



**Tooele County Council  
 Agenda Item Summary**

**Department Making Request:**

Aging

**Meeting Date:**

8/2/2022

*Contract*

**Mark Options That Apply:**

**Grant**  
*1 time*

**Contract**  
*1 yr. or less*

**Purchase**

*Exp date: 8/22/2023*

**Grant**  
*With County Match*

**Contract**  
*More than 1 yr.*

*Exp date: \_\_\_\_\_*

**Budget Impact:**

**In Budget**

**Over Budget**

**Amount of Contract, Service, Grant:** \$ 70,635.00

**Item Title:** Switchpoint ENP Agreement with Tooele County

*Please answer the who? what? when? why?*

Aging Services worked with the Auditor's office and the Utah Division of Purchasing and General Services for an RFP for the Nutritional Program that includes home-delivered and senior center meals. One RFP was submitted from Switchpoint, and Colin Winchester is reviewing the contract. The proposed rates will increase the costs for the Nutritional Program. In addition, the increased cost of food, gas, and the number of older adults receiving meals has contributed to the increased expenses for this year. Therefore, aging Services is requesting an additional \$60,000 from the Aging Services fund balance to continue providing meals to the older adults in our community. In addition, we will have \$10,635.00 from grants and the surplus sale of vehicles.

**List who needs copies when approved:**

## **FOOD SERVICES AGREEMENT**

THIS AGREEMENT is made by and between Tooele County through its Area Agency on Aging (AAA) and Switchpoint, a Utah corporation with principal offices located at 948 North 1300 West, St. George, Utah 84770 (Switchpoint).

### **WITNESSETH:**

**WHEREAS**, Tooele County AAA has issued a Request for Proposal to engage a vendor to provide for the preparation of meals for the Home Delivered Meal Program and the Congregate Meal Program ("RFP") and Switchpoint submitted its proposal to provide these food services ("Proposal"); and

**WHEREAS**, Tooele County AAA desires to accept the Proposal and avail itself of Switchpoint's services; and

**WHEREAS**, Switchpoint desires to perform such services for Tooele County AAA;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound hereby, agree as follows:

### **SECTION 1. TOOELE COUNTY AAA GRANT TO SWITCHPOINT**

Tooele AAA grants to Switchpoint, as an independent contractor, the exclusive right to prepare meals for Tooele County AAA's Home Delivered Meal Program ("HDM") and the Congregate Meal Program which Tooele AAA's staff will pickup and deliver to recipients determined eligible by Tooele AAA (such food service hereinafter referred to as "Services").

### **SECTION 2. SWITCHPOINT'S RESPONSIBILITIES**

**2.1.** Pursuant to the terms, conditions, and requirements of the RFP, including but not limited to the Proposal, all of which are incorporated herein by this reference, and the provisions of this Agreement, Switchpoint will operate and manage its Services hereunder at the Premises and keep its Services adequately serviced and supplied with appropriate merchandise and food products of good quality at prices as agreed upon by the parties.

**2.2.** Switchpoint agrees: (i) to comply with all Federal, state, and local laws and regulations governing the preparation, handling, and serving of foods; and (iii) to procure, post as required by law and keep in effect all necessary licenses, permits, and food handler's cards required by law. Switchpoint agrees to pay all Federal, state, and local taxes assessed in connection with the operation of its Services.

**2.3.** Switchpoint shall hire all employees necessary for the performance of this Agreement. All persons employed by Switchpoint will be the employees of Switchpoint, and not of Tooele AAA. Switchpoint shall be solely responsible for all employment withholding, social security, and other taxes on the wages of its employees. Switchpoint agrees to comply with applicable Federal, state, and local laws and regulations pertaining to wages and hours of employment.

**2.4.** In connection with Services provided hereunder, Switchpoint shall purchase inventory, equipment, and services from various sellers and vendors selected by Switchpoint at its sole discretion (each a "Vendor"). Purchases from Vendors shall be made under such terms

Switchpoint deems in its sole discretion as acceptable and meets the nutritional guidelines required by the Older Americans Act ("Vendor Terms"). All Vendor Terms are the exclusive obligation and property of Switchpoint. Tooele AAA does not have any liability under, or any right to, any Vendor Terms and no Vendor Terms will operate to reduce or otherwise affect the amount or performance of Tooele AAA's Obligations.

