



## EMERGENCY FUNDING

Sourcewise contract

CONTRACT NUMBER: #2023SWARP11

EFFECTIVE DATE OF CONTRACT:

10/01/2022

CONTRACT TERM: October 01, 2022 – September 30, 2023, until terminated, canceled or amended

In response to the COVID-19 emergency, Congress has approved funding in pursuant to of the Older American Act of 1965 to support older adults and persons with disabilities in the community during the COVID-19 public health emergency.

THIS EMERGENCY FUNDING AGREEMENT (hereinafter "AGREEMENT") made and entered into this 1<sup>st</sup> day of October, by and between Sourcewise, (hereinafter "AREA AGENCY") and **Santa Clara County** (Hereinafter "CONTRACTOR").

WHEREAS, this Board is designated as the Area Agency on Aging for Santa Clara County to carry out a program pursuant of Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 and

WHEREAS, it is necessary and desirable that the Area Agency on Aging contract to provide the following:

Unit of Service Type	Amount of Service	Type of Funding	Dollar Amount
Title III C2-Home Delivered Meals	75,000 units of service, 125 unduplicated persons	Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2	\$454,239

### Section 1. Service

- a. CONTRACTOR covenants to and shall perform COVID-19 emergency response and/or relief activities to enhance or support existing Older American Act services funded by the AREA AGENCY during in accordance with the "Units of Service Type" set forth in this AGREEMENT.
- b. The CONTRACTOR'S approved Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 Funding Application, which is on file with AREA AGENCY, and which, by this reference, is also incorporated herein as if fully set forth. CONTRACTOR agrees that the service provided is subject to modification only upon written authorization of the CEO of AREA AGENCY.
- c. Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 funding is exclusive from all Title III and Title VII Area Plan funds including other emergency funding not listed specifically in this agreement and **Santa Clara County** will adhere to the reporting and expenditure requirements outlined in this agreement. Funds must be expended on allowable Older Americans Act activities as defined by the Older Americans Act and State and local policy.
- d. CONTRACTOR is responsible for carrying out the terms of this AGREEMENT, including the satisfaction, settlement, and resolution of all administrative, programmatic, and fiscal aspects of the program(s),

Approved: 12/06/2022

including issues that arise out of any subcontracts, and shall not delegate or contract these responsibilities to any other entity. This includes, but is not limited to, disputes, claims, protests of award, or other matters of a contractual nature. The AREA AGENCY decision on these matters is final, however the CONTRACTOR of the AREA AGENCY may appeal the AREA AGENCY final adverse determination relating to Title III and Title VII programs using the appeals process established in 22 CCR 7700 to 7710.

CONTRACTOR agrees to deliver services outlined in this agreement in line with Exhibit 1-A ensure equity in program planning & delivery to the best extent possible.

**Section 2. Effective Period and Right of Termination:**

This AGREEMENT is effective for the period from October 01, 2022 – September 30, 2023, unless terminated earlier as provided herein. Upon thirty (30) days written notice to the other party, either party may terminate this AGREEMENT. Upon giving or receiving such notice, CONTRACTOR shall immediately remit to AREA AGENCY all unexpended funds previously received hereunder.

CONTRACTOR shall adhere to all Federal and States regulations and laws, and to the AGREEMENT terms and policy.

**Section 3: Termination Upon Failure of Contractor to Perform:**

- a. Should CONTRACTOR fail to perform any covenant contained herein, AREA AGENCY may immediately terminate this AGREEMENT. Termination shall be effective thirty (30) days after CONTRACTOR receives written notice of AREA AGENCY's decision to terminate the AGREEMENT. Thereafter, AREA AGENCY may complete the Project in any manner it deems proper. In the event of such termination, the cost of completion of the Project shall be deducted from any monies not yet paid CONTRACTOR, and CONTRACTOR shall immediately remit to AREA AGENCY all unexpended funds previously received and disposition of property hereunder.
- b. After receipt of a Notice of Termination, and except as directed by AREA AGENCY the CONTRACTOR shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any funds due under this clause.

The Contractor shall:

- i. Stop work as specified in the Notice of Termination.
- ii. Place no further subcontracts for materials or services, except as necessary, to complete the continued portion of the Contract.
- iii. Terminate all subcontracts to the extent they relate to the work terminated.

**Section 4. Compliance:**

- a. This AGREEMENT shall be in full compliance within 120 days of the effective date. CONTRACTOR shall adhere to all Federal and States regulations and laws; and to the AGREEMENT terms and policy.
- b. CONTRACTOR shall not commence work under this AGREEMENT until a signed statement of CONTRACTOR'S assurance of compliance with subsections d and e below is on file with AREA AGENCY.
- c. CONTRACTOR warrants that upon execution of this AGREEMENT, it will be fully informed of the Act and all other relevant Federal, State, and local statutes, rules and regulations, directives, and amendments affecting this AGREEMENT.

