

CONTRACT AMENDMENT NO. 03

Original Contract Number 15-73909

1. PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the "Contract") is entered into by and between **Morning Star Financial Services Holding Co., d/b/a Morning Star Financial Services**, 9400 Golden Valley Rd, Golden Vally, MN 55427 (hereinafter called "Contractor"), and the **STATE OF COLORADO**, acting by and through the Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203 (hereinafter called "Department" or "State.")

2. EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date.") The Department shall not be liable to pay or reimburse Contractor for any performance hereunder, including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. FACTUAL RECITALS

The Parties entered into the Contract for the Contractor to provide Consumer Directed Attendant Support Services (CDASS) Financial Management Services (FMS) for the Department. The purpose of this Amendment is to remove the Agency with Choice Model to comply with the Fair Labor Standards Act without placing caps on the hours worked by attendants.

4. CONSIDERATION

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment.

5. LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6. MODIFICATIONS

The Contract and all prior amendments thereto, if any, are modified as follows:

A. Exhibit A, Statement of Work, Section 1, Terminology, Paragraph 1.1.1.1., Agency with Choice (AwC) is hereby deleted in its entirety.

B. A. Exhibit A, Statement of Work, Section 1, Terminology, Paragraph 1.1.1.18. shall be deleted in its entirety and replaced with the following:

1.1.1.18. Employer Costs – the sum of all employer paid employment taxes and worker's compensation insurance costs directly related to Attendant wages. Employer costs include, but are not limited to:

C. Exhibit A, Statement of Work, Section 1, Terminology, Paragraph 1.1.1.19., Employer of Record is hereby deleted in its entirety and replaced with the following:

1.1.1.19. Employer of Record - Under the Fiscal Employer Agent (F/EA) FMS model, the Client is legally responsible for paying Attendants and managing employee costs. The F/EA pays workers and vendors on the participant's behalf. The F/EA withholds, calculates, deposits and files withheld Federal Income Tax and both employer and employee Social Security and Medicare Taxes. The Contractor shall provide a client all corrections needed on the forms, application, agreement, or consent within three business days from receipt.

D. Exhibit A, Statement of Work, Section 2, Statement of Work, Subsection 2.1., Contractor's General Requirements, Paragraph 2.3.6.3.1. is hereby deleted in its entirety and replaced with the following:

2.3.6.3.1. In the event that the Contractor receives a form, application, agreement or consent form that is inaccurate, the Contractor shall send those forms back to the Client or Attendant for correction and with all errors identified. These corrections shall be returned to the Client within three (3) business days. The five (5) Business Day period in this section 2.3.6.3. shall not begin until the Contractor has received the corrected form, application, agreement or consent form.

E. Exhibit A, Statement of Work, Section 2, Statement of Work, Subsection 2.3., Client, authorized representative, attendant and case manager support, Paragraph 2.3.12. is hereby added:

2.3.12. The Contractor shall maintain sufficient coverage to ensure that it also covers the Contractor's liability to clients for breaching its indemnification obligation (as clarified in § 2.4.1.1 through § 2.4.1.4 and § 2.4.1.6.7.), so that insurance funds are available if needed when a client sues the Contractor directly.

F. Exhibit A, Statement of Work, Section 2, Statement of Work, Subsection 2.3.9., FMS Web-Based System, Paragraph 2.3.9.8. is hereby added as follows:

2.3.9.8. The Web-based System shall maintain system prompts requiring case managers to verify all requirements and forms that have been completed prior to completing a prior authorization request for services. The system prompts shall be fully implemented no later than January 31, 2016.

G. Exhibit A, Statement of Work, Section 2, Statement of Work, Subsection 2.4.1.6.7. shall be deleted in its entirety and replaced with the following:

2.4.1.6.7. The FMS shall comply with all laws including those regarding worker's compensation insurance, unemployment compensation insurance, withholding and payment of all federal and state and local taxes, compliance with federal and state and local laws regarding overtime pay and minimum wage requirements. The FMS shall comply with Department regulations at 10 CCR 2505 and this Contract with the Department. The FMS shall indemnify, save, and hold harmless clients and their authorized representatives, against any and

all penalties, claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the FMS, or its employees, agents, subcontractors, or assignees pursuant to § 2.4.1.1 through § 2.4.1.4 and this § 2.4.1.6.7.