### **SECTION 3. TOOELE AAA'S RESPONSIBILITIES**

**3.1.** Tooele AAA will designate the Nutrition Program Manager or designee as primary contact and to (1) provide oversight of the Services; (2) ensure the Services are implemented successfully; (3) provide feedback; (4) address issues as they arise; and (5) ensure meals meet the quality, food safety, and nutritional specifications identified in the RFP Scope of Work.

**3.2.** Tooele AAA will provide weekly meal orders via email to Switchpoint for the purpose of determining meal counts. Tooele AAA will provide training and support to Switchpoint in meal orders and meal preparation reports

**3.3.** From time to time it may be necessary to amend certain aspects of meal preparation guidelines due to changes in program and/or meal preparation requirements imposed by Federal and/or State policy, or by other requirements placed on Tooele AAA such as changes in dietary requirements. Tooele AAA will provide prompt notification to Switchpoint of such changes and will negotiate with Switchpoint to determine how to incorporate those changes into meal planning and preparation processes.

### **SECTION 4. FINANCIAL ARRANGEMENTS**

The financial arrangements of this Agreement are set forth in Exhibit A, which is attached hereto incorporated herein and made a part hereof as if fully set forth in this Agreement.

### **SECTION 5. INDEMNIFICATION AND INSURANCE**

**5.1.** Each Party to this Agreement shall be responsible for its own acts and omissions, and, to the extent allowed by law, shall indemnify and hold harmless the other and its officers, employees and agents thereof, from and against any and all claims, suits, proceedings, liabilities, losses, damages, costs and expenses whatsoever, including reasonable counsel fees and the reasonable costs associated with the retention of consultants or experts, arising out of or resulting from any bodily injury, death, sickness, property damage or other injury or loss caused by or arising from the non-compliance with any applicable law, or the alleged or actual breach of this Agreement or any negligent act or omission attributable to the indemnifying party, its managers, members, officers, employees, agents or subcontractors in the performance of their obligations under this Agreement (except to the extent caused by the negligent act or omission of the other party, its employees, or agents). Notwithstanding the foregoing, Switchpoint shall not be required to indemnify Tooele AAA for any claim or action brought by an employee of Switchpoint against Tooele AAA. The provisions of this Section shall survive the expiration or termination of this Agreement.

**5.2.** Notification of an event giving rise to an indemnification claim ("Notice") must (a) be received by the indemnifying party on or by the earlier of a date thirty (30) days after the date which such event was or should have been discovered or ninety (90) days subsequent to the effective termination date of this Agreement; and (b) include a brief factual summary of the

damage and cause thereof. An indemnification claim is expressly subject to, and conditioned upon, compliance with the Notice provisions hereunder.

**5.3.** Switchpoint shall obtain and maintain insurance as required by the terms of the RFP. Certificates of Insurance for such coverages shall be provided by Switchpoint upon request by Tooele AAA.

## **SECTION 6. COMMENCEMENT AND TERMINATION**

**6.1.** Unless sooner terminated as provided herein, the term of this Agreement shall be for one (1) year beginning on August 22, 2022.

**6.2** Either party may terminate the contract if either party shall refuse, fail, or be unable to perform or observe any of the terms or conditions of this Agreement for any reason by giving the other party written notice of such termination at least 120 days prior to the proposed end date. Certain areas of performance demand special effort and attention. A failure of performance ins such areas may constitute enough cause for immediate termination of the contract. They include

- Outbreak of foodborne illness resulting in death, or serious illness of customer or client.
- Suspension/Revocation of Tooele County Health Department permits to operate.
- Material misstatements in billings (Fraud).
- Failure to maintain required insurance.
- Consistently poor quality of meals by the provider

## **SECTION 7. INDEPENDENT CONTRACTOR RELATIONSHIP**

Switchpoint shall be an independent contractor and shall retain control over its employees and agents. The employees of Switchpoint are not, nor shall they be deemed to be, employees of Tooele AAA and employees of Tooele AAA are not, nor shall they be deemed to be, employees of Switchpoint.