- d. The CONTRACTOR agrees to administer this AGREEMENT and require any subcontractors to administer their subcontracts in accordance with this AGREEMENT, and with all applicable local, State, and federal laws and regulations including, but not limited to, discrimination, wages and hours of employment, occupational safety, and to fire, safety, health, and sanitation regulations, directives, guidelines, and/or manuals related to this AGREEMENT and resolve all issues using good administrative practices and sound judgment. The CONTRACTOR and its subcontractors shall keep in effect all licenses, permits, notices, and certificates that are required by law.
- e. CONTRACTOR shall require language in all subcontracts to require all subcontractors to comply with all applicable state and federal laws.
- f. The CONTRACTOR shall ensure that the subcontractor will complete all reporting and expenditure documents requested by AREA AGENCY, Federal or State entity. These reporting and expenditure documents shall be sent to the AREA AGENCY in a timely manner and at intervals as determined by AREA AGENCY or requesting entity.
- g. CONTRACTOR warrants that upon execution of this AGREEMENT, it will be fully informed of the Act and all other relevant Federal, State, and local statutes, rules and regulations, directives, and amendments affecting this AGREEMENT.
- h. CONTRACTOR shall comply with all Federal statutes relating to nondiscrimination. These include those statutes and laws contained in the Contractor Certification Clauses (CCC 307), which is hereby incorporated by reference.
  - i. Equal Access to Federally Funded Benefits, Programs and Activities; The Contractor shall ensure compliance with Title VI of the Civil Rights Act of 1964 [42 USC 2000d; 45 CFR 80], which prohibits recipients of Federal financial assistance from discriminating against persons based on race, color, or national origin.
  - ii. Equal Access to State-Funded Benefits, Programs and Activities; The Contractor shall, unless exempted, ensure compliance with the requirements of Cal. Gov. Code § 11135 et seq., and 2 CCR § 11140 et seq., which prohibit recipients of state financial assistance from discriminating against persons based on race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability. [22 CCR § 98323]
  - iii. California Civil Rights Laws; The Contractor shall, ensure compliance with the requirements of California Public Contract Code § 2010 by submitting a completed California Civil Rights Laws Certification, prior to execution of this Agreement.
- i. CONTRACTOR shall comply with the provisions of Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 200, as amended by the Equal Opportunity Act of 1972, Public Law No. 92-261) in that it will not discriminate against any individual with respect to his or her compensation, terms, conditions, or which would deprive, or tend to deprive any individual with respect to his or her compensation, terms, conditions, or which would deprive, or tend to deprive any individual of employment opportunities, or otherwise adversely affect his or her status as an employee, because of such individual's race, color, religion, sex, or national origin and 2. EMPLOYER DISCRIMINATORY POLICIES: For contracts executed or renewed after January 1, 2017, if a Contractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Contractor certifies that such policies are not used in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the Fair Employment and Housing Act (Section 12960 of the Government Code).
- j. CONTRACTOR shall recognize any same-sex marriage legally entered into in a United States (U.S.) jurisdiction that recognizes their marriage, including one of the fifty (50) states, the District of Columbia, or a U.S. territory, or in a foreign country so long as that marriage would also be recognized by a U.S. jurisdiction.

This applies regardless of whether or not the couple resides in a jurisdiction that recognizes same-sex marriage. However, this does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under the law of the jurisdiction of celebration as something other than a marriage. Accordingly, CONTRACTOR must review and revise, as needed, any policies and procedures which interpret or apply federal statutory or regulatory references to such terms as “marriage,” “spouse,” “family,” “household member” or similar references to familial relationships to reflect inclusion of same-sex spouse and marriages. Any similar familial terminology references in the U.S. Department of Health and Human Services’ (HHS) statutes, regulations, or policy transmittals will be interpreted to include same-sex spouses and marriages legally entered into as described herein. [1 USC 7 - Section 3 of the Defense of Marriage Act]