- H.** Exhibit A, Statement of Work, Section 2, Statement of Work, Subsection 2.5. FMS Functions, Paragraphs 2.5.1.5.2.1 through 2.5.1.5.2.3.3. are hereby deleted in their entirety.
- I.** Exhibit A, Statement of Work, Section 2, Statement of Work, Subsection 2.5.3. FMS Policies and Procedures, Paragraph 2.5.3.1.2.6. is hereby deleted in its entirety.
- J.** Exhibit A, Statement of Work, Section 2, Statement of Work, Subsections 2.6 through subsections 2.6.4.3.2 is hereby deleted in its entirety and replaced with the following:
 - 2.6 FMS Model
 - 2.6.1. The Contractor shall secure required workers compensation insurance for the Client's Attendants and process workers compensation claims.
 - 2.6.2. The Contractor shall provide a written hiring agreement and maintain the agreement and all other forms, applications, agreements and consent forms in the Attendant's record for each Client.
 - 2.6.3. The Contractor shall maintain all state and federal employment forms filed on behalf of the Attendant in the Attendant's file.
 - 2.6.5. Provider Screening
 - 2.6.5.1. The Contractor shall be considered a Provider and shall be enrolled and screened under the ACA Provider Screening Rule as directed by the Department.
 - 2.6.6. In the F/EA Model:
 - 2.6.6.1. The Client or Authorized Representative shall be the Employer of Record for all Attendants selected by a Client under the F/EA model.
 - 2.6.6.2. For worker's compensation, the Contractor shall:
 - 2.6.6.2.1. Maintain and track worker's compensation policies for all clients.
- K.** Exhibit A, Statement of Work, Section 2, Statement of Work, Subsection 2.7 through 2.14. are renumbered as appropriate due to the deletion of several paragraphs in the beginning of Section 2.6.
- L.** Exhibit A, Statement of Work, Section 2, Statement of Work, Subsection 2.7. Customer Service, Paragraphs 2.7.1.6. and 2.7.1.7. are hereby deleted in their entirety.
- M.** Exhibit A, Statement of Work, Section 3, Compensation and Invoicing, Subsection 3.1., Compensation, Paragraph 3.1.4.5. is hereby deleted in its entirety and replaced with the following:
 - 3.1.4.5. For all Client calculations for Incentive Payments, the calculation shall include Clients receiving services under the F/EA model.
- N.** Exhibit A, Statement of Work, Section 3, Compensation and Invoicing, Subsection 3.2. Invoicing and Payment Procedures, Paragraphs 3.2.1.3.1. and 3.2.1.3.2. are hereby deleted in their entirety.

- O. Exhibit B, Rates, is hereby deleted in its entirety and replaced with Exhibit B1, Rates, attached hereto and incorporated by reference in to the Contract. All references within the Contract to Exhibit B shall be deemed to reference Exhibit B1.

8. START DATE

This Amendment shall take effect on its Effective Date.

9. ORDER OF PRECEDENCE

Except for the Special Provisions and the HIPAA Business Associates Addendum, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

10. AVAILABLE FUNDS

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available to the Department by the federal government, state government and/or grantor.

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THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.


CONTRACTOR:

Morning Star Financial Services Holding Co., d/b/a Morning Star Financial Services

STATE OF COLORADO:

John W. Hickenlooper, Governor

By: 
Signature of Authorized Officer

By: 
Susan E. Birch, MBA, BSN, RN
Executive Director
Department of Health Care Policy and Financing

Date: 12/28/2015

Date: 1/6/16

Toni M. Thwen
Printed Name of Authorized Officer

LEGAL REVIEW:
Cynthia H. Coffman, Attorney General

CFO
Printed Title of Authorized Officer

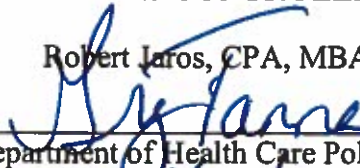
By: n/a
Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER:

Robert Jaros, CPA, MBA, JD

By: 
Department of Health Care Policy and Financing

Date: 1/15/16

EXHIBIT B1, RATES

Base Payment Table	
Model	Payment Amount
Fiscal Employer Agent (F/EA) FMS model	\$103.21 PMPM

Incentive Payment Table	
Incentive Payment	Payment Amount
Quality Survey	\$1.39 PMPM
Caller Wait Time	\$0.70 PMPM
New Attendant Application	\$0.70 PMPM