post-award submissions, with respect to any CoC funds awarded to the New CoC Plaintiffs or members of their Continuums; (2) as to the New CoC Plaintiffs or members of their Continuums, rescinding, withholding, cancelling, or otherwise not processing any CoC Agreements, or pausing, freezing, impeding, blocking, cancelling, terminating, delaying, withholding, or conditioning CoC funds, based on such terms or conditions, including without limitation failing or refusing to process and otherwise implement grants signed with changes or other objections to conditions enjoined by this preliminary injunction; (3) requiring the New CoC Plaintiffs or members of their

Continuums to make any "certification" or other representation related to compliance with such terms or conditions; or (4) refusing to issue, process, or sign CoC Agreements based on New CoC Plaintiffs' participation in this lawsuit;

3. The Enjoined HUD CoC Parties shall immediately treat any actions taken to implement or enforce the CoC Grant Conditions or any materially similar terms or conditions as to the New CoC Plaintiffs or their Continuums, including but not limited to any delays or withholding of funds based on such conditions, as null, void, and rescinded; while this preliminary injunction is in effect, shall treat as null and void any such conditions included in any grant agreement executed by any New CoC Plaintiff or member of a New CoC Plaintiff's Continuum; and may not retroactively apply such conditions to grant agreements during the effective period of this preliminary injunction. The Enjoined HUD CoC Parties shall immediately take every step necessary to effectuate this order, including without limitation clearing any administrative, operational, or technical hurdles to implementation;

4. HUD, all of the HUD program offices, and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them (collectively "Enjoined HUD Parties"), are enjoined from (1) imposing or enforcing the Non-CoC HUD Grant Conditions, as defined in the Appendix II to this Order, or any materially similar terms or conditions at any stage of the grant-making process, including but not limited to in new grant applications, notices of funding availability or opportunity, certifications, grant agreements, or post-award submissions, with respect to any non-CoC HUD funds awarded to the Non-CoC HUD Plaintiffs, their consortia, or their subrecipients; (2) as to the Non-CoC HUD Plaintiffs, their consortia, or their subrecipients, rescinding, withholding, cancelling, or otherwise

not processing any non-CoC HUD awards, or pausing, freezing, impeding, blocking, cancelling, terminating, delaying, withholding, or conditioning non-CoC HUD funds, based on such terms or conditions, including without limitation failing or refusing to process and otherwise implement grants signed with changes or other objections to conditions enjoined by this preliminary injunction; (3) requiring the Non-CoC HUD Plaintiffs, their consortia, or their subrecipients to make any "certification" or other representation related to compliance with such terms or conditions; or (4) refusing to issue, process, or sign grant agreements based on the Non-CoC HUD Plaintiffs' participation in this lawsuit;

5. The Enjoined HUD Parties shall immediately treat any actions taken to implement or enforce the Non-CoC HUD Grant Conditions or any materially similar terms or conditions as to the Non-CoC HUD Plaintiffs, their consortia, or their subrecipients, including but not limited to any delays or withholding of funds based on such conditions, as null, void, and rescinded; while this preliminary injunction is in effect, shall treat as null and void any such conditions included in any grant agreement executed by any Non-CoC HUD Plaintiff, a member of its consortium, or its subrecipient; and may not retroactively apply such conditions to grant agreements during the effective period of this preliminary injunction. The Enjoined HUD Parties shall immediately take every step necessary to effectuate this order, including without limitation clearing any administrative, operational, or technical hurdles to implementation;

6. DOT, all of the DOT operating agencies, and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them (collectively "Enjoined DOT Parties"), are enjoined from (1) imposing or enforcing the DOT Grant Conditions, as defined in the Appendix II to this Order, or any materially similar

terms or conditions at any stage of the grant-making process, including but not limited to in new grant applications, notices of funding availability or opportunity, certifications, grant agreements, or post-award submissions, as to any DOT funds awarded, directly or indirectly, to the New DOT Plaintiffs or their subrecipients; (2) as to the New DOT Plaintiffs or their subrecipients, rescinding, withholding, cancelling, or otherwise not processing the DOT grant awards, or pausing, freezing, impeding, blocking, canceling, terminating, delaying, withholding, or conditioning DOT funds, based on such terms or conditions, including without limitation failing or refusing to process and otherwise implement grants signed with changes or other objections to conditions enjoined by this preliminary injunction; (3) requiring the New DOT Plaintiffs or their subrecipients to make any "certification" or other representation related to compliance with such terms or conditions; or (4) refusing to issue, process, or sign grant agreements based on New DOT Plaintiffs' participation in this lawsuit;

7. The Enjoined DOT Parties shall immediately treat any actions taken to implement or enforce the DOT Grant Conditions or any materially similar terms or conditions as to DOT funds awarded, directly or indirectly, to the New DOT Plaintiffs or their subrecipients, including but not limited to any delays or withholding of funds based on such conditions, as null, void, and rescinded; while this preliminary injunction is in effect, shall treat as null and void any such conditions included in any grant agreement executed by any New DOT Plaintiff or its subrecipient; and may not retroactively apply such conditions to grant agreements during the effective period of this preliminary injunction. The Enjoined DOT Parties shall immediately take every step necessary to effectuate this order, including without limitation clearing any administrative, operational, or technical hurdles to implementation;

8. HHS, all of the HHS operating divisions and agencies, and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them (collectively "Enjoined HHS Parties"), are enjoined from (1) imposing or enforcing the HHS Grant Conditions, as defined in the Appendix II to this Order, or any materially similar terms or conditions at any stage of the grant-making process, including but not limited to in new grant applications, notices of funding availability or opportunity, certifications, grant agreements, or post-award submissions, as to any HHS funds awarded, directly or indirectly, to the HHS Plaintiffs or their subrecipients; (2) as to the HHS Plaintiffs or their subrecipients, rescinding, withholding, cancelling, or otherwise not processing HHS grant awards, or pausing, freezing, impeding, blocking, canceling, terminating, delaying, withholding, or conditioning HHS funds, based on such terms or conditions, including without limitation failing or refusing to process and otherwise implement grants signed with changes or other objections to conditions enjoined by this preliminary injunction; (3) requiring the HHS Plaintiffs or their subrecipients to make any "certification" or other representation related to compliance with such terms or conditions; or (4) refusing to issue, process, or sign grant agreements based on HHS Plaintiffs' participation in this lawsuit;

9. The Enjoined HHS Parties shall immediately treat any actions taken to implement or enforce the HHS Grant Conditions or any materially similar terms or conditions as to HHS funds awarded, directly or indirectly, to the HHS Plaintiffs or their subrecipients, including but not limited to any delays or withholding of funds based on such conditions, as null, void, and rescinded; while this preliminary injunction is in effect, shall treat as null and void any such conditions included in any grant agreement executed by any HHS Plaintiff or its subrecipient;

and may not retroactively apply such conditions to grant agreements during the effective period of this preliminary injunction. The Enjoined HHS Parties shall immediately take every step necessary to effectuate this order, including without limitation clearing any administrative, operational, or technical hurdles to implementation;

10. Defendants' counsel shall provide written notice of this Order to all Defendants and their employees by the end of business on the second day after issuance of this Order;

11. By the end of business on the second day after issuance of this Order, the Defendants SHALL FILE on the Court's electronic docket and serve upon Plaintiffs a Status Report documenting the actions that they have taken to comply with this Order, including a copy of the foregoing notice (paragraph 10 above) and an explanation as to whom the notice was sent;

12. This order shall remain in effect pending further orders from this Court.

Dated this 12th day of August 2025.

Barbara Jacobs Rothstein
U.S. District Court Judge

APPENDIX I

A. Complaint filed May 2, 2025

1. Plaintiffs

a. CoC Plaintiffs[11]

King County, Pierce County, Snohomish County, City and County of San Francisco, Santa Clara County, Boston, Columbus, and New York City.

b. DOT Plaintiff

King County

2. Defendants

United States Department of Housing and Urban Development ("HUD"), Department of Transportation ("DOT"), and the Federal Transit Administration ("FTA"), as well as the agencies' heads in their official capacities (Scott Turner in his official capacity as Secretary of HUD, Sean Duffy in his official capacity as Secretary of DOT, and Matthew Welbes in his official capacity as acting Director of the FTA).

B. First Amended Complaint filed May 21, 2025

1. Plaintiffs added:

a. Added CoC Plaintiffs

Metropolitan Government of Nashville & Davidson County ("Nashville"), Pima County, Cambridge, San Jose, Pasadena, Tucson, King County Regional Homelessness Authority located in King County, Washington ("King County RHA"), Santa Monica Housing Authority, California ("Santa Monica HA")

b. Added DOT Plaintiffs

Denver, Nashville, Pima County, Sonoma County, Bend, Chicago, Culver City, Minneapolis, Pittsburgh, San Jose, Santa Monica, Tucson, Wilsonville, Central Puget Sound Regional Transit Authority located in King, Pierce, and Snohomish Counties, Washington ("CPSRTA"), Intercity Transit located in Thurston County, Washington ("Intercity Transit"), Port

[11] A Plaintiff may be included in more than one Plaintiff Group.

of Seattle, San Francisco County Transportation Authority, located in the City and County of San Francisco, California ("SFCTA"), and Treasure Island Mobility Management Agency located in Treasure Island and Yerba Buena Island, California ("TIMMA")

2. Defendants added

Federal Highway Administration ("FHWA"), the Federal Aviation Administration ("FAA"), the Federal Railroad Administration ("FRA"), and component heads in their official capacities (Tariq Bokhari as the acting Administrator of FTA,[12] Gloria M. Shepard as the acting Director of FHWA, Chris Rocheleau as acting Administrator of FAA, and Drew Feeley as acting Administrator of FRA).