- k. CONTRACTOR shall report immediately to the AREA AGENCY in writing any incidents of alleged fraud and/or abuse by either CONTRACTOR or subcontractor.
- l. Except as otherwise expressly provided for herein, CONTRACTOR shall not use AGREEMENT funds to pay the salary or expenses of any individual who is engaged in activities designed to influence legislation or appropriations pending before Congress.
- m. CONTRACTOR shall use the funds solely on the service set forth in this AGREEMENT as described in Section 1; misuse of funds will result in suspension of funds and thus termination of the AGREEMENT.
- n. DOMESTIC PARTNERS: For contracts of \$100,000 or more, CONTRACTOR certifies that CONTRACTOR is in compliance with Public Contract Code section 10295.3.
- o. GENDER IDENTITY: For contracts of \$100,000 or more, CONTRACTOR certifies that CONTRACTOR is in compliance with Public Contract Code section 10295.35.
- p. Compliance with California Government Code Section 11019.9, California Civil Code Section 1798 et seq., AREA AGENCY hereby requires the Contractor/Vendor to certify that:
  - i. Confidential information shall be protected from disclosure in accordance with all applicable laws, regulations and policies.
  - ii. All access codes which allow access to confidential information will be properly safeguarded.
  - iii. Activities by any individual or entity that is suspected of compromising confidential information will be reported to AREA AGENCY by completing a Security Incident Report.
  - iv. Any wrongful access, inspection, use, or disclosure of confidential information is a crime and is prohibited under State and Federal laws, including but not limited to California Penal Code Section 502, California Government Code Section 15619, California Civil Code Section 1798.53 and 1798.55, and the Health Insurance Portability and Accountability Act.
  - v. Any wrongful access, inspection, use, disclosure, or modification of confidential information may result in termination of this Contract/Agreement. Obligations to protect confidential information obtained under this Contract/Agreement will continue after termination of the Contract/Agreement with CDA.
  - vi. All employees/subcontractors of the Contractor/Vendor will be notified of the AREA AGENCY confidentiality and data security requirements.
  - vii. The AREA AGENCY or its designee will be granted access by the Contractor/Vendor to any computer-based confidential information within the scope of the Contract.
  - viii. Contractor agrees to protect the following types of confidential information which include but are not limited to: Social Security number; Medical information- Claimant and employer information; Driver License information; Information about individuals that relate to their personal life or identifies or describes an individual; Other agencies’ confidential and proprietary information; Criteria used for initiating audit selection; Methods agencies use to safeguard their information

(computer systems, networks, server configurations, etc.); Any other information that is considered proprietary, a copyright or otherwise protected by law or contract

- ix. Contractor agrees to protect confidential information by: Accessing, inspecting, using, disclosing or modifying information only for the purpose of performing official duties-Never accessing, inspecting, using, disclosing, or modifying information for curiosity, personal gain, or any non-business-related reason- Securing confidential information in approved locations.
- q. The AREA AGENCY provided Exhibit 1 “Equity Tool” developed by the Master Plan for Aging Equity Workgroup which is called “Ensuring Equity in Program Planning and Delivery”. The tool will assist CONTRACTOR in determining whether equity is adequately addressed in their H.R. 133 CAA Title III or Title VII services administration; see Exhibit 1.
- r. CONTRACTOR agrees to notify the AREA AGENCY 15 days in advance or soon as possible of any projected or planned reductions in the Title III or Title VII service. CONTRACTOR shall aim to work collaboratively and keep AREA AGENCY apprised on Title III and Title VII service availability in planning service area. AREA AGENCY aims to support the CONTRACTOR with linkages to community programs for clients.

### **Section 5. Availability of Funds; rights to and Method of Payments**

- a. It is mutually understood between the parties that the Notification of Award may have been written before ascertaining the availability of congressional and State appropriation of funds for the mutual benefit of both parties in order to avoid program and fiscal delays which would occur if the award were executed after that determination was made.
- b. The Subgrant Award is valid and enforceable only if sufficient funds are made available to the State by the United States government for the contract term outlined in this AGREEMENT, for the purpose of this program Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2. In addition, the award is subject to any additional restrictions, limitations or conditions enacted by the Congress, State or any statutes enacted by the Congress, which may affect the provisions, terms of funding of this award in any manner.
- c. It is mutually agreed that if the Congress and/or the State does not appropriate sufficient funds for this program, this Subgrant Award shall be amended to reflect any reduction in funds.
- d. In consideration of the performance of this Project in a manner considered satisfactory to AREA AGENCY, AREA AGENCY shall pay to CONTRACTOR the amount shown on page 1. CONTRACTOR understands that said funds are ultimately derived from federal funds and covenants to spend said money only in accordance with the terms of Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 pursuant to CONTRACTOR’S approved budget, which is in the CONTRACTOR’s Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 Funding Application and by this reference incorporated herein as if fully set forth.
- e. Payments to CONTRACTOR under this AGREEMENT shall be made monthly based upon invoices submitted by CONTRACTOR prior to or on the 15<sup>th</sup> of the following month. Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 funding is exclusive from all other Title III or Title VII Older American Act funding and other COVID-19 emergency funding which must be tracked and expended separately. In the event that invoices submitted by CONTRACTOR are inconsistent with AREA AGENCY invoice policy, AREA AGENCY may withhold all or part of the funds under this AGREEMENT until all inconsistencies and irregularities are resolved to AREA AGENCY’S satisfaction.

- f. No alteration, variation or deviation from any budget item described in CONTRACTOR's Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 Funding Application shall be valid unless made in writing and approved by the Chief Executive Officer of AREA AGENCY.
- g. In the event CONTRACTOR is unable to attain the minimum service and/or allowable services in accordance with the terms of the Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 funding the contract for the said contract term, CONTRACTOR must notify AREA AGENCY and submit a budget revision to AREA AGENCY within 120 days of the contract end date.
- h. The CONTRACTOR shall ensure that the subcontractor will complete all reporting and expenditure documents requested by AREA AGENCY, Federal or State entity. These reporting and expenditure documents shall be sent to the AREA AGENCY in a timely manner and at intervals as determined by AREA AGENCY or requesting entity.
- i. AREA AGENCY reserves the right to refuse payment to the Contractor or disallow costs for any expenditure, as determined by AREA AGENCY to be: out of compliance with this Agreement, unrelated or inappropriate to contract activities, when adequate supporting documentation is not presented, or where prior approval was required, but was either not requested or not granted.
- j. AREA AGENCY reserves the right to withhold payment from CONTRACTOR at any time during the contract terms if determined by AREA AGENCY to be: out of compliance with this Agreement, or any other relevant Federal, State, and local statutes, rules and regulations, directives and amendments executed under this AGREEMENT. Payment will be reinstated once a resolution is determined, and corrective action is successfully completed by CONTRACTOR and AREA AGENCY.

