

**SECOND AMENDED
AREA AGENCY ON AGING
JOINT POWERS AGREEMENT**

THIS AGREEMENT, effective on the 1st day of October, 2018, is entered into pursuant to the provisions of Joint Exercise of Powers Act, Sections 67-2326 through 67-2333, Idaho Code, by counties of the state of Idaho as set forth in Chapter 1, Title 31, Idaho Code (hereinafter collectively as "COUNTIES," individually as "COUNTY"), as subscribers to counterparts of this Agreement, for the purpose of operating a separate legal entity of unlimited duration to be known and designated as the Area 3 Senior Services Agency (Area 3-SSA). This Agreement supersedes all prior Area 3-SSA agreements signed by the COUNTIES to establish and operate the Area 3-SSA.

WHEREAS, COUNTIES desire to unite to form a separate administrative entity which will be known as the Area 3 Senior Services Agency (Area 3-SSA) and which entity will apply to the Idaho Commission on Aging (ICOA) for designation as the Area Agency on Aging (AAA) for that area of southwest Idaho which ICOA has identified as Area 3; and

WHEREAS, each COUNTY is a political subdivision created under the laws of the State of Idaho, Title 31, Chapter 1, Idaho Code, and as such has been delegated certain powers, including the authority to enter into contracts as set forth in Sections 31-601, 602, and 603, Idaho Code; and

WHEREAS, each COUNTY's authority is general and not limited to only one function or combination of related functions and, as such, meets the definition of "a unit of general purpose government," as defined in 42 USC Section 3022 (Public Health and Welfare, Programs for Older Americans: Grants for State and Community Programs on Aging, General provisions); and

WHEREAS, each COUNTY lies within the geographic boundaries of "Area 3," a geographic service area which has been designated by ICOA; and

WHEREAS, each COUNTY meets the criteria allowing it to apply to become the AAA for Area 3; and

WHEREAS, each COUNTY has committed to membership in the Area 3-SSA as duly evidenced by an appropriately executed resolution of its county commission, and all COUNTIES wish to unite for the specific purpose of continuing to be the designated AAA for Area 3; and

WHEREAS, this Joint Powers Agreement is entered into by the COUNTIES to establish a separate legal entity, which will be designated as the AAA for Area 3, and to set forth the powers and authority of that separate legal entity; and

WHEREAS, the Area 3-SSA as structured by this Joint Powers Agreement meets the requirements for an area agency on aging under 42 U.S.C. 3025(c)(3);

NOW, BE IT AGREED, and in consideration of the mutual advantages and benefits to each COUNTY, which is a party hereto, and the mutual covenants herein contained, the COUNTIES agree

as follows:

ARTICLE I. Creation of Area 3 Senior Services Agency. Area 3-SSA is hereby created as a separate Joint Powers Entity, separate and apart from any member political subdivision, through this Joint Powers Agreement (hereinafter “Agreement”) pursuant to the provisions of Sections 67-2326 through 67-2333, Idaho Code.

ARTICLE II. Purposes and Duration.

- (1) The Area 3-SSA is established to apply for and maintain designation as the Area 3 AAA. In that capacity, the Area 3-SSA will plan, develop and implement services for older persons throughout Area 3, as required by the terms of its approval by ICOA.
- (2) It is the intent of the COUNTIES to create a separate entity of unlimited duration, unless terminated pursuant to this Agreement or until the Area 3-SSA is no longer designated the Area 3 AAA, whichever occurs first.
- (3) Each COUNTY may renew its subscription in the Area 3-SSA by paying its annual dues installment.
- (4) The terms of this Agreement shall govern the operations of the Area 3-SSA.

ARTICLE III. Financial Operations. Financial operations of the Area 3-SSA shall be committed to the sound discretion of the BOARD. All income and assets of the Area 3-SSA shall be at all times dedicated to the work of the Area 3-SSA as the Area 3 AAA.

ARTICLE IV. Non-Waiver of Governmental or Other Immunity. COUNTIES participating in the Area 3-SSA do not waive any immunities or limitations of liability provided to political subdivisions or their employees by any state or federal law.

ARTICLE V. Jurisdictional Area. The Area 3-SSA’s jurisdictional area shall consist of the southwest Idaho area identified by ICOA as Area 3.

ARTICLE VI. Obligation. The obligations of each COUNTY that is a subscriber to this Agreement shall be as follows:

- (1) To designate a county commissioner to the BOARD as specified by Article IX.
- (2) To cooperate fully with the officers, agents, and employees of the Area 3-SSA in activities relating to its purposes and powers.
- (3) To pay annual dues installments to Area 3-SSA by September 30 for a one-year subscription to the Agreement which starts on October 1.

ARTICLE VII. Budgeted Expenditures. The BOARD shall establish the annual operating budget for the Area 3-SSA and, as appropriate, each COUNTY shall pay each year a flat fee of \$100.00 (one hundred dollars), or other amount as set by the BOARD, for incidental expenses not covered by grants and other

funding. The annual budget and work program of the Area 3-SSA may be amended by vote of the BOARD, provided such amendment does not require an additional budget appropriation, or by the joint approval of the BOARD where such amendment does require an additional budget appropriation. After approval of the Area 3-SSA's budget, no COUNTY may terminate or withhold its financial obligations to the Area 3-SSA during the year of which it was allocated.