C. Second Amended Complaint filed July 10, 2025

1. Plaintiffs Added [13]

a. CoC Plaintiffs

Alameda County, Albuquerque, Baltimore, Columbus, Dane County, Hennepin County, Milwaukee, Multnomah County, Oakland, Petaluma, Ramsey County, San Mateo County, and Sonoma County.

b. DOT Plaintiffs

Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Cambridge, Dane County, Eugene, Healdsburg, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Milwaukee County, Multnomah County, Oakland, Pacifica, Pasadena, Petaluma, PSRC, Ramsey County, Rochester, Rohnert Park, San Diego, San Mateo County, Santa Rosa, SCTA, and Watsonville.

c. Non-CoC HUD Plaintiffs

King County, Pierce County, Snohomish County, Boston, Columbus, San Francisco, Santa Clara, NYC, Bend Cambridge, Chicago, Culver City, Minneapolis, Nashville, Pasadena, Pima County, Pittsburgh, Portland, San Jose, Santa Monica, Tucson, King County RHA, Santa Monica HA, Alameda County, Albuquerque, Baltimore, Bellevue, Bellingham, Bremerton, Dane County, Eugene, Hennepin County, Kitsap County, Los Angeles, Milwaukee, Multnomah County, Oakland,

[12] Replacing Matthew Welbes in his official capacity as acting Director of the FTA.
[13] Some of these are new Plaintiffs; some are previous Plaintiffs but with new claims.

Petaluma, Ramsey County, Rochester, San Diego, San Mateo County, Santa Rosa, Sonoma County, Watsonville, CCHA, and SCCDC

d. HHS Plaintiffs

Alameda County, Baltimore, Boston, Cambridge, Chicago, Columbus, Dane County, Denver, Eugene, Hennepin County, King County, Milwaukee, Minneapolis, Multnomah County, NYC, Oakland, Pacifica, Pierce County, Pima County, Ramsey County, Rochester, San Francisco, Santa Clara, San Mateo County, Snohomish County, and Wilsonville.

2. Defendants added

HHS and its agencies, including the Administration for Children and Families ("ACF"), Health Resources and Services Administration ("HRSA"), National Institutes of Health ("NIH"), Substance Abuse and Mental Health Services Administration ("SAMHSA"), and the Centers for Disease Control and Prevention ("CDC"), as well as Robert F. Kennedy in his official capacity as the Secretary of HHS.

APPENDIX II

The **"CoC Grant Conditions"** enjoined by this Order are the following terms and conditions:

- The recipient or applicant shall not use grant funds to promote "gender ideology," as defined in Executive Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;
- The recipient or applicant agrees that its compliance in all respects with all applicable Federal antidiscrimination laws is material to the U.S. Government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;
- The recipient or applicant certifies that it does not operate any programs that violate any applicable Federal anti-discrimination laws, including Title VI of the Civil Rights Act of 1964;
- The recipient or applicant shall not use any Grant Funds to fund or promote elective abortions, as required by Executive Order 14182, Enforcing the Hyde Amendment;

- The recipient or applicant must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) ("PRWORA") and any applicable requirements that HUD, the Attorney General, or the U.S. Center for Immigration Services [sic] may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws;

- No state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation;

- Subject to the exceptions provided by PRWORA, the recipient or applicant must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States;

- The recipient or applicant agrees that use of Grant Funds and its operation of projects assisted with Grant Funds are governed by all Executive Orders.

The **"Non-CoC HUD Grant Conditions"** enjoined by this Order are the following terms and conditions:

- The recipient or applicant will not use Federal funding to promote diversity, equity, and inclusion ("DEI") mandates, policies, programs, or activities that violate any applicable Federal antidiscrimination laws;

- The recipient or applicant shall not use grant funds to promote "gender ideology," as defined in Executive Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;

- The recipient or applicant agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the

U.S. Government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;

– The recipient or applicant certifies that it does not operate any programs that violate any applicable Federal antidiscrimination laws, including Title VI of the Civil Rights Act of 1964;

– The recipient or applicant shall not use any grant funds to fund or promote elective abortions, as required by Executive Order 14182, Enforcing the Hyde Amendment;

– The recipient or applicant must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (8 U.S.C. 1601-1646) ("PRWORA") and any applicable requirements that HUD, the Attorney General, or the U.S. Citizenship and Immigration Services may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws;

– If applicable, no state or unit of general local government that receives or applies for funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation;

– Unless excepted by PRWORA, the recipient or applicant must use SAVE, or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.

– The recipient or applicant must comply with applicable existing and future Executive Orders, as advised by the Department, including but not limited to E.O. 14182, Enforcing the Hyde Amendment; Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity; Executive Order 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government; and Executive Order 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing.

The **"DOT Grant Conditions"** enjoined by this Order are the following terms and conditions:

- Pursuant to section (3)(b)(iv)(A), Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, the recipient or applicant agrees that its compliance in all respects with all applicable Federal antidiscrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code;

- Pursuant to section (3)(b)(iv)(B), Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, by entering into this Agreement, the recipient or applicant certifies that it does not operate any programs promoting diversity, equity, and inclusion ("DEI") initiatives that violate any applicable Federal anti-discrimination laws;

- The recipient or applicant agrees to comply with executive orders, including but not limited to Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, as they relate to the application, acceptance, and use of Federal funds for this project or grant;

- The recipient or applicant will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement ("ICE") and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law;

- The recipient or applicant will follow applicable federal laws pertaining to Subchapter 12, and be subject to the penalties set forth in 8 U.S.C. § 1324, Bringing in and harboring certain aliens, and 8 U.S.C. § 1327, Aiding or assisting certain aliens to enter.

- The recipient or applicant must comply with other applicable federal nondiscrimination laws, regulations, and requirements, and follow federal guidance prohibiting discrimination;

- The recipient or applicant must comply with all applicable executive orders as they relate to the application, acceptance, and use of Federal funds for this Project;

> – Performance under this agreement or application shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the recipient or applicant and any applicable sub-recipients. The applicable provisions to this agreement or application include, but are not limited to, the following: Bringing in and harboring certain aliens – 8 U.S.C. 1324; Aiding or assisting certain aliens to enter – 8 U.S.C. 1327; Executive Order 14151, Ending Radical and Wasteful Government DEI Programs and Preferencing; Executive Order 14168 Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government; and Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity.

The **"HHS Grant Conditions"** enjoined by this Order are the following terms and conditions:

> – The recipient or applicant must comply with all applicable Federal anti-discrimination laws material to the government's payment decisions for purposes of 31 U.S.C. § 372(b)(4).
>
> (1) Definitions. As used in this clause –
>
> (a) DEI means "diversity, equity, and inclusion."
>
> (b) DEIA means "diversity, equity, inclusion, and accessibility."
>
> (c) Discriminatory equity ideology has the meaning set forth in Section 2(b) of Executive Order 14190 of January 29, 2025.
>
> . . . .
>
> (e) Federal anti-discrimination laws means Federal civil rights law that protect individual Americans from discrimination on the basis of race, color, sex, religion, and national origin.
>
> (2) Grant award certification.
>
> (a) By accepting the grant award, recipients are certifying that:
>
> (i) They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws;

- By applying for or accepting federal funds from HHS, recipients certify compliance with all federal antidiscrimination laws and these requirements and that complying with those laws is a material condition of receiving federal funding streams. Recipients are responsible for ensuring subrecipients, contractors, and partners also comply.

- All activities proposed in your application and budget narrative must be in alignment with the current Executive Orders;

- Recipients are required to comply with all applicable Executive Orders;

- Funds cannot be used to support or provide services, either directly or indirectly, to removable or illegal aliens;

- By accepting this award, including the obligation, expenditure, or drawdown of award funds, recipients or applicants, whose programs, are covered by Title IX certify as follows:

  > The recipient or applicant is compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and Recipient will remain compliant for the duration of the Agreement.
  >
  > The above requirements are conditions of payment that go the essence of the Agreement and are therefore material terms of the Agreement.
  >
  > Payments under the Agreement are predicated on compliance with the above requirements, and therefore the recipient or applicant is not eligible for funding under the Agreement or to retain any funding under the Agreement absent compliance with the above requirements.
  >
  > The recipient or applicant acknowledges that this certification reflects a change in the government's position regarding the materiality of the foregoing requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this Agreement.

The recipient or applicant acknowledges that a knowing false statement relating to recipient's or applicant's compliance with the above requirements and/or eligibility for the Agreement may subject the recipient or applicant to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001.

AAA AGREEMENT

Health Related Social Needs

DSHS CONTRACT #: 2569-65864

This Agreement is by and between the State of Washington Department of Social and Health Services (DSHS) and the Contractor identified below, and is issued pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.

Program Contract Number

Contractor Contract Number

CONTRACTOR NAME	CONTRACTOR DBA
Snohomish County	Snohomish County Aging & Disability Services Division

CONTRACTOR ADDRESS	CONTRACTOR DSHS INDEX NUMBER
3000 Rockefeller Avenue MS 502 Everett, WA 98201	1065

CONTRACTOR CONTACT TELEPHONE	CONTRACTOR FAX	CONTRACTOR E-MAIL ADDRESS
(425) 388-7360	(425) 388-7304	laura.white@snoco.org

DSHS ADMINISTRATION	DSHS DIVISION	DSHS CONTRACT CODE
Aging & Long Term Support Admin	Division of Home And Community Services	1928LS-69

DSHS CONTACT NAME AND TITLE	DSHS CONTACT ADDRESS
Paula Renz Program Manager	4450 10th Ave SE Lacey, WA 98504-5600

DSHS CONTACT TELEPHONE	DSHS CONTACT FAX	DSHS CONTACT E-MAIL ADDRESS
(360)725-2560	Click here to enter text.	paula.renz@dshs.wa.gov

IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT?	ASSISTANCE LISTING NUMBERS
No	

CONTRACT START DATE	**CONTRACT END DATE**	MAXIMUM CONTRACT AMOUNT
07/01/2025	06/30/2026	$1,931,100.00

ATTACHMENTS. The following Exhibits are attached to and incorporated into this Interlocal Agreement by reference:

☒ **Exhibits (specify): Exhibit A, Statement of Work, Exhibit B, Budget**

The terms and conditions of this Agreement are an integration and representation of the final, entire, and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Agreement. The parties signing below represent that they have read and understand this Agreement, and have the authority to execute this Agreement. This Agreement shall be binding on DSHS only upon signature by DSHS.

CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED

DSHS SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED

AAA General Terms And Conditions

1. **Amendment.** This Agreement, or any term or condition, may be modified only by a written amendment signed by both parties. Only personnel authorized to bind each of the parties shall sign an amendment.

2. **Assignment.** Except as otherwise provided herein, the AAA shall not assign rights or obligations derived from this Agreement to a third party without the prior, written consent of the DSHS Contracts Administrator and the written assumption of the AAA's obligations by the third party.

3. **Client Abuse.** The AAA shall report all instances of suspected client abuse to DSHS, in accordance with RCW 74.34.