## **Section 6. Budget Requirements**

CONTRACTOR is aware of and agrees to adhere to the following Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 budget requirements:

- a. Sources of revenue for the Project will be separated on the budget as follows:
  - i. Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 – the funding received as a result of this contract
- b. "Indirect costs" are costs incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objective specifically benefiting the Project, without effort disproportionate to the results achieved.
  - i. The maximum reimbursement amount allowable for indirect costs is ten percent (10%) of the CONTRACTOR'S Modified Total Direct Costs (MTDC),
- c. The American Rescue Planning funding has the following service Match requirements:
  - Title III E
    - i. 25% match required for services
  - Title III B, III C-1, III C2
    - ii. 15% match required for services
  - Title III D
    - No match required
  - LTCOP program
    - No match required for the portion of funds used to support the LTCO program.

## Section 7. Contract Resolution

CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by AREA AGENCY, including, but not limited to, submission of a closeout for the contract by **October 20, 2024**, and submission of Audited Financial Statements or Single Audit Report for the contract year by **February 1<sup>st</sup>** of the following year. **All matching funds must be verified by CONTRACTOR's Independent Auditor and noted in Single Audit Report or Audited Financial Statements.** CONTRACTOR must comply with all other requirements contained in the AREA AGENCY's Provider Manual, which is incorporated herein by this reference as if fully set forth. CONTRACTOR shall account for, maintain record of, and report all Federal and State funds received under this AGREEMENT in accordance with requirements set forth by AREA AGENCY and applicable State and Federal requirements. Such requirements are outlined below and/or in the Sourcewise Provider Manual which is provided to CONTRACTOR at the start of the applicable contract period.

- a. CONTRACTOR Single Audit Reporting Requirements (2 CFR 200 Subpart F and 45 CFR 75 Subpart F)
- i. CONTRACTORS that expend \$750,000 or more in federal funds shall arrange for an audit to be performed as required by the Single Audit Act of 1984, Public Law 98- 502; the Single Audit Act Amendments of 1996, Public Law 104-156; and 2 CFR 200.501 to 200.521 and 45 CFR 75.501 to 75.521 A copy shall be submitted to:

Sourcewise  
 Attn: Area Planner  
 3100 De La Cruz Blvd, Suite 310,  
 Santa Clara CA, 95054

- ii. The copy of the Single Audit Report or Audited Financial Statement shall be submitted within thirty (30) days after receipt of the Auditor's report or nine (9) months after the end of the audit period, whichever occurs first, or unless a longer period is agreed to in advance by the AREA AGENCY. [2 CFR 200.512 and 45 CFR 75.512].
- iii. The CONTRACTOR shall include in the Single Audit Report "Schedule of Expenditures of Federal Awards" (SEFA) the Catalog of Federal Domestic Assistance (CFDA) number for the applicable federal award outlined in this AGREEMENT and awarded by the AREA AGENCY. The CFDA number is outlined in the AREA AGENCY Provider Manual.
- iv. The CONTRACTOR shall ensure that State-funded expenditures are displayed discretely along with the related federal expenditures in the Single Audit Report's "Schedule of Expenditures of Federal Awards" (SEFA) under the Catalog of Federal Domestic Assistance (CFDA) number.
- v. The CONTRACTOR shall ensure that for State contracts that do not have CFDA numbers, the CONTRACTOR shall ensure that the State-funded expenditures are discretely identified in the SEFA by the appropriate program name, identifying grant/contract number, and as passed through Sourcewise.
- vi. CONTRACTOR may request from the AREA AGENCY the federal and State grant award breakdown as a result of this AGREEMENT 60 - 90 days prior to the end of the contract term.
- vii. The CONTRACTOR shall ensure that the Single Audit Report meets 2 CFR 200 and 45 CFR 75, Subparts F – Audit Requirements:
  1. Performed timely – not less frequently than annually and a report submitted timely. The audit is required to be submitted within thirty (30) days after receipt of the Auditor's report or nine (9) months after the end of the audit period, whichever occurs first. [2 CFR 200 512 and 45 CFR 75.512]
  2. Performed in accordance with Generally Accepted Government Auditing Standards. [2 CFR 200.514 and 45 CFR 75.514].