## **SECTION 8. EXCUSED PERFORMANCE**

If the performance of any terms or provisions herein (other than the payment of monies) shall be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority, either local, state, or federal, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, pandemics, Acts of God or Nature, or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence said party is unable to prevent, the party so suffering may at its option suspend, without liability, the performance of its obligations hereunder (other than the payment of monies) during the period such cause continues, and extend the term of this Agreement for the period of such suspension of the performance of duties hereunder.

Switchpoint shall not be subject to fines or other charges if the performance of any terms or provisions of the Agreement shall be delayed or prevented because of Switchpoint's compliance with any law, decree, or order of any governmental agency or authority, either local, state, or federal, or because of riots, war, public disturbances, shortages, strikes, lockouts, differences with workmen, fires, floods, Acts of God or Nature, or any other reason whatsoever

which is not within Switchpoint's control and which, by the exercise of reasonable diligence, Switchpoint is unable to prevent.

#### **SECTION 9. ASSIGNMENT**

Neither Switchpoint nor Tooele AAA may assign or transfer this Agreement, or any part thereof, without the written consent of the other party, except the parties may, without prior approval and without being released from any of their responsibilities hereunder, assign this Agreement to an affiliated company or wholly owned subsidiary.

#### **SECTION 10. ENTIRE AGREEMENT AND WAIVER**

This Agreement constitutes the entire Agreement between the parties with respect to the provision of Switchpoint's Services, and there are no other or further written or oral understandings or agreements with respect thereto. No variation or modification of this Agreement, and no waiver of its provisions, shall be valid unless in writing and signed by the duly authorized representatives of Switchpoint and Tooele AAA.

#### **SECTION 11. NOTICES**

All notices to be given under this Agreement shall be in writing and shall be served either personally, by deposit with an overnight courier with charges prepaid or by deposit in the United States mail, first-class postage prepaid by registered or certified mail, addressed to the parties at the address stated below or at any other address as designated by one party upon notice to the other party. Any such notices shall be deemed to have been given (a) upon the first business day following personal service; or (b) one (1) business day after deposit with an overnight courier; or (c) three (3) business days after deposit in the United States mail.

If to Tooele AAA: Tooele County Aging Services  
Attn: Tooele County Aging Director  
151 North Main Street, Suite 200  
Tooele, UT 84074

If to Switchpoint: Switchpoint  
Attn: Christy Johnson  
34 S. Main Street  
Tooele, UT 84074

#### **SECTION 12. CONFIDENTIALITY**

While providing Services hereunder, the parties may be exposed to trade secrets or other confidential or proprietary information and materials of the other party which includes, but is not limited to, Tooele AAA security means and methods, recipes, food service surveys and studies, management guidelines, procedures, operating manuals, and software, all of which shall be identified as confidential ("Confidential Information"). The parties agree, to the extent permitted by law, to hold in confidence and not to disclose any Confidential Information during, and for two (2) years after, the term of this Agreement, except that the parties may use or disclose Confidential Information (a) to its employees and affiliates or others to the extent necessary to render any service hereunder, provided that the other party is first notified of the information that will be provided to any party outside of this Agreement and provided further that such information is disclosed only after such party is required to maintain it in confidence as required hereunder; (b) to the extent expressly authorized by either party; (c) to the extent that

at the time of disclosure, such Confidential Information is in the public domain, or after disclosure, enters the public domain other than by breach of the terms of this Agreement; (d) is in the possession of either party at the time of disclosure and is not acquired directly or indirectly from the other party; (e) is subsequently received on a non-confidential basis from a third party having a right to provide such information; or (f) as required by order during the course of a judicial or regulatory proceeding or as required by a governmental authority. The parties agree not to photocopy or otherwise duplicate any Confidential Information without the express written consent of the other party. Each party's Confidential Information shall remain the exclusive property of the party and shall be returned by the party to the other party upon termination or expiration of this Agreement. In the event of any breach of this provision, the parties shall be entitled to equitable relief, in addition to all other remedies otherwise available to them at law. This provision shall survive the termination or expiration of this Agreement.