4. **Client Grievance.** The AAA shall establish a system through which applicants for and recipients of services under the approved area plans may present grievances about the activities of the AAA or any subcontractor(s) related to service delivery. Clients receiving Medicaid funded services must be informed of their right to a fair hearing regarding service eligibility specified in WAC 388-02 and under the provisions of the Administrative Procedures Act, Chapter 34.05 RCW.

5. **Compliance with Applicable Law.** At all times during the term of this Agreement, the AAA and DSHS shall comply with all applicable federal, state, and local laws, regulations, and rules, including but not limited to, nondiscrimination laws and regulations.

6. **Confidentiality.** The parties shall use Personal Information and other confidential information gained by reason of this Agreement only for the purpose of this Agreement. DSHS and the AAA shall not otherwise disclose, transfer, or sell any such information to any other party, except as provided by law or, in the case of Personal Information except as provided by law or with the prior written consent of the person to whom the Personal Information pertains. The parties shall maintain the confidentiality of all Personal Information and other confidential information gained by reason of this Agreement and shall return or certify the destruction of such information if requested in writing by the party to the Agreement that provided the information.

7. **AAA Certification Regarding Ethics.** By signing this Agreement, the AAA certifies that the AAA is in compliance with Chapter 42.23 RCW and shall comply with Chapter 42.23 RCW throughout the term of this Agreement.

8. **Debarment Certification.** The AAA, by signature to this Agreement, certifies that the AAA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. The AAA also agrees to include the above requirement in all subcontracts into which it enters, resulting directly from the AAA's duty to provide services under this Agreement.

9. **Disputes.** In the event of a dispute between the AAA and DSHS, every effort shall be made to resolve the dispute informally and at the lowest level. If a dispute cannot be resolved informally, the AAA shall present their grievance in writing to the Assistant Secretary for Aging and Long-Term Support Administration. The Assistant Secretary shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. If the dispute remains unresolved after the Assistant Secretary's determination, either party may request intervention by the Secretary of DSHS, in which event the Secretary's process shall control. The Secretary will make a determination within 45 days. Participation in this dispute process shall precede any judicial or quasi-judicial action and shall be the final administrative remedy available to the parties. However, if the Secretary's determination is not made within 45 days, either party may proceed with judicial or quasi-judicial action without awaiting the Secretary's determination.

10. **Drug-Free Workplace.** The AAA shall maintain a work place free from alcohol and drug abuse.

11. Entire Agreement. This Agreement including all documents attached to or incorporated by reference, contain all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind the parties.

12. Governing Law and Venue. The laws of the State of Washington govern this Agreement. In the event of a lawsuit by the AAA against DSHS involving this Agreement, venue shall be proper only in Thurston County, Washington. In the event of a lawsuit by DSHS against a County AAA involving this Agreement, venue shall be proper only as provided in RCW 36.01.050.

13. Independent Status. Except as otherwise provided in Paragraph 26 herein below, for purposes of this Agreement, the AAA acknowledges that the AAA is not an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not hold out itself or any of its employees as, nor claim status as, an officer, employee, or agent of DSHS or the State of Washington. The AAA shall not claim for itself or its employees any rights, privileges, or benefits, which would accrue to an employee of the State of Washington. The AAA shall indemnify and hold harmless DSHS from all obligations to pay or withhold federal or state taxes or contributions on behalf of the AAA or the AAA's employees.

14. Inspection. Either party may request reasonable access to the other party's records and place of business for the limited purpose of monitoring, auditing, and evaluating the other party's compliance with this Agreement, and applicable laws and regulations. During the term of this Agreement and for one (1) year following termination or expiration of this Agreement, the parties shall, upon receiving reasonable written notice, provide the other party with access to its place of business and to its records which are relevant to its compliance with this Agreement and applicable laws and regulations. This provision shall not be construed to give either party access to the other party's records and place of business for any other purpose. Nothing herein shall be construed to authorize either party to possess or copy records of the other party.

15. AAA Provider Contracting Insurance Requirements

The AAA shall include the following insurance requirements in all AAA Provider Contracts entered into pursuant to this Contract, at AAA Provider Contractor's expense, the following insurance coverages, and comply with the following insurance requirements.

a. General Liability Insurance

The AAA Provider Contractor shall maintain Commercial General Liability Insurance or Business Liability Insurance, no less comprehensive than coverage under- Insurance Service Offices, Inc. (ISO) form CG 00-01, including coverage for bodily injury, property damage, and contractual liability. The amount of coverage shall be no less than $2,000,000 per occurrence and $4,000,000 General Aggregate. The policy shall include liability arising out of the parties' performance under their Contract, including but not limited to premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The AAA, its elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

b. In lieu of general liability insurance mentioned in Subsection a. above, if the AAA Provider Contractor is a sole proprietor with less than three (3) contracts, the AAA Provider Contractor may choose one of the following three (3) general liability policies, but only if attached to a professional liability policy. If selected the policy shall be maintained for the life of the contract.

Supplemental Liability Insurance, including coverage for bodily injury and property damage that will cover the AAA Provider Contractor wherever the service is performed with minimum limits of

$2,000,000 per occurrence; and $4,000,000 General Aggregate. The AAA, its elected and appointed officials, agents, and employees shall be named as additional insureds;

Or

Workplace Liability Insurance, including coverage for bodily injury and property damage that provides coverage wherever the service is performed with minimum limits of $2,000,000 per occurrence; and $4,000,000 General Aggregate. The AAA, its elected and appointed officials, agents, and employees shall be named as additional insured:

Or

Premises Liability Insurance if services are provided only at their recognized place of business, including coverage for bodily injury, property damage with minimum limits of $2,000,000 per occurrence; and $4,000,000 General Aggregate. The AAA, its elected and appointed officials, agents, and employees shall be named as additional insureds.

c. Professional Liability—if needed (errors & omissions)

The AAA Provider Contractor shall maintain insurance of at least $1,000,000 per occurrence, $2,000,000 General Aggregate for malpractice or errors and omissions coverage against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use, and damages because of negligent acts, errors, and omissions in any way related to this contract.

d. Workers' Compensation

The AAA contractor shall comply with all applicable Workers' Compensation, occupational disease, and occupational health and safety laws and regulations. The AAA, State of Washington, and DSHS shall not be held responsible for claims for Workers' Compensation under Title 51 RCW by the AAA Provider Contractor or its employees under such laws and regulations.

e. Employees and Volunteers

Insurance required of the AAA Provider Contractor under the Contract shall include coverage for the acts and omissions of the AAA Provider Contractor's employees and volunteers. In addition, the AAA Provider Contracts shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.

f. Separation of Insureds

All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision.

g. Insurers

The AAA contractor shall obtain insurance from insurance companies identified as an admitted insurer/carrier in the State of Washington, with a current Best's Reports' rating of A-, Class VII, or better.

h. Evidence of Coverage

The AAA Provider Contractor shall, upon request by AAA, submit a copy of the Certificate of Insurance, policy, and additional insured endorsement for each coverage required of the AAA Provider Contractor under this Contract. The Certificate of Insurance shall identify the AAA as the Certificate Holder. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract, shall execute each Certificate of Insurance.

The AAA Provider Contractor shall maintain copies of Certificate of Insurance, policies, and additional insured endorsements for each AAA Provider Contractor as evidence that each AAA Provider Contractor maintains insurance as required by the Contract.

i. Material Changes

The insurer shall give the AAA point of contact listed on page one of this Contract 45 days advance written notice of cancellation or non-renewal of any insurance policy required under this Contract. If cancellation is due to non-payment of premium, the insurer shall give the AAA ten (10) days advance written notice of cancellation. Failure to provide notice as required may result in termination of the Contract.

j. Waiver of Subrogation

AAA contractor waives all rights of subrogation against the AAA and DSHS for the recovery of damages are or would be covered by insurance required under the Contract. AAA contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies whether or not the AAA and DSHS receive the waiver of subrogation endorsement from the insurer.

k. Coverage Limits

By requiring insurance, the AAA does not represent that the coverage and limits required in this Contract will be adequate to protect the AAA Provider Contractor. Such coverage and limits shall not limit the AAA Provider Contractor's liability in excess of the required coverage and limits, and shall not limit the AAA Provider Contractor's liability under the indemnities and reimbursements granted to the AAA, the State, and DSHS in this Contract.

l. Primary Coverage

All AAA Provider Contractor's insurance provided in compliance with this Contract shall be primary and shall not seek contribution from insurance or self-insurance programs afforded to or maintained by the AAA. Insurance or self-insurance programs afforded to or maintained by the AAA shall be in excess of, and shall not contribute with, insurance required of the AAA Provider Contractor and any AAA Provider Contractor's Contractor under this Contract.

m. Waiver

The AAA contractor waives all rights, claims, and causes of action against the AAA, the State of Washington, and DSHS for the recovery of damages to the extent said damages are covered by insurance maintained by AAA Provider Contractor.

n. Liability Cap

Any limitation of liability cap set forth in this Contract shall not preclude the AAA from claiming under any insurance maintained by the AAA contractor pursuant to this Contract, up to the policy limits.

o. Business Automobile Liability Insurance

The AAA contractor shall maintain a Business Automobile Policy on all vehicles used to transport clients, including vehicles hired by the AAA contractor or owned by the AAA Provider Contractor's employees, volunteers or others, with the following minimum limits: $1,000,000 per accident combined single limit. The AAA Provider Contractor's carrier shall provide the AAA with a waiver of subrogation or name the AAA as an additional insured.

p. Indemnification and Hold Harmless

(1) The AAA Provider Contractor shall be responsible for and shall indemnify, defend, and hold the AAA and DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines, of whatsoever kind of nature, arising out of or relating to a) the AAA contractor's performance or failure to perform this Contract, or b) the acts or omissions of the AAA contractor.

(2) The AAA contractor's duty to indemnify, defend, and hold the AAA and DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines shall include the AAA and DSHS' personnel-related costs, reasonable attorney's fees, court costs, and all related expenses.

(3) The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.

(4) Nothing in this term shall be construed as a modification or limitation on the AAA contractor's obligation to procure insurance in accordance with this Contract or the scope of said insurance.

16. Insurance Required for AAA.

DSHS certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable.