3. All inclusive opinion (or disclaimer of opinion) of the financial statements including internal control, related to the financial statements and major programs; an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts; and the schedule of findings and questioned costs. [2 CFR 200.515 and 45 CFR 75.515]
  4. Properly procured – use procurement standards for auditor selection. [2 CFR 200.509 and 45 CFR 75.509].
- viii. The CONTRACTOR shall perform a reconciliation of the “Financial Closeout Report” to the audited financial statements, single audit, and general ledgers. The reconciliation shall be maintained and made available for AREA AGENCY review upon submission of the Single Audit Report or Audited Financial Statements.
- b. A CONTRACTOR which is not required to obtain a Single Audit nor is subject to Single Audit requirements shall adhere to the AREA AGENCY alternative procedures for Contract Resolution, including the following:
- i. The copy of the Audited Financial Statement shall be submitted within thirty (30) days after receipt of the Auditor’s report or nine (9) months after the end of the audit period, whichever occurs first, or unless a longer period is agreed to in advance by the AREA AGENCY. [2 CFR 200.512 and 45 CFR 75.512].
  - ii. The CONTRACTOR shall perform a reconciliation of the “Financial Closeout Report” to the audited financial statements, single audit, and general ledgers. The reconciliation shall be maintained and made available for AREA AGENCY review upon submission of the Audited Financial Statements.
  - iii. The CONTRACTOR shall reconcile the grant award expenditures outlined in this AGREEMENT reported by the CONTRACTOR to the AREA AGENCY in the closeout to the amounts identified in the Audited Financial Statement or other type of audit. For a CONTRACTOR who was not required to obtain a single audit and did not obtain another type of audit, the reconciliation of expenditures reported to AREA AGENCY must be accomplished through performing alternative procedures (e.g., risk assessment [2 CFR 200.331 and 45 CFR 75.352], documented review of financial statements, and documented expense verification, including match, etc.). CONTRACTOR shall assure that the AREA AGENCY can complete the required alternative procedures to verify expenses including match.
- c. The following audit costs are unallowable:
- i. Any costs when audits required by the Single Audit Act and 2 CFR 200 and 45 CFR 75, Subparts F – Audit Requirements have not been conducted or have been conducted but not in accordance therewith; and
  - ii. Any costs of auditing a nonfederal entity that is exempted from having an audit conducted under the Single Audit Act, 2 CFR 200 and 45 CFR 75, Subparts F – Audit Requirements because its expenditures under federal awards are less than \$750,000 during the non-federal entity’s fiscal year.
    1. The costs of a financial statement audit of a nonfederal entity that does not currently have a federal award may be included in the indirect cost pool for a cost proposal.
    2. Pass-through entities may charge federal awards for the cost of agreed-upon procedures engagements to monitor subcontractors who are exempted from the requirements of the Single Audit Act and 2 CFR 200 and 45 CFR 75, Subparts F – Audit Requirements. This cost is allowable only if the agreed-upon procedures engagements are conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS) attestation standards, paid for and arranged by the pass-through entity, and limited in scope to one or more of the following types of compliance requirements: activities allowed or not allowed; allowable costs/cost principles; eligibility; and reporting. [2 CFR 200.425]

- d. The AREA AGENCY shall, at a minimum, perform Contract Resolution within fifteen (15) months of the CONTRACTORS “Financial Closeout Report”.
  - i. The AREA AGENCY shall ensure that the CONTRACTOR’s single audit reports meet 2 CFR 200 and 45 CFR 75, Subparts F-Audit Requirements.
  - ii. The AREA AGENCY will issue a management decision on monitoring or audit findings within six (6) months after receipt of the CONTRACTOR’s single audit report and ensuring that the CONTRACTOR takes appropriate and timely corrective action
  - iii. CONTRACTOR shall adhere to and ensure that the following are upheld to ensure that the AREA AGENCY may complete the required contract resolution of the Audited Financial Statement or Single Audit Report:
    - a. Accurate, current, and complete disclosure of the financial results of each federal award or program.
    - b. Records that identify adequately the source and application of funds for each federally funded activity.
    - c. Effective controls over, and accountability for, all funds, property, and other assets to ensure these items are used solely for authorized purposes.
    - d. Accuracy of comparison of expenditures with budget amounts for each federal award.
    - e. Compliance with AREA AGENCY resolution after the alternative procedure is performed to reconcile and make necessary adjustments of the Contractor’s own records for the applicable contract time period.

## **Section 8. Records**

- a. The CONTRACTOR, shall maintain complete records which shall include, but not be limited to, accounting records, contracts, agreements, a reconciliation of the “Financial Closeout Report” to the audited financial statements, single audit report, and general ledgers, and a summary worksheet identifying the results of performing an audit resolution of its subcontractors in accordance with Section 10. This includes the following: Letters of Agreement, insurance documentation, memorandums and/or Letters of Understanding, patient or client records, and electronic files of its activities and expenditures hereunder in a form satisfactory to AREA AGENCY. All records pertaining to this AGREEMENT must be made available for inspection and audit by the Federal, State and AREA AGENCY or its duly authorized agents, at any time during normal business hours.