ARTICLE VIII. Board of Directors. The BOARD will be composed of directors, each of whom is a county commissioner selected by the board of county commissioners from each of the participating COUNTIES. Each director of the BOARD shall serve for the term designated by the COUNTY which they represent. Each director may be allowed to provide an issue-specific proxy. Each director of the BOARD may not vote on any matter of Area 3-SSA business until its COUNTY has paid its annual dues installment.

ARTICLE IX. Powers and Duties of the Board. The BOARD shall have the following powers and duties:

- (1) To create an advisory council.
- (2) To implement services through contracts or direct operations in accordance with ICOA's Senior Services State Plan for Idaho.
- (3) To participate as part of a network of agencies that coordinate a "No Wrong Door" approach for all consumers to access aging and disability resources and services available to older persons in Idaho.
- (4) To operate all current Area 3 AAA programs under the Older Americans Act (OAA) and the Idaho Senior Services Act (ISSA).
- (5) To annually elect a chair and vice-chair. Each officer shall serve until his or her successor is elected. The officers must be elected from among the BOARD by a majority vote of the BOARD. Only representatives who are elected officials may serve as officers. Officers shall serve a one-year term. Officers have no term-limits.
- (6) To establish the annual operating budget for the Area 3 AAA, determine how the funds will be expended, and establish the time period for which the flat fee payment is due.
- (7) To provide for the selection, employment, purchase, and termination of all personnel, contractors, and services (such as insurance and legal representation) necessary for the Area 3-SSA and the administration of Area 3 AAA.
- (8) To establish and schedule BOARD meetings.
- (9) To reimburse BOARD members for reasonable and approved expenses incurred in attending to BOARD responsibilities.
- (10) To exercise all powers of Area 3 AAA, except powers reserved to the COUNTIES.

- (11) To develop, prepare and adopt an Area Plan.
- (12) To make reports to the COUNTIES at its meetings.
- (13) To provide for the disbursement of funds.
- (14) To establish and amend rules governing its own conduct and procedures and the powers and duties of its officers, consistent with the JPA.
- (15) To provide to COUNTIES and ICOA an annual report of operations and financial affairs.
- (16) To form committees and advisory panels, and to provide other services as needed by Area 3 AAA. The BOARD shall determine the method of appointment and terms of members of committees and advisory panels.
- (17) To dissolve the Area 3 AAA in accordance with state or federal regulations governing the dissolution of an Area Agency on Aging.
- (18) To disburse its assets upon dissolution of the Area 3 AAA, provided that notice of the intent to dissolve shall be provided to all COUNTIES at least thirty (30) days before such vote.
- (19) To permit other COUNTIES in the Area 3 region to join this Agreement.
- (20) To purchase, sell, encumber, and lease real property, equipment, machinery, and personal property to the extent permitted by law.
- (21) To set the annual dues.
- (22) To sue and be sued.
- (23) To enter into contracts.
- (24) To do all acts necessary and proper for the implementation of this Agreement.

ARTICLE X. Meetings of the Board of Directors.

- (1) The BOARD may set a time and place for regular meetings in accordance with applicable law. All provisions of law applicable to open public meetings shall be observed.
- (2) All meetings shall be held at such place as the call for the meeting shall direct and may be attended in person or electronically. Electronic or written notice stating the place, day and hour of any meeting shall be delivered either personally, by mail, or electronically to each member representative not less than seven (7) days before such meeting. Such notice shall include the agenda, minutes of the previous meeting, and other supporting documents pertinent to the agenda items.

- (3) The Chairman of the BOARD may call a special meeting or shall call a special meeting at the request of a majority of the members of the BOARD.
- (4) A majority of seated Directors shall constitute a quorum to do business. All acts of the BOARD shall require a majority vote of the Directors present and voting, unless specified otherwise herein.
- (5) Each BOARD member shall be entitled to one vote. No other individuals shall have voting privileges on the BOARD.

ARTICLE XI. Distribution of Property, Funds, and Supplies Upon Termination of this Agreement. In the event of termination of this Agreement, all dues, unused consumable supplies, non-consumable supplies or other property acquired by Area 3 AAA through the use of grant funds provided through the ICOA, shall become the property of the ICOA. Any other supplies, properties, or funds shall be disposed of as determined by the BOARD.

ARTICLE XII. Severability. In the event that any Article, provision, clause or other part of this Agreement should be held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability with respect to other Articles, provisions, clauses, applications or occurrences, and these agreements are expressly declared to be severable.

ARTICLE XIII. Amendments. This Agreement may be amended by a mutual agreement of all of the COUNTIES that are a party hereto.