The AAA certifies, by checking the appropriate box below, initialing to the left of the box selected, and signing this Agreement, that:

_____ ☐ The contractor is self-insured or insured through a risk pool and shall pay for losses for which it is found liable and shall, prior to the execution of this Agreement by DSHS, provide proof of coverage to the effect to the DSHS contact on page one of this Agreement.; or

_____☐ The Contractor maintains the types and amounts of insurance identified below and shall, prior to the execution of this Agreement by DSHS, provide certificates of insurance to the effect to the DSHS contact on page one of this Agreement.

Commercial General Liability Insurance (CGL)—to include coverage of bodily injury, property damage, and contractual liability, with the following minimum limits: Each occurrence--$2,000,000; General Aggregate--$4,000,000. The policy shall include liability arising out of premises, injury, and liability assumed under an insured contract. The State of Washington, DSHS, its elected and appointed officials, agents, and employees, shall be named as additional insureds.

17. Maintenance of Records. During the term of this Agreement and for six (6) years following termination or expiration of this Agreement, both parties shall maintain records sufficient to:

a. Document performance of all acts required by law, regulation, or this Agreement;

b. Demonstrate accounting procedures, practices, and records that sufficiently and properly document the AAA's invoices to DSHS and all expenditures made by the AAA to perform as required by this Agreement.

For the same period, the AAA shall maintain records sufficient to substantiate the AAA's statement of its organization's structure, tax status, capabilities, and performance.

18. Medicaid Fraud Control Unit (MFCU). As required by federal regulations, the Health Care Authority, the Department of Social and Health Services, and any contractors or subcontractors, shall promptly comply with all MFCU requests for records or information. Records and information includes, but is not limited to, records on micro-fiche, film, scanned or imaged documents, narratives, computer data, hard copy files, verbal information, or any other information the MFCU determines may be useful in carrying out its responsibilities.

19. Order of Precedence. In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:

a. Applicable federal CFR, CMS Waivers and Medicaid State Plan;

b. State of Washington statues and regulations;

c. ALTSA Management Bulletins and policy manuals;

d. This Agreement; and

e. The AAA's Area Plan.

20. Ownership of Client Assets. The AAA shall ensure that any client for whom the AAA or Subcontractor is providing services under this Agreement shall have unrestricted access to the client's personal property. For purposes of this paragraph, client's personal property does not pertain to client records. The AAA or Subcontractor shall not interfere with the client's ownership, possession, or use of such property. Upon termination of this Agreement, the AAA or Subcontractor shall immediately release to the client and/or DSHS all of the client's personal property.

21. Ownership of Material. Material created by the AAA and paid for by DSHS as a part of this Agreement shall be owned by DSHS and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the AAA uses to perform this Agreement but is not created for or paid for by DSHS is owned by the AAA and is not "work made for hire"; however, DSHS shall have a license of perpetual duration to use, modify, and distribute this material at no charge to DSHS, provided that such license shall be limited to the extent which the AAA has a right to grant such a license.

22. Ownership of Real Property, Equipment and Supplies Purchased by the AAA. Title to all property, equipment and supplies purchased by the AAA with funds from this Agreement shall vest in the AAA. When real property, or equipment with a per unit fair market value over $5000, is no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the per unit fair market value of equipment is under $5000, the AAA may retain, sell, or dispose of it with no further obligation. Proceeds from the sale or lease of property that was purchased with revenue accrued under the Case Management/Nursing Services unit rate must be expended in Medicaid TXIX or Aging Network programs.

When supplies with a total aggregate fair market value over $5000 are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS. If the total aggregate fair market value of equipment is under $5000, the AAA may retain, sell, or dispose of it with no further obligation.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.

23. Ownership of Real Property, Equipment and Supplies Purchased by DSHS. Title to property, equipment and supplies purchased by DSHS and provided to the AAA to carry out the activities of this Agreement shall remain with DSHS. When real property, equipment or supplies are no longer needed for the purpose of carrying out this Agreement, or this Agreement is terminated or expired and will not be renewed, the AAA shall request disposition instructions from DSHS.

Disposition and maintenance of property shall be in accordance with 45 CFR Parts 92 and 74.

24. Responsibility. Each party to this Agreement shall be responsible for the negligence of its officers, employees, and agents in the performance of this Agreement. No party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not party to this Agreement. DSHS and the AAA shall cooperate in the defense of tort lawsuits, when possible. Both parties agree and understand that this provision may not be feasible in all circumstances. DSHS and the AAA agree to notify the attorneys of record in any tort lawsuit where both are parties if either DSHS or the AAA enters into settlement negotiations. It is understood that the notice shall occur prior to any negotiations, or as soon as possible, and the notice may be either written or oral.

25. Restrictions Against Lobbying. The AAA certifies to the best of its knowledge and belief that no federal appropriated funds have been paid or will be paid, by or on behalf of the AAA, to any person for influencing or attempting to influence an officer or employee of a federal agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federal appropriated funds have or will be paid for the purposes stated above, the AAA must file a disclosure form in accordance with 45 CFR Section 93.110.

The AAA shall include a clause in all subcontracts restricting subcontractors from lobbying in accordance with this section and requiring subcontractors to certify and disclose accordingly.

26. Severability. The provisions of this Agreement are severable. If any court holds any provision of this Agreement, including any provision of any document incorporated by reference, invalid, that invalidity shall not affect the other provisions this Agreement.

27. Subcontracting.

a. The AAA may, without further notice to DSHS; subcontract for those services specifically defined in the Area Plan submitted to and approved by DSHS, except subcontracts with for-profit entities must have prior DSHS approval.

b. The AAA must obtain prior written approval from DSHS to subcontract for services not specifically defined in the approved Area Plan.

c. Any subcontracts shall be in writing and the AAA shall be responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all

client services Subcontracts unless an exception to including a particular term or terms has been approved in advance by DSHS.

d. Subcontractors are prohibited from subcontracting for direct client services without the prior written approval from the AAA.

e. When the nature of the service the subcontractor is to provide requires a certification, license or approval, the AAA may only subcontract with such contractors that have and agree to maintain the appropriate license, certification or accrediting requirements/standards.

f. In any contract or subcontract awarded to or by the AAA in which the authority to determine service recipient eligibility is delegated to the AAA or to a subcontractor, such contract or subcontract shall include a provision acceptable to DSHS that specifies how client eligibility will be determined and how service applicants and recipients will be informed of their right to a fair hearing in case of denial or termination of a service, or failure to act upon a request for services with reasonable promptness.

g. If DSHS, the AAA, and a subcontractor of the AAA are found by a jury or trier of fact to be jointly and severally liable for damages rising from any act or omission from the contract, then DSHS shall be responsible for its proportionate share, and the AAA shall be responsible for its proportionate share. Should the subcontractor be unable to satisfy its joint and several liability, DSHS and the AAA shall share in the subcontractor's unsatisfied proportionate share in direct proportion to the respective percentage of their fault as found by the jury or trier of fact. Nothing in this term shall be construed as creating a right or remedy of any kind or nature in any person or party other than DSHS and the AAA. This term shall not apply in the event of a settlement by either DSHS or the AAA.

h. Any subcontract shall designate subcontractor as AAA's Business Associate, as defined by HIPAA, and shall include provisions as required by HIPAA for Business Associate contract. AAA shall ensure that all client records and other PHI in possession of subcontractor are returned to AAA at the termination or expiration of the subcontract.

28. Subrecipients.

a. General. If the AAA is a subrecipient of federal awards as defined by 2 CFR Part 200 and this Agreement, the AAA shall:

(1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;

(2) Maintain internal controls that provide reasonable assurance that the AAA is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;

(3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;

(4) Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;

(5) Comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget

(OMB) Circular or regulation; and

(6) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to https://ojp.gov/about/offices/ocr.htm for additional information and access to the aforementioned Federal laws and regulations.)

b. Single Audit Act Compliance. If the AAA is a subrecipient and expends $750,000 or more in federal awards from all sources in any fiscal year, the AAA shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the AAA shall:

(1) Submit to the DSHS contact person the data collection form and reporting package specified in 2 CFR Part 200, Subpart F, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;

(2) Follow-up and develop corrective action for all audit findings; in accordance with 2 CFR Part 200, Subpart F; prepare a "Summary Schedule of Prior Audit Findings" reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs.

c. Overpayments. If it is determined by DSHS, or during the course of the required audit, that the AAA has been paid unallowable costs under this Agreement, DSHS may require the AAA to reimburse DSHS in accordance with 2 CFR Part 200.

(1) For any identified overpayment involving a subcontract between the AAA and a tribe, DSHS agrees it will not seek reimbursement from the AAA, if the identified overpayment was not due to any failure by the AAA.

29. Survivability. The terms and conditions contained in this Agreement, which by their sense and context, are intended to survive the expiration of the particular agreement shall survive. Surviving terms include, but are not limited to: Confidentiality, Disputes, Inspection, Maintenance of Records, Ownership of Material, Responsibility, Termination for Default, Termination Procedure, and Title to Property.

30. Contract Renegotiation, Suspension, or Termination Due to Change in Funding. If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this contract but prior to the normal completion of this Contract or Program Agreement:

a. The Contract or Program Agreement may be renegotiated under the revised funding conditions.

b. At DSHS's discretion, DSHS may give notice to the AAA to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.

(1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.

(2) When DSHS determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written

notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsubsection, "written notice" may include email.

(3) If the AAA's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

c. DSHS may immediately terminate this Contract by providing written notice to the AAA. The termination shall be effective on the date specified in the termination notice. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.

31. Termination for Convenience. The Contracts Administrator may terminate this Agreement or any in whole or in part for convenience by giving the AAA at least thirty (30) calendar days' written notice. The AAA may terminate this Agreement for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to: Central Contract Services, PO Box 45811, Olympia, Washington 98504-5811.