All such records, including confidential records, must be maintained and made available by the CONTRACTOR: (1) until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by AREA AGENCY, (2) shall retain said records for a minimum of seven years or for such longer period, if any, as is required by applicable statute, by any other clause of this AGREEMENT, or by Sections A and C of this section.

- b. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for the same periods as specified in Section A above. The CONTRACTOR shall ensure that any resource directories and all client records remain the property of AREA AGENCY upon termination of this AGREEMENT and are returned to AREA AGENCY or transferred to another CONTRACTOR as instructed by AREA AGENCY.
- c. Monthly data reporting is due on the 10<sup>th</sup> day of the following month for the previous month. At minimum, CONTRACTOR will report Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 data required to Sourcewise. CONTRACTOR will include at minimum in the data report submitted to Sourcewise:
  - i. Total unduplicated number of seniors/caregivers receiving services

- ii. Type of service, including name and category of service provided
  - iii. Total number of units of service provided
- d. CONTRACTOR is responsible for maintaining record of total number of seniors / caregivers receiving services and total number of units of service provided based on the AGREEMENT outlined above in (c). for Federal, State and AAA monitoring and contract resolution. The chosen data reporting system is the responsibility of the CONTRACTOR to manage and maintain to ensure compliance with reporting requirements of Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 funding.
- e. In the event of any litigation, claim, negotiation, audit exception, or other action involving the records, all records relative to such action shall be maintained and made available until every action has been cleared to the satisfaction of the AREA AGENCY and/or Federal or State and is so stated in writing to the Contractor.
- f. Adequate source documentation of each transaction shall be maintained relative to the allowability of expenditures reimbursed by the State and AREA AGENCY under this Agreement. If the allowability of expenditures cannot be determined because records or documentation of the Contractor are nonexistent or inadequate according to guidelines set forth in 2 CFR 200.302 and 45 CFR 75.302, the expenditures will be questioned in the audit and may be disallowed by AREA AGENCY during the audit resolution process.
- g. All records containing confidential information shall be handled in a confidential manner in accordance with the requirements for information integrity and security, and in accordance with guidelines set forth in this Article, and Section 8. After the authorized period has expired, confidential records shall be shredded and disposed of in a manner that will maintain confidentiality.
- h. The CONTRACTOR shall maintain accounting records for funds received under the terms and conditions of this AGREEMENT. These records shall be separate from those for any other funds administered by the CONTRACTOR, and shall be maintained in accordance with Generally Accepted Accounting Principles and Procedures and the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [2 CFR 200] [45 CFR 75]

## **Section 9. Equipment**

- a. Equipment/Property with per unit cost over \$5,000 or any computing devices, regardless of cost requires justification from the Contractor and approval from AREA AGENCY and must be included in its Federal American Rescue Plan Act (ARPA) [Older Americans Act], P.L. 117-2 approved budget.
- i. property refers to all assets used in operation of this Agreement.
  - ii. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, and intangibles, etc.
  - iii. Property does not include consumable office supplies such as paper, pencils, toner cartridges, file folders, etc.
- b. Property acquired under this agreement, which meets any of the following criteria is subject to the reporting requirements:
- i. Has a normal useful life of at least one (1) year and has a unit acquisition cost of at least \$5,000 (a desktop or laptop setup, is considered a unit, if purchased as a unit).
  - ii. All computing devices, regardless of cost (including but not limited to, workstations, servers, laptops, personal digital assistants, notebook computers, tablets, smartphones and cellphones).
  - iii. All Portable electronic storage media, regardless of cost (including but not limited to, thumb/flash drives and portable hard drives).

- c. The CONTRACTOR shall keep track of property purchased with funds from this AGREEMENT that meet the requirements as defined in Section 9 and submit to AREA AGENCY a Property Acquisition Form (CDA 9023) for all property furnished or purchased by either the Contractor or the Subcontractor with funds awarded under the terms of this AGREEMENT.
- d. Prior to disposal of any property purchased by the CONTRACTOR or the subcontractor with funds from this Agreement or any predecessor Agreement, the CONTRACTOR must obtain approval from AREA AGENCY and State for all reportable property as defined in Section 9 of this AGREEMENT. CONTRACTOR will contact AREA AGENCY with request in writing.

## **Section 10. Right to Monitor and Audit**

### **a. General**

- i. Any duly authorized representative of the Federal or State government and AREA AGENCY, which includes but is not limited to the State Auditor, CDA Staff, and AREA AGENCY shall have the right to monitor and audit CONTRACTOR and all subcontractors providing services under this AGREEMENT through on-site inspections, audits, and other applicable means determined necessary. In the event that AREA AGENCY is informed of an audit by an outside Federal or State government entity affecting the Contractor, AREA AGENCY will provide timely notice to Contractor.