### **SECTION 13. INFORMATION TECHNOLOGY SECURITY**

In connection with the services being provided hereunder, Switchpoint may need to operate certain information technology systems not owned by Tooele AAA ("Non-Tooele AAA Systems"), which may need to interface with or connect to Tooele AAA's networks, internet access, or information technology systems. Switchpoint shall be responsible for all Non-Tooele AAA Systems, and Tooele AAA shall be solely responsible for Tooele AAA Systems, including taking the necessary security and privacy protections as are reasonable under the circumstances. If Switchpoint serves as the merchant-of-record for any credit or debit card transactions in connection with any of the services provided hereunder, then Switchpoint will be responsible for complying with all applicable laws, regulations and payment card industry data security standards related to the protection of cardholder data ("Data Protection Rules"). If Tooele AAA Systems interface with or connect to Tooele AAA Systems, then Tooele AAA agrees to implement forthwith upon request from Tooele AAA, at its own expense, the changes to the Tooele AAA Systems that Switchpoint reasonably requests and believes are necessary or prudent to ensure Switchpoint's compliance with the Data Protection Rules. Each party shall indemnify, defend and hold harmless the other party from all claims, liabilities, damages and costs (including reasonable attorneys' fees) to the extent caused by the indemnifying party's failure to comply with its obligations in this Section.

### **SECTION 14. EXECUTION**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the Parties. The Parties may execute this Agreement and any amendment hereto by an exchange of scanned and emailed executed copies. In the event of such an exchange, this Agreement and any applicable amendment shall become binding and any scanned and emailed signed copies shall constitute admissible evidence of the existence of this Agreement and applicable amendment.

### **SECTION 15. DISPUTE RESOLUTION AND GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Utah and any dispute, controversy, claim, or disagreement arising out of or relating to this Agreement or the breach, termination, validity, or enforceability of any provision of this Agreement (each a "Dispute") not remedied within thirty (30) days after the parties use their best efforts to resolve and settle such Dispute by consulting and negotiating with each other in good faith and attempting to reach a just and equitable solution satisfactory to both parties, may be submitted to a court of competent jurisdiction within the State of Utah.

SECTION 16.

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The parties shall comply with all federal, state and local laws as required including, but not limited to, Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Act of 1974, as amended. The parties hereby incorporate the requirements of 41 C.F.R. §60-1.4(a) (7), 60-250.5 and 60-741.5, if applicable.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals.

Tooele County Health Department Executive Director, Jeff Coombs

By: *Jeff R. Coombs*  
Printed Name: JEFF R. COOMBS  
Title: Executive Director  
Date: 7-26-22

Tooele County Council Chair, Jared Hamner

By: *Jared Hamner*  
Printed Name: Jared Hamner  
Title: Chair  
Date: 8/3/2022

Tooele County Deputy County Attorney, Colin Winchester

By: *Colin Winchester*  
Printed Name: COLIN WINCHESTER  
Title: DEPUTY COUNTY ATTORNEY  
Date: 07/29/2022

Switchpoint, Carol Hollowell

By: *Carol Hollowell*  
Printed Name: Carol Hollowell  
Title: Executive Director / CEO  
Date: 8/5/2022

**EXHIBIT A**  
**FINANCIAL ARRANGEMENTS**

**I. PRICE PER MEAL**

Client shall pay Switchpoint the price per meal as detailed in the rate sheet that is attached hereto as Schedule 1 and incorporated herein by this reference. To the extent Switchpoint's receipts are less than Switchpoint's costs and expenses for providing such meals, Switchpoint shall bear all losses. To the extent Switchpoint's receipts exceed its costs and expenses, Switchpoint shall be entitled to all profits therefrom.

In the event of material cost changes in federal, state, or local taxes including, but not limited to, social security taxes, unemployment taxes or payroll based taxes or an increase in the minimum wage rate or the implementing regulations or the enactment or application of any "living wage", "prevailing wage" or similar laws by any governmental entity; and/or an increase in employee benefits whether as a result of a change in federal, state, or local laws or a federal, state, or local legislative or regulatory mandate or otherwise, it is agreed that the parties shall adjust the meal prices to reflect said increases. If other material conditions change due to causes beyond Switchpoint's control, including, but not limited to a change in the scope of services, menu changes requested by the facility, state or local standards or regulations or other unforeseen conditions beyond Switchpoint's control, it is agreed that the parties shall adjust the meal prices to reflect the impact of the change in circumstances.

**II. PAYMENT TERMS**

Switchpoint shall invoice Tooele AAA each week, in arrears, for the total amount due from Tooele AAA as the result of the number of meals served in the preceding week. Meals should