32. Termination for Default.

a. The Contracts Administrator may terminate this Agreement for default, in whole or in part, by written notice to the AAA, if DSHS has a reasonable basis to believe that the AAA has:

(1) Failed to meet or maintain any requirement for contracting with DSHS;

(2) Failed to perform under any provision of this Agreement;

(3) Violated any law, regulation, rule, or ordinance applicable to this Agreement; and/or

(4) Otherwise breached any provision or condition of this Agreement.

b. Before the Contracts Administrator may terminate this Agreement for default, DSHS shall provide the AAA with written notice of the AAA's noncompliance with the agreement and provide the AAA a reasonable opportunity to correct the AAA's noncompliance. If the AAA does not correct the AAA's noncompliance within the period of time specified in the written notice of noncompliance, the Contracts Administrator may then terminate the agreement. The Contracts Administrator may terminate the agreement for default without such written notice and without opportunity for correction if DSHS has a reasonable basis to believe that a client's health or safety is in jeopardy.

c. The AAA may terminate this Agreement for default, in whole or in part, by written notice to DSHS, if the AAA has a reasonable basis to believe that DSHS has:

(1) Failed to meet or maintain any requirement for contracting with the AAA;

(2) Failed to perform under any provision of this Agreement;

(3) Violated any law, regulation, rule, or ordinance applicable to this Agreement; and/or

(4) Otherwise breached any provision or condition of this Agreement.

d. Before the AAA may terminate this Agreement for default, the AAA shall provide DSHS with written notice of DSHS' noncompliance with the Agreement and provide DSHS a reasonable opportunity to correct DSHS' noncompliance. If DSHS does not correct DSHS' noncompliance within the period of time specified in the written notice of noncompliance, the AAA may then terminate the Agreement.

33. Termination Procedure. The following provisions apply in the event this Agreement is terminated:

a. The AAA shall cease to perform any services required by this Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination which are related to the transfer of clients, distribution of property, and termination of services.

b. The AAA shall promptly deliver to the DSHS contact person (or to his or her successor) listed on the first page this Agreement, all DSHS assets (property) in the AAA's possession, including any material created under this Agreement. Upon failure to return DSHS property within ten (10) working days of the Agreement termination, the AAA shall be charged with all reasonable costs of recovery, including transportation. The AAA shall take reasonable steps to protect and preserve any property of DSHS that is in the possession of the AAA pending return to DSHS.

c. DSHS shall be liable for and shall pay for only those services authorized and provided through the effective date of termination. DSHS may pay an amount mutually agreed by the parties for partially completed work and services, if work products are useful to or usable by DSHS.

d. If the Contracts Administrator terminates this Agreement for default, DSHS may withhold a sum from the final payment to the AAA that DSHS determines is necessary to protect DSHS against loss or additional liability. DSHS shall be entitled to all remedies available at law, in equity, or under this Agreement. If it is later determined that the AAA was not in default, or if the AAA terminated this Agreement for default, the AAA shall be entitled to all remedies available at law, in equity, or under this Agreement.

34. Treatment of Client Property. Unless otherwise provided in the applicable Agreement, the AAA shall ensure that any adult client receiving services from the AAA under this Agreement has unrestricted access to the client's personal property. The AAA shall not interfere with any adult client's ownership, possession, or use of the client's property. The AAA shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination or completion of this Agreement, the AAA shall promptly release to the client and/or the client's guardian or custodian all of the client's personal property. This section does not prohibit the AAA from implementing such lawful and reasonable policies, procedures and practices as the AAA deems necessary for safe, appropriate, and effective service delivery (for example, appropriately restricting clients' access to, or possession or use of, lawful or unlawful weapons and drugs).

35. Waiver. Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement unless amended as set forth in Section 1, Amendment. Only the Contracts Administrator or designee has the authority to waive any term or condition of this Agreement on behalf of DSHS.

HIPAA Compliance

Preamble: This section of the Contract is the Business Associate Agreement as required by HIPAA.

36. Definitions

a. "Business Associate," as used in this Contract, means the "Contractor" and generally has the same meaning as the term "business associate" at 45 CFR 160.103. Any reference to Business Associate in this Contract includes Business Associate's employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

b. "Business Associate Agreement" means this HIPAA Compliance section of the Contract and includes the Business Associate provisions required by the U.S. Department of Health and Human Services, Office for Civil Rights.

c. "Breach" means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the Protected Health Information, with the exclusions and exceptions listed in 45 CFR 164.402.

d. "Covered Entity" means DSHS, a Covered Entity as defined at 45 CFR 160.103, in its conduct of covered functions by its health care components.

e. "Designated Record Set" means a group of records maintained by or for a Covered Entity, that is: the medical and billing records about Individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or Used in whole or part by or for the Covered Entity to make decisions about Individuals.

f. "Electronic Protected Health Information (EPHI)" means Protected Health Information that is transmitted by electronic media or maintained in any medium described in the definition of electronic media at 45 CFR 160.103.

g. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 ("ARRA"), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act).

h. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and Part 164.

i. "Individual(s)" means the person(s) who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

j. "Minimum Necessary" means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.

k. "Protected Health Information (PHI)" means individually identifiable health information created, received, maintained or transmitted by Business Associate on behalf of a health care component of the Covered Entity that relates to the provision of health care to an Individual; the past, present, or future physical or mental health or condition of an Individual; or the past, present, or future payment for provision of health care to an Individual. 45 CFR 160.103. PHI includes demographic information that identifies the Individual or about which there is reasonable basis to believe can be used to identify the Individual. 45 CFR 160.103. PHI is information transmitted or held in any form or medium and includes EPHI. 45 CFR 160.103. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA 1232g(a)(4)(B)(iv) or employment records held by a Covered Entity in its role as employer.

l. "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.

m. "Subcontractor" as used in this HIPAA Compliance section of the Contract (in addition to its definition in the General Terms and Conditions) means a Business Associate that creates, receives, maintains, or transmits Protected Health Information on behalf of another Business Associate.

n. "Use" includes the sharing, employment, application, utilization, examination, or analysis, of PHI within an entity that maintains such information.

37. Compliance. Business Associate shall perform all Contract duties, activities and tasks in compliance with HIPAA, the HIPAA Rules, and all attendant regulations as promulgated by the U.S. Department of Health and Human Services, Office of Civil Rights.

38. Use and Disclosure of PHI. Business Associate is limited to the following permitted and required uses or disclosures of PHI:

a. Duty to Protect PHI. Business Associate shall protect PHI from, and shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to EPHI, to prevent the unauthorized Use or disclosure of PHI other than as provided for in this Contract or as required by law, for as long as the PHI is within its possession and control, even after the termination or expiration of this Contract.

b. Minimum Necessary Standard. Business Associate shall apply the HIPAA Minimum Necessary standard to any Use or disclosure of PHI necessary to achieve the purposes of this Contract. See 45 CFR 164.514 (d)(2) through (d)(5).

c. Disclosure as Part of the Provision of Services. Business Associate shall only Use or disclose PHI as necessary to perform the services specified in this Contract or as required by law, and shall not Use or disclose such PHI in any manner that would violate Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information) if done by Covered Entity, except for the specific uses and disclosures set forth below.

d. Use for Proper Management and Administration. Business Associate may Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

e. Disclosure for Proper Management and Administration. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.

f. Impermissible Use or Disclosure of PHI. Business Associate shall report to DSHS in writing all Uses or disclosures of PHI not provided for by this Contract within one (1) business day of becoming aware of the unauthorized Use or disclosure of PHI, including Breaches of unsecured PHI as required at 45 CFR 164.410 (Notification by a Business Associate), as well as any Security Incident of which it becomes aware. Upon request by DSHS, Business Associate shall mitigate, to the extent practicable, any harmful effect resulting from the impermissible Use or disclosure.

g. Failure to Cure. If DSHS learns of a pattern or practice of the Business Associate that constitutes a violation of the Business Associate's obligations under the terms of this Contract and reasonable steps by DSHS do not end the violation, DSHS shall terminate this Contract, if feasible. In addition,

If Business Associate learns of a pattern or practice of its Subcontractors that constitutes a violation of the Business Associate's obligations under the terms of their contract and reasonable steps by the Business Associate do not end the violation, Business Associate shall terminate the Subcontract, if feasible.

h. Termination for Cause. Business Associate authorizes immediate termination of this Contract by DSHS, if DSHS determines that Business Associate has violated a material term of this Business Associate Agreement. DSHS may, at its sole option, offer Business Associate an opportunity to cure a violation of this Business Associate Agreement before exercising a termination for cause.

i. Consent to Audit. Business Associate shall give reasonable access to PHI, its internal practices, records, books, documents, electronic data and/or all other business information received from, or created or received by Business Associate on behalf of DSHS, to the Secretary of DHHS and/or to DSHS for use in determining compliance with HIPAA privacy requirements.

j. Obligations of Business Associate Upon Expiration or Termination. Upon expiration or termination of this Contract for any reason, with respect to PHI received from DSHS, or created, maintained, or received by Business Associate, or any Subcontractors, on behalf of DSHS, Business Associate shall:

(1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

(2) Return to DSHS or destroy the remaining PHI that the Business Associate or any Subcontractors still maintain in any form;

(3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 (Security Standards for the Protection of Electronic Protected Health Information) with respect to Electronic Protected Health Information to prevent Use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate or any Subcontractors retain the PHI;

(4) Not Use or disclose the PHI retained by Business Associate or any Subcontractors other than for the purposes for which such PHI was retained and subject to the same conditions set out in the "Use and Disclosure of PHI" section of this Contract which applied prior to termination; and

(5) Return to DSHS or destroy the PHI retained by Business Associate, or any Subcontractors, when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

k. Survival. The obligations of the Business Associate under this section shall survive the termination or expiration of this Contract.

39. Individual Rights.

a. Accounting of Disclosures.

(1) Business Associate shall document all disclosures, except those disclosures that are exempt under 45 CFR 164.528, of PHI and information related to such disclosures.

(2) Within ten (10) business days of a request from DSHS, Business Associate shall make available to DSHS the information in Business Associate's possession that is necessary for DSHS to respond in a timely manner to a request for an accounting of disclosures of PHI by the Business

Associate. See 45 CFR 164.504(e)(2)(ii)(G) and 164.528(b)(1).

(3) At the request of DSHS or in response to a request made directly to the Business Associate by an Individual, Business Associate shall respond, in a timely manner and in accordance with HIPAA and the HIPAA Rules, to requests by Individuals for an accounting of disclosures of PHI.

(4) Business Associate record keeping procedures shall be sufficient to respond to a request for an accounting under this section for the six (6) years prior to the date on which the accounting was requested.

b. Access

(1) Business Associate shall make available PHI that it holds that is part of a Designated Record Set when requested by DSHS or the Individual as necessary to satisfy DSHS's obligations under 45 CFR 164.524 (Access of Individuals to Protected Health Information).