1. CONTRACTOR shall make available all reasonable information necessary to substantiate that expenditures under this AGREEMENT are allowable and allocable, including, but not limited to books, documents, papers, and records. CONTRACTOR shall agree to make such information available to the Federal government, the AREA AGENCY, or State authorized representatives, including performing inspections, for examination, copying, or mechanical reproduction, on or off the premises of the appropriate entity upon a reasonable request.
2. All AGREEMENT(S) entered into by CONTRACTOR and subcontractors with audit firms for purposes of conducting independent audits under this Agreement shall contain a clause permitting any duly authorized representative of the Federal or State government and AREA AGENCY access to the supporting documentation of said audit firm(s).
3. The AREA AGENCY shall monitor the CONTRACTOR and subcontracts to ensure compliance with laws, regulations, and the provisions of contracts that may have a direct and/or material effect on each of its H.R. 133 CAA funded programs.
4. The CONTRACTOR shall cooperate with and participate in any further audits which may be required by the AREA AGENCY, including CDA fiscal and compliance audits.
5. The CONTRACTOR shall cooperate with the AREA AGENCY monitoring and evaluation processes, which include making any administrative, program and fiscal staff available during any scheduled process.

### **b. Fiscal and Compliance Audit**

- i. Authorized representatives from the AREA AGENCY and the State and Federal Government agencies shall have the right to perform fiscal and compliance audits of Contractors in accordance with Generally Accepted Government Auditing Standards (GAGAS) to ensure compliance with applicable laws, regulations, grants, and contract requirements.
- ii. Audits may include, but not be limited to, of:
  1. Financial closeouts (2 CFR 200.16 and 45 CFR 75.2)
  2. Internal controls (2 CFR 200.303 and 45 CFR 75.303)

3. Allocation of expenditures (2 CFR 200.4 and 45 CFR 75.2)
4. Allowability of expenditures (2 CFR 200.403 and 45 CFR 75.403)
5. Equipment expenditures and approvals, if required (2 CFR 200.439 and 45 CFR 75.439)

### **Section 11. Independent Contractor**

CONTRACTOR, its agents and employees, shall be independent contractors in performance of this AGREEMENT and not officers, employees or agents of the AREA AGENCY.

### **Section 12. Conflict of Interest**

- a. The CONTRACTOR shall prevent employees, consultants, or members of governing bodies from using their positions for purposes including, but not limited to, the selection of subcontractors, that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as family, business, or other ties. In the event that the AREA AGENCY determines that a conflict of interest exists, funds may be disallowed by the AREA AGENCY and such conflict may constitute grounds for termination of the AGREEMENT.
- b. This provision shall not be construed to prohibit employment of persons with whom the CONTRACTOR's officers, agents, or employees have family, business, or other ties, so long as the employment of such persons does not result in a conflict of interest (real or apparent) or increased costs over those associated with the employment of any other equally qualified applicant, and such persons have successfully completed for employment with the other applicants on a merit basis.

### **Section 13. Covenant Against Contingent Fees**

- a. The CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit this AGREEMENT. There has been no agreement to make commission payments in order to obtain this AGREEMENT.
- b. For breach or violation of this warranty, the AREA AGENCY shall have the right to terminate this AGREEMENT without liability or at its discretion to deduct from the AGREEMENT price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingency fee.

### **Section 14. Licensing and Accreditation**

Where necessary for its operation, CONTRACTOR shall maintain the appropriate license, or accreditation throughout the life of this AGREEMENT.

### **Section 15. Copyrights & Rights to Data**

- a. The CONTRACTOR shall not publish or transfer any materials, as defined in Section 15 b., produced or resulting from activities supported by this AGREEMENT without the express consent of the AREA AGENCY. That consent shall be given, or the reasons for denial shall be given, and any conditions under which it is given or denied, within thirty (30) days after the written request is received by the AREA AGENCY. The AREA AGENCY requires all CONTRACTOR's adhere to the Sourcewise Style Guide guidelines concerning branding, logo, and messaging available on the Sourcewise website at, <http://www.mysourcewise.com/about/media-center>. The AREA AGENCY may request a copy of the material for review and approval for use.

This subsection is not intended to prohibit the CONTRACTOR from sharing identifying client information authorized by the participant or summary program information which is not client-specific.

- b. As used in this Agreement, the term “subject data” means writings, sound recordings, pictorial reproductions, drawings, designs or graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this Agreement. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.
- c. Subject only to other provisions of this Agreement, AREA AGENCY may use, duplicate, or disclose in any manner, and have or permit others to do so subject to State and Federal law, all subject data delivered under this Agreement.
- d. Materials published or transferred by the CONTRACTOR and financed with funds under this Agreement shall: (a) state “The materials or product were a result of a project funded by an Agreement with the AREA AGENCY and the California Department of Aging;” (b) give the name of the entity, (c) include the following statement: “The conclusions and opinions expressed may not be those of the AREA AGENCY and/or the California Department of Aging and this publication may not be based upon or inclusive of all raw data.”
- e. The CONTRACTOR agrees to acknowledge the receipt of all funding support from the AREA AGENCY in news releases (radio, television, and newspaper); printed materials such as brochures, pamphlets, newsletters; the CONTRACTOR’S Web site; and any other printed documents. Such acknowledgement shall make accurate reference to the service for which funding is provided, in whole or in part, by the AREA AGENCY and include AREA AGENCY logo.
- f. The CONTRACTOR shall provide a copy of all products and materials developed in whole or in part with AGREEMENT funds to the AREA AGENCY for file.
- g. The CONTRACTOR is a public agency subject to the disclosure requirements of the California Public Records Act (“CPRA”). If CONTRACTOR receives a CPRA request that includes “materials” as that term is defined in Section 32 b of this Agreement, CONTRACTOR will immediately notify AREA AGENCY in writing of the request and provide AREA AGENCY with an opportunity to review CONTRACTOR’s proposed response. If AREA AGENCY claims that any part of the proposed response falls within one or more CPRA exemptions, AREA AGENCY must notify CONTRACTOR of its claims and identify the specific lines containing the information.