ARTICLE XIV. Withdrawal. Any COUNTY may withdraw as a subscriber from this Agreement by providing written notice to the Area 3-SSA Executive Director no less than 30 days before the effective date of withdrawal. A withdrawing COUNTY forfeits its rights to its funds paid or materials provided to the Area 3-SSA, and must fulfill its obligations under Article VII of this Agreement. The withdrawal or removal of a COUNTY from this Agreement does not affect this Agreement with respect to each remaining COUNTY.

ARTICLE XV. Effective Date and Termination of Agreement.

The effective date of this Joint Powers Agreement is set forth in the first paragraph of this document. This Agreement shall remain in effect until as set forth in Article II of this Agreement, or terminated by the BOARD. The BOARD can terminate the existence of Area 3-SSA by a vote of two-thirds (2/3) vote of the Directors present and voting.

ARTICLE XVI. Miscellaneous Provisions.

- (1) **Severability in Case of Partial Invalidity.** If any portion of this Agreement is determined to be invalid or unenforceable as a matter of law, such invalidity or lack of enforcement shall be limited to such portion, and shall not affect any other portions or provisions, which shall be given the fullest effect permitted by law. In the event that it should ever be determined by a

tribunal having appropriate jurisdiction that this Agreement is illegal or unenforceable as a matter of law, this Agreement shall be deemed to be null and void, from its inception, and the Parties hereto shall be relieved of any further performance under the terms of this Agreement.

- (2) **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Idaho. The Counties agree that venue for any dispute or cause of action arising out of or related to this Agreement shall be in the state and federal courts located in Ada County, Idaho.
- (3) **No Third-Party Beneficiaries.** Each COUNTY to this Agreement intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person or legal entity other than the COUNTIES who have signed this Agreement.
- (4) **Attorney Fees.** If in the event judicial action of any kind is necessary to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney fees and costs from the non-prevailing Party as provided by Idaho law and the Idaho Rules of Civil Procedure.
- (5) **Additional Parties.** The COUNTIES agree to the admission of future COUNTIES that are in the Area 3 service area. The COUNTIES acknowledge that they shall have no right to object to the addition of such COUNTIES provided that they are admitted in accordance with the terms of this Agreement.
- (6) **Indemnification of Directors.** Directors of Area 3-SSA must use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties hereunder. They shall not be personally liable for any mistake of judgment or other action made, taken or omitted by them in good faith; nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care so long as the actions or omissions complained of shall have taken place within the course and scope of their official duties. No director shall be personally liable for any action taken or omitted by any other director. The assets of Area 3-SSA may be used to defend and indemnify any trustee, officer, agent or employee for actions taken by each such person in good faith within the scope of his or her authority for Area 3-SSA as public officials in the state of Idaho. Area 3-SSA may purchase insurance providing coverage for trustees, officers and employees.
- (7) **Indemnification of a County by Area 3-SSA.** To the extent allowed by Idaho law, including Article VIII, Section 4 of the Idaho Constitution and the Idaho Tort Claims Act (Idaho Code § 6-901, et seq.), in the event that a COUNTY is alleged to be liable solely as a result of wrongful acts, omissions, or negligence, or all three (3), of Area 3-SSA, Area 3-SSA shall indemnify, defend, and hold harmless the COUNTY and its employees from and against all liability, claims, loss, costs, and expenses arising out of, or resulting from, the actions of the COUNTY.
- (8) **Insurance.** Without limiting the COUNTIES' rights to indemnification, Area 3-SSA shall secure and maintain insurance coverage during its existence pursuant to this Agreement as follows:
 - a. Worker's compensation insurance as required by Idaho statutes.

- b. Commercial general liability insurance, including coverage for premises and operations, contractual liability, personal injury liability, and independent liability (if applicable), in an amount of not less than \$1,000,000 per occurrence, combined single limit, written on an occurrence form. The policy must cover any and all claims, losses, actions, and judgments for damages or injury to persons or property arising out of or in connection with the Parties' acts.
 - c. Commercial auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 per occurrence. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).
- (9) **Recitals.** The above and foregoing recitals shall be considered a part of this agreement for all purposes and interpretations.
- (10) **Nonwaiver.** Failure of a COUNTY to exercise any of its rights under this Agreement, or breach thereof, shall not be deemed to be a waiver of such right or a waiver of any subsequent breach.
- (11) **Entire Agreement.** This Agreement constitutes the entire Agreement between the COUNTIES to it. This Agreement supersedes any prior verbal or written understanding or agreement, and may be modified only as provided in this Agreement.
- (12) **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:
- a. "Employee" means an elected official, officer, employee, volunteer, intern, extern, representative, or agent.
- (13) **Survival.** The provisions in Articles IV, XI, XII, XVI(1), XVI(2), XVI(3), XVI(4), XVI(6), XVI(7), XVI(13) of this Agreement survive for two years past termination of this Agreement for any COUNTIES that are a subscriber to this Agreement at the time of termination. These provisions are binding on any COUNTY for two years past withdrawal from this Agreement.

IN WITNESS WHEREOF, the COUNTIES hereto have entered into this Joint Powers Agreement.

Adopted September 18, 2018