(2) When the request is made by the Individual to the Business Associate or if DSHS asks the Business Associate to respond to a request, the Business Associate shall comply with requirements in 45 CFR 164.524 (Access of Individuals to Protected Health Information) on form, time and manner of access. When the request is made by DSHS, the Business Associate shall provide the records to DSHS within ten (10) business days.

c. Amendment.

(1) If DSHS amends, in whole or in part, a record or PHI contained in an Individual's Designated Record Set and DSHS has previously provided the PHI or record that is the subject of the amendment to Business Associate, then DSHS will inform Business Associate of the amendment pursuant to 45 CFR 164.526(c)(3) (Amendment of Protected Health Information).

(2) Business Associate shall make any amendments to PHI in a Designated Record Set as directed by DSHS or as necessary to satisfy DSHS's obligations under 45 CFR 164.526 (Amendment of Protected Health Information).

40. Subcontracts and other Third Party Agreements. In accordance with 45 CFR 164.502(e)(1)(ii), 164.504(e)(1)(i), and 164.308(b)(2), Business Associate shall ensure that any agents, Subcontractors, independent contractors or other third parties that create, receive, maintain, or transmit PHI on Business Associate's behalf, enter into a written contract that contains the same terms, restrictions, requirements, and conditions as the HIPAA compliance provisions in this Contract with respect to such PHI. The same provisions must also be included in any contracts by a Business Associate's Subcontractor with its own business associates as required by 45 CFR 164.314(a)(2)(b) and 164.504(e)(5) .

41. Obligations. To the extent the Business Associate is to carry out one or more of DSHS's obligation(s) under Subpart E of 45 CFR Part 164 (Privacy of Individually Identifiable Health Information), Business Associate shall comply with all requirements that would apply to DSHS in the performance of such obligation(s).

42. Liability. Within ten (10) business days, Business Associate must notify DSHS of any complaint, enforcement or compliance action initiated by the Office for Civil Rights based on an allegation of violation of the HIPAA Rules and must inform DSHS of the outcome of that action. Business Associate bears all responsibility for any penalties, fines or sanctions imposed against the Business Associate for violations of the HIPAA Rules and for any imposed against its Subcontractors or agents for which it is found liable.

43. Breach Notification.

a. In the event of a Breach of unsecured PHI or disclosure that compromises the privacy or security of PHI obtained from DSHS or involving DSHS clients, Business Associate will take all measures required by state or federal law.

b. Business Associate will notify DSHS within one (1) business day by telephone and in writing of any acquisition, access, Use or disclosure of PHI not allowed by the provisions of this Contract or not authorized by HIPAA Rules or required by law of which it becomes aware which potentially compromises the security or privacy of the Protected Health Information as defined in 45 CFR 164.402 (Definitions).

c. Business Associate will notify the DSHS Contact shown on the cover page of this Contract within one (1) business day by telephone or e-mail of any potential Breach of security or privacy of PHI by the Business Associate or its Subcontractors or agents. Business Associate will follow telephone or e-mail notification with a faxed or other written explanation of the Breach, to include the following: date and time of the Breach, date Breach was discovered, location and nature of the PHI, type of Breach, origination and destination of PHI, Business Associate unit and personnel associated with the Breach, detailed description of the Breach, anticipated mitigation steps, and the name, address, telephone number, fax number, and e-mail of the individual who is responsible as the primary point of contact. Business Associate will address communications to the DSHS Contact. Business Associate will coordinate and cooperate with DSHS to provide a copy of its investigation and other information requested by DSHS, including advance copies of any notifications required for DSHS review before disseminating and verification of the dates notifications were sent.

d. If DSHS determines that Business Associate or its Subcontractor(s) or agent(s) is responsible for a Breach of unsecured PHI:

(1) requiring notification of Individuals under 45 CFR § 164.404 (Notification to Individuals), Business Associate bears the responsibility and costs for notifying the affected Individuals and receiving and responding to those Individuals' questions or requests for additional information;

(2) requiring notification of the media under 45 CFR § 164.406 (Notification to the media), Business Associate bears the responsibility and costs for notifying the media and receiving and responding to media questions or requests for additional information;

(3) requiring notification of the U.S. Department of Health and Human Services Secretary under 45 CFR § 164.408 (Notification to the Secretary), Business Associate bears the responsibility and costs for notifying the Secretary and receiving and responding to the Secretary's questions or requests for additional information; and

(4) DSHS will take appropriate remedial measures up to termination of this Contract.

44. Miscellaneous Provisions.

a. Regulatory References. A reference in this Contract to a section in the HIPAA Rules means the section as in effect or amended.

b. Interpretation. Any ambiguity in this Contract shall be interpreted to permit compliance with the HIPAA Rules.

Special Terms and Conditions

1. Definitions.

a. "AAA" or "Contractor" shall mean the Area Agency on Aging that is a party to this agreement, and includes the AAA's officers, directors, trustees, employees and/or agents unless otherwise stated in this Agreement. For purposes of this Agreement, the AAA or agent shall not be considered an employee of DSHS.

b. "AAA contractor" means any separate agreement or contract between the AAA and an individual or entity ("AAA contracted provider") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Agreement.

c. "AAA contracted provider" means an individual or entity (including its officers, directors, trustees, employees, and/or agents) with whom the AAA contracts to provide services that are specifically defined in the Area Plan or are otherwise approved by DSHS in accordance with this Agreement.

d. "Agreement" means this Agreement, including all documents attached or incorporated by reference.

e. "Allocable costs" are those costs which are chargeable or assignable to a particular cost objective in accordance with the relative benefits received by those costs.

f. "Allowable costs" are those costs necessary and reasonable for proper and efficient performance of this Agreement and in conformance with this Agreement. Allowable costs under federal awards to local or tribal governments must be in conformance with Subpart E of 2 CFR part 200, Cost Principles for State, Local and Indian Tribal Governments; allowable costs and federal awards to non-profit organizations must be in conformance with 2 CFR part 200 Cost Principles for Non-Profit Organizations.

g. "Area Plan" means the document submitted by the AAA to DSHS for approval every four years, with updates every two years, which sets forth goals, measurable outcomes, and identifies the planning, coordination, administration, social services and evaluation of activities to be undertaken by the AAA to carry out the purposes of the Older Americans Act (OAA), the Social Security Act, the Senior Citizens Services Act (SCSA), or any other statute for which the AAA receives funds.

h. "Assignment" means the act of transferring to another the rights and obligations under this Agreement.

i. "Business Associate" means a Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of the Covered Entity that involves the use

or disclosure of protected health information (PHI). Any reference to Business Associate under this Agreement includes Business Associate's employees, agents, officers, AAA contracted providers, third party contractors, volunteers, or directors.

j. "CFR" means Code of Federal Regulations. All references in this Agreement to the CFR shall include any successor, amended, or replacement regulation.

k. "Client" means an individual that is eligible for or receiving services provided by the AAA in connection with this Agreement.

l. "Covered Entity" means DSHS, a Covered Entity as defined in 45 CFR 160.103.

m. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section of office.

n. "Debarment" means an action taken by a federal official to exclude a person or business entity from participating in transactions involving certain federal funds.

o. "Designated Record Set" means a group of records maintained by or for the Covered Entity that is the medical and billings records about the individuals or the enrollment, payment, claims adjudication, and case or medical management records, used in whole or part by or for the Covered Entity to make decisions about individuals.

p. "DSHS" or "the Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.

q. "Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

r. "HIPAA" means the Health Information Portability and Accountability Act of 1996, as codified at 42 USCA 1320d-d8.

s. "HRSN" means Health Related Social Needs". HRSN are unmet, adverse social conditions that negatively impact an individual's health. These conditions can include housing instability, homelessness, nutrition insecurity, and other factors that affect health outcomes.

t. "HRSN Care Coordination" means funding provided for AAA or AAA contracted provider staffing to ensure adequate screening, eligibility determination, authorization/referral, optional follow-up, and documentation. Client management system will be Comprehensive Assessment Reporting Evaluation (CARE)/ProviderOne for individuals receiving Medicaid Long Term Services and Supports (LTSS) or GetCare/AAA payment process for other eligible individuals.

u. "HRSN Infrastructure "means funding provided to build capacity to deliver HRSN services. This includes, but is not limited to, targeted provider recruitment and contracting, AAA contracted provider needs for commercial kitchen, storage and delivery equipment, and staff funding for outreach and marketing.

v. “HRSN Services “are categorized under the following: (1) Caregiver Respite, (2) Home Accessibility Modifications, Remediations, Adaptation, and (3) Nutrition Supports. Services under each of these service categories are defined below.

(1) Caregiver Respite—provide intermittent temporary supervision on a short-term basis. Services provided to the individual are primarily non-medical and may include attending to the individual’s basic self-help needs and other activities of daily living (ADLs). Caregiver respite services are provided in-home or in-facility to individuals or families meeting the financial, social, and clinical eligibility criteria. Eligible program participants may receive up to 336 hours of service per calendar year. Additional hours can be approved if the caregiver experiences an event, including medical treatment and hospitalization, that leaves an individual without their caregiver. Caregiver respite services are provided to the individual in their own home, health care facility, adult day care/health, or other location being used as the home. Caregiver respite services cannot be provided virtually or via telehealth.

(2) Home Accessibility Modifications, Remediations, and Adaptation

(a) Home Accessibility Modifications—The provision of home/environmental accessibility modification services to eliminate known home-based health and safety risks and ensure the occupants’ health and safety in the living environment. Modifications must be conducted in accordance with applicable State and local building codes. Modifications are payable up to a lifetime maximum of $7,500. A program participant may receive an exception to this maximum if their physical condition or living situation has changed so significantly that additional modifications are necessary to ensure the participants health, welfare, or independence. The services are available in a home that is owned, rented, leased or occupied by the individual or their caregiver. Examples of Accessibility Modification include but are not limited to:

- Ramps and grab-bars
- Wheelchair access improvements like doorway widening, stair lifts, and roll-in showers
- Installation of specialized electric and plumbing systems to accommodate medical equipment
- Door and cabinet handles
- Non-skid surfaces
- Sound proofing
- Overhead track systems
- Making a bathroom or shower wheelchair accessible
- Personal Emergency Response System

(b) Home Remediations—The provision of home/environmental remediation services to eliminate known home-based health and safety risks and ensure the occupants’ health and safety in the living environment. Examples of home remediation include but are not limited to:

- Allergen-impermeable mattress and pillow dustcovers
- Ventilation improvements and air filters

- Integrated Pest Management (sustainable approach to pest control combining various methods to minimize the use of pesticides and other interventions)
- De-humidifiers
- Minor mold removal and remediation services
- Carpet replacement
- Housing safety inspections
- Installation of washable curtains or synthetic blinds to prevent allergens

(c) Adaptation Home Devices—The provision, service delivery, and installation as needed of a home device to individuals for whom such equipment is clinically appropriate as a component of a treatment or prevention for home-device specific medical indication. Examples of Adaptation home devices include but are not limited to:

- Air conditioners/heater
- Air filtration—devices for individuals at health risk due to compromised air quality, and replacement air filters as needed.
- Portable power supply—for individuals who need access to electricity-dependent equipment or are at risk of public safety power shutoffs that may compromise their ability to use medically necessary devices.
- Mini refrigerator—for individuals who lack a working refrigerator unit or a unit that meets their medical needs.