If CONTRACTOR indicates in writing that it still intends to produce the challenged materials, and AREA AGENCY wishes to prevent disclosure, AREA AGENCY is required to obtain a protective order, injunctive relief, or other appropriate remedy from a court of law in Santa Clara County before the CONTRACTOR is required to respond to the CPRA request. If AREA AGENCY fails to obtain such remedy within the time the CONTRACTOR is required to respond to the CPRA request, CONTRACTOR may disclose the requested information. AREA AGENCY further agrees that it shall defend, indemnify, and hold CONTRACTOR harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney’s fees) that may result from denial by CONTRACTOR of a CPRA request for information arising from any representation, or any action (or inaction), by the AREA AGENCY.

**Section 16. Hold Harmless and Indemnification**

Each party (AREA AGENCY and CONTRACTOR) hereto agrees to be responsible and assume mutual and proportional liability for its own wrongful or negligent acts or omissions, including but not limited to, the concurrent active or passive negligence of those of its officers, agents, or employees and servants to the full extent required by law.

Each party shall indemnify and hold the other harmless for claims of every name, kind, and description incurred by the indemnitee, brought for, or on account of injuries to or death of any person, or damage to property of any kind whatsoever, including intangible property rights, resulting from the performance by the indemnitor of any work required by this agreement, provided that this indemnity and hold-harmless obligation shall not apply to benefit a party relating to injuries or damage for which that party has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**Section 17. Assignability**

Without the written consent of AREA AGENCY, this AGREEMENT is not assignable by CONTRACTOR either in whole or in part. In the event of subcontract hereunder, CONTRACTOR remains primarily liable for performance of this AGREEMENT.

**Section 18. Entire Contract**

This AGREEMENT is the entire contract between the parties, and no modification or amendment thereof shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not set forth herein shall be binding on any of the parties hereto.

In the event CONTRACTOR contract does not meet all the necessary service requirements, AREA AGENCY has the right to negotiate contract modification or revisions to assure that all necessary service requirements are met.

**Section 19. Insurance**

CONTRACTOR has been afforded this funding opportunity based on its existing contract with the AREA AGENCY. CONTRACTOR shall keep insurance up to date with all requirements specified in its FY22-23 baseline contract with the AREA AGENCY.

**Section 20. Limitation of Authority**

CONTRACTOR shall have no authority to contract for or on behalf of, or to incur obligations on behalf of the AREA AGENCY.

**Section 21. Time**

Time is of the essence of this AGREEMENT. The undersigned, as authorized representatives of CONTRACTOR and SOURCEWISE respectively, certify the establishment of this AGREEMENT.

**Section 22. Contract Execution**

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "ELECTRONIC COPY OF A SIGNED CONTRACT" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "ELECTRONICALLY SIGNED CONTRACT" means a contract that is executed by applying an electronic signature using technology approved by the COUNTY.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have caused this AGREEMENT to be executed on the day and year first above written.

CONTRACTOR

BY: **MIKE WASSERMAN**  
\_\_\_\_\_  
(Name)

\_\_\_\_\_  
President, Board of Supervisors  
(Title)

*Mike Wasserman*  
\_\_\_\_\_  
(Signature)

**DEC 06 2022**  
\_\_\_\_\_  
(Date)

SOURCEWISE

DocuSigned by:  
*Jeffrey Tepper*  
\_\_\_\_\_  
1750F56FC7514D0  
BY: \_\_\_\_\_  
President, Board of Directors

Attest:

DocuSigned by:  
*Aneliza Del Pinal*  
\_\_\_\_\_  
83D19351F69E420  
Chief Executive Officer, Sourcewise

**10/31/2022**  
\_\_\_\_\_  
(Date)

Signed and certified that copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

*Tiffany Lennear*  
\_\_\_\_\_  
Clerk of the Board of Supervisors **TIFFANY LENNEAR**

Date: **DEC 06 2022**

APPROVED AS TO FORM AND LEGALITY

DocuSigned by:  
*[Signature]*  
\_\_\_\_\_  
C729F630578A45D

Deputy County Counsel

Date: **10/27/2022**