(3) Nutrition Support services are listed below and shall be provided in accordance with all applicable laws, regulations, codes, and standards and may include:

- Medically Tailored meals (Home Delivered Meals)—Meals tailored to support individuals with health-related condition(s) for which nutrition supports would improve health outcomes. Meals may be provided up to three (3) meals a day for up to six (6) months with an option for renewal for up to six (6) months if clinical and social needs factors still apply.

- Short-term Grocery Provision—Service allows an individual to purchase an assortment of foods aimed at promoting improved nutrition for the program participant. Individuals may pick up food from food retailers or have food delivered to the program participants home if delivery service is available. Individuals may stock up on groceries for thirty (30) days, no more than once per calendar year. The cost of groceries for each instance of the service may not exceed 200% of the United States Department of Agriculture (USDA) Supplemental Nutrition Assistance Program (SNAP) Allowance for one (1) month.

- Pantry Stocking/Grab and Go Meals/Home Delivered Meals/Congregate Meals—This service allows a program participant to pick up food or have food delivered. Available for up to three (3) meals daily for up to six (6) months. It may be renewed for an additional six (6) months if it is determined the beneficiary still meets all eligibility criteria.

- Fruit and Vegetable Prescriptions—This service allows an individual to purchase fruits and vegetables. Fruits and vegetables available for purchase through this service may be fresh, frozen, or canned. Available for up to three (3) meals daily for up to six (6) months. It may be renewed for an additional six (6) months if it is determined that the program participant still meets all eligibility criteria.

- Nutrition Counseling and Education—Any combination of educational strategies designed to motivate and facilitate voluntary adoption of food choices and other food and nutrition-related behaviors conducive to health and well-being.

  *** Note: Program participants cannot receive medically tailored meals, meals or pantry stocking, or short-term grocery provisions concurrently. ***

w. "Individual" means the person who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

x. "Older Americans Act" refers to 45 CFR Part 1321, and any subsequent amendment or replacement statutes thereto.

y. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

z. "PHI" means protected health information and is information created or received by Business Associate from or on behalf of Covered Entity that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present or future payment for provision of health care to an individual. 45 CFR 160 and 14. PHI includes demographic information that identifies the individual or about which there is reasonable basis to believe, can be used to identify the individual, 45 CFR 160.103. PHI is informative, transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA 1232(a)(4)(b)(iv).

aa. "RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at http://slc.leg.wa.gov/.

bb. "Real Property" means land, including improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

cc. "Regulation" means any federal, state, or local regulation, rule, or ordinance.

dd. "Subrecipient" means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

ee. "Supplies" means all tangible personal property other than equipment as defined herein.

ff. "WAC" means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at http://slc.leg.wa.gov/.

gg. "Unique Entity Identifier (UEI)" means a unique number assigned to all entities (public and private companies, individuals, institutions, or organizations) who register to do business with the federal government.

2. Purpose. The intent of this contract is to fund HRSN services and supports through the AAA aging network. Funds may not be repurposed to support non-AAA focused services and supports.

3. Statement of Work. The AAA shall provide the services and staff and otherwise do all things necessary for or incidental to the performance of work, as set forth in the attached Statement of Work (Exhibit A).

4. Consideration. Total consideration payable to the AAA for satisfactory performance of the work under this Agreement is a maximum of **$1,931,100,** including any and all expenses for HRSN services and supports and shall be based on the attached Exhibit B, funding allocation worksheet. A maximum consideration of **$1,516,012** may be billed for service delivery (Caregiver Respite, Home Accessibility Modifications, Remediations, Adaptation, and Nutrition Support) including 15% admin on total service budget. AAA may bill maximum consideration of **$303,202** for Care Coordination. Care Coordination billing cannot exceed 20% of total services billed. Finally, AAA may bill a maximum consideration of **$111,886** for HRSN Infrastructure as incurred.

5. Billing and Payment.

a. **Billing.** The AAA shall submit invoices using the State A-19 Invoice Voucher, or such other forms designated by DSHS. Consideration for services rendered shall be payable upon receipt and acceptance of properly completed invoices which shall be submitted to DSHS by the AAA, not more often than monthly.

b. **Payment.** Payment shall be considered timely if made by DSHS within thirty (30) days after receipt and acceptance by DSHS of the properly completed invoices. Payment shall be sent to the address designated by the AAA on page one (1) of this Agreement. DSHS may, at its sole discretion, withhold payment claimed by the AAA for services rendered if AAA fails to satisfactorily comply with any term or condition of this Agreement.

DSHS shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Agreement. Unless otherwise specified in this Agreement, DSHS shall not pay any claims for payment for services submitted more than six (6) months after completion of the contract period. The AAA shall not bill DSHS for services performed under this Agreement, and DSHS shall not pay the AAA, if the AAA has charged or will charge the State of Washington or any other party under any other contract or agreement for the same services.

6. Confidentiality. In addition to General Terms and Conditions Confidentiality language, the AAA or its Subcontractors may disclose information to each other, to DSHS, or to appropriate authorities, for purposes directly connected with the services provided to the client. This includes, but is not limited to,

determining eligibility, providing services, and participation in disputes, fair hearings or audits. The AAA and its Subcontractors shall disclose information for research, statistical, monitoring and evaluation purposes conducted by appropriate federal agencies and DSHS.

7. **Background and Fingerprint Checks.** Background check will be completed with staff prior to having unsupervised access to clients and then every two (2) years thereafter, and as required under RCW 43.20A.710, and RCW 43.43.830 through 43.43.842. Fingerprint check is required for staff residing in the state less than three (3) consecutive years before employment (this is not required to be updated every two (2) years as long as in-state residency remain continuous). Documentation of successful completion of required background and fingerprint checks must be maintained.

8. **Duty to Disclose Business Transactions.** Pursuant to 42 CFR 455.105(b), within thirty-five (35) days of the date on a request by the Secretary of the U.S. Department of Health and Human Services or DSHS, Contractor must submit full and complete information related to Contractor's business transactions that include:

   a. The ownership of any AAA contracted provider with whom the Contractor has had business transactions totaling more than $25,000 during the 12-month period ending on the date of the request; and

   b. Any significant business transactions between the Contractor and any wholly owned supplier, or between the Contractor and any AAA contracted provider, during the 5-year period ending on the date of the request.

   Failure to comply with requests made under this term may result in denial of payments until the requested information is disclosed. See 42 CRF 455.105(c).

9. **State or Federal Audit Requests.** The contractor is required to respond to State or Federal audit requests for records or documentation, within the timeframe provided by the requestor. The Contractor must provide all records requested to either State or Federal agency staff or their designees.

Special Terms and Conditions

Exhibit A, Statement of Work

The Area Agency on Aging (AAA) may provide the following Health Related Social Needs (HRSN) services either directly or through administrative oversight of AAA contracted providers. The AAA shall comply with all applicable state and federal statute and rules, including but not limited to the United States Code, the Code of Federal Regulations, the Revised Code of Washington, the Washington Administrative Code (WAC), Federal Home and Community Based Services (HCBS) Waivers and Medicaid State Plan, and any and all Department of Human Services (DSHS)/Home and Community Living Administration (HCLA) standards, guidelines, policy manuals, and management bulletins.

If a proposed change or combination of changes in any DSHS/HCLA standard, guideline, policy manual and/or management bulletin after the commencement of this agreement creates a new and material impact, to the extent possible and as quickly as possible DSHS will consult with the AAA or its professional association to identify potential impacts and when possible, identify how to mitigate impacts within available funding.

HRSN Services and Supports

Provide specified services below included under the Medicaid Transformation Project (MTP), Washington State's Section 1115 demonstration waiver (**RCW 74.09.5222**) to individuals who are enrolled in Medicaid Apple Health that meet the social and clinical eligibility criteria for the respective service. HRSN services and supports shall be delivered to eligible Medicaid individuals and cannot supplant services in place under Older Americans Act (OAA)/Senior Citizens Services Act (SCSA). AAAs may expand on existing services or provide service to new recipients. AAA contracted providers qualified through the procurement protocols of Policy and Procedure Manual for AAA Operation, Chapter 6, may be utilized to provide HRSN services. AAAs will expand the provider network as needed for HRSN service provision.

Each AAA will submit an annual report on HRSN Infrastructure, Care Coordination, and service provision. The due date for the annual report will be published in the HRSN Management Bulletin.

HRSN services cannot supplant services and supports currently being provided.

1. **HRSN Infrastructure.** Funding is provided to build capacity to deliver HRSN services. This includes, but is not limited to, targeted provider recruitment and contracting, AAA contracted provider needs for commercial kitchen, storage and delivery equipment, and staff funding for outreach and marketing.

**It is strongly encouraged that outreach efforts for each AAA should include collaboration and training on HRSN services with the local Planning and Service Area provider of WA 211 to streamline referral and access to HRSN services.

2. **HRSN Care Coordination.** Funding is provided for AAA or AAA provider contractor staffing to ensure adequate screening, eligibility determination, authorization/referral, optional follow-up, and documentation. Client management system will be Comprehensive Assessment Reporting Evaluation (CARE)/ProviderOne for individuals receiving Medicaid Long Term Services and Supports (LTSS) or GetCare/AAA payment process for other eligible individuals. Care Coordination billing cannot exceed 20% of the total services billed.

3. **HRSN Services:** AAAs may bill 15% admin of total service budget (Caregiver Respite, Home Accessibility Modifications, Remediations, Adaptation, and Nutrition Support).

a. Nutrition Supports

The Contractor may provide Nutrition Support services included under the MTP 2.0 to individuals that meet the financial, social, and clinical eligibility criteria for the respective service. The Contractor or the AAA contracted provider shall access clients for eligibility using established social and clinical criteria and enroll eligible individuals for services through the designated client management system. Nutrition supports services shall be provided in accordance with all applicable laws, regulations, codes, and standards and may include:

- Fruit and Vegetable Prescriptions
- Medically Tailored Meals (HDM)
- Nutrition Counseling and Education
- Pantry Stocking/Grab and Go Meals/Home Delivered Meals/Congregate Meals
- Short-term Grocery Provision

The Contractor shall establish a rate(s) for services up to the maximum amount established under the MTP 2.0.

Program participants cannot receive medically tailored meals, meals or pantry stocking, or short-term grocery provisions concurrently.

HRSN Nutrition Support Services			
Service	Eligibility Criteria	Service Ceilings	Fee Schedule
Fruit and Vegetable Prescriptions	Enrolled in Apple Health AND Have at least one (1) Chronic Condition AND Low/Very Low Food Security	Available for up to three (3) meals daily for up to six (6) months with an option—may be renewed for up to six (6) months if the client continues to meet eligibility criteria	Up to $83.33/month
Medically Tailored Meals	Enrolled in Apple Health AND Have Low/Very Low Food Security AND At least one (1) Chronic Condition AND has been or is being discharged from institutional care, hospital or congregate setting within six (6) months or at high risk of hospitalization or nursing facility placement	Up to three (3) meals daily for up to six (6) months. **HRSN service participants cannot receive medically tailored meals, meals or pantry stocking, or short-term grocery provisions concurrently.**	Up to $20.50/meal
Nutrition Counseling and Education	Enrolled in Apple Health AND Have		Up to $33.48/unit

	Low/Very Low Food Security		
Pantry Stocking or Meals	Enrolled in Apple Health AND have Low/Very Low Food Security AND have at least one (1) Chronic Condition	Available for up to three (3) meals daily for up to six (6) months with an option—may be renewed for up to six (6) months if the client continues to meet eligibility criteria. **HRSN service participants cannot receive medically tailored meals, meals or pantry stocking, or short-term grocery provisions concurrently. **	Up to $500
Short-Term Grocery Provision	Enrolled in Apple Health AND Have Low/Very Low Food Security	HRSN service participants may stock up on groceries for thirty (30) days, no more than once per calendar year. **HRSN service participants cannot receive medically tailored meals, meals or pantry stocking, or short-term grocery provisions concurrently. **	Cost of the groceries for each instance or service may not exceed 200% of the U.S. Department of Agriculture (USDA) Senior Nutrition Assistance Program (SNAP) Allowance for one (1) month. Up to $584/month

b. **Home Accessibility Modifications, Remediations and Adaptation**

The Contractor may provide Home Accessibility Modifications, Remediation, and/or Adaptations included under the MTP 2.0 to individuals and families that meet the financial social, and clinical eligibility criteria.

The Contractor or AAA contracted provider shall assess clients for eligibility based on the established social and clinical factors and enroll eligible individuals for services through the designated client management system. Services under this part shall be provided in accordance with all applicable laws, regulations, codes, and standards and may include:

- Home Accessibility Modifications—The provision of home/environmental accessibility modification services to eliminate known home-based health and safety risks and ensure the occupants' health and safety in the living environment. Examples of Accessibility Modification include:

- Ramps and grab-bars
- Wheelchair access improvements like doorway widening, stair lifts, and roll-in showers
- Installation of specialized electric and plumbing systems to accommodate medical equipment
- Door and cabinet handles
- Non-skid surfaces
- Sound proofing
- Overhead track systems
- Making a bathroom and shower wheelchair accessible
- Personal Emergency Response System

Home Accessibility Modifications			
Service	Eligibility Criteria	Service Ceilings	Fee Schedule
Home Accessibility Modification	Enrolled in Apple Health AND has a Chronic Health Condition causing physical limitations with inaccessible living environments AND the HRSN service participant or family requires a clinically appropriate home modification and the housing can be modified cost-effectively and the HRSN service participant needs a home inspection and/or transition to another housing option OR HRSN service participant or family lives in a home that is not accessible or unsafe due to the HRSN service participant's disability or medical condition and the home can be modified and the HRSN service participant needs a home inspection and/or transition to another housing option OR the	Modifications are payable up one time in a HRSN funding cycle (2025-2028) of $7,500 unless an exception is granted by the SUA to extend this ceiling. Modifications must be conducted in accordance with applicable State and local building codes.	Maximum of $7,500 or amount approved with exception.

	HRSN service participant or family is in a home that is negatively impacting their health, due to factors including but not limited to pests, mold, elements of the home are in disrepair, the HRSN service participant has exposure to pathogens/hazards and/or the property is inadequately maintained, and the HRSN participant needs a home inspection or healthy home, or the HRSN participant needs to transition to another housing option.		

Modifications must be conducted in accordance with applicable State and local building codes. Modifications are payable up to a lifetime maximum of $7,500. A program participant may receive an exception to this maximum if their physical condition or living situation has changed so significantly that additional modifications are necessary to ensure their health, welfare, or independence.

The services are available in a home that is owned, rented, leased, or occupied by the individual or their caregiver.

For a home that is not owned by the individual, the individual must provide written consent from the owner for physical adaptations to the home or for equipment that is physically installed in the home.

AAA must upload into the GetCare electronic file cabinet, a document of a current licensed health care provider's order specifying the requested services for the HRSN service participant with a brief evaluation specific to the participant describing how and why the service meets the needs of the participant; and then a home visit must be conducted to determine suitability of requested service/s.

- Home Remediations—The provision of home/environmental remediation services to eliminate known home-based health and safety risks and ensure the occupants' health and safety in the living environment. Examples of Remediation include:

    - Allergen-impermeable mattress and pillow dustcovers
    - Ventilation improvements and air filters

- Integrated Pest Management (sustainable approach to pest control that combines various methods to minimize the use of pesticides and other interventions)
- De-humidifiers
- Minor mold removal and remediation services
- Carpet replacement
- Housing safety inspections
- Installation of washable curtains or synthetic blinds to prevent allergens

Home Remediations			
Service	Eligibility Criteria	Service Ceiling	Fee Schedule
Home Remediation	Enrolled in Apple Health AND has a Chronic Health Condition for which remediation may be reasonably expected to improve health outcomes AND the HRSN service participant or family requires a clinically appropriate home modification and the housing can be modified cost-effectively and the HRSN service participant needs a home inspection and/or transition to another housing option OR HRSN service participant or family lives in a home that is not accessible or unsafe due to the HRSN service participant's disability or medical condition and the home can be modified and the HRSN service participant needs a home inspection and/or transition to another housing option OR the HRSN service participant or family is in a home that is negatively		Up to $5,000

	impacting their health, due to factors including but not limited to pests, mold, elements of the home are in disrepair, the HRSN service participant has exposure to pathogens/hazards and/or the property is inadequately maintained, and the HRSN participant needs a home inspection or healthy home, or the HRSN participant needs to transition to another housing option.		

- Adaptation Home Devices
    - air conditioners/heater—The provision, service delivery, and installation as needed of a home device to individuals for whom such equipment is clinically appropriate as a component of a treatment or prevention for a home-device specific medical indication
    - air filtration—devices for individuals at health risk due to compromised air quality, and replacement air filters as needed.
    - portable power supply—for individuals who need access to electricity-dependent equipment or are at risk of public safety power shutoffs that may compromise their ability to use medically necessary devices.
    - mini refrigerator—for individuals who lack a working refrigerator unit or a unit that meets their medical needs.

Adaptation Home Devices			
Service	Eligibility Criteria	Service Ceiling	Fee Schedule
Adaptation Home Devices	Enrolled in Apple Health AND HRSN service participants at risk for institutionalization due to inaccessible living environments		
Air conditioner			Up to $880
Air filtration device			Up to $500
Air filter replacement			Up to $80
Portable power supply			Up to $1,400
Heater			Up to $220

Mini refrigerator			Up to $300

The Contractor shall establish a rate(s) for services up to the maximum amount established under the MTP 2.0.

AAA must obtain and retain in GetCare a document of a current licensed health care provider's order specifying the requested services for the HRSN service participant with a brief evaluation specific to the participant describing how and why the service meets the needs of the participant; and then a home visit must be conducted to determine suitability of requested service/s.

c. **Caregiver Respite**

The Contractor may provide Caregiver Respite Services (in-home or in-facility) included under the MTP 2.0 to individuals or families that meet the financial, social, and clinical eligibility criteria.

The Contractor or AAA contracted provider shall assess clients for eligibility based on the established social and clinical factors and enroll eligible individuals for services through the designated client management system. Services for caregiver respite shall be provided in accordance with all applicable laws, regulations, codes, and standards.

The Contractor shall establish a rate(s) for services up to the maximum amount established under the MTP 2.0.

Eligible program participants may receive up to 336 hours of service per calendar year. The limit is inclusive of all in-home and in-facility services. Additional hours can be approved if the caregiver experiences an event, including medical treatment and hospitalization, that leaves an individual without their caregiver.

Caregiver respite services are provided to the individual in their own home, health care facility, adult day care, or another location being used as the home. Caregiver respite services cannot be provided virtually or via telehealth.

Caregiver Respite			
Service	Eligibility Criteria	Service Ceiling	Fee Schedule
Caregiver Respite—in home	Enrolled in Apple Health AND HRSN eligible service participant whose unpaid caregiver requires relief to avoid HRSN eligible service participant institutionalization AND unpaid caregiver reports stress or fatigue or competing time commitment or scheduled vacation AND HRSN eligible service participant reports challenge finding or affording alternative care.	Eligible HRSN service participants may receive up to 336 hours of service per calendar year. Additional hours can be approved through an exception process.	Medicaid rate for Medicaid contracted home care providers.
Caregiver Respite—in facility	Enrolled in Apple Health AND HRSN eligible service participant whose unpaid caregiver requires relief to avoid HRSN		Up to $554 per diem

	eligible service participant institutionalization AND unpaid caregiver reports stress or fatigue or competing time commitment or scheduled vacation AND HRSN eligible service participant reports challenge finding or affording alternative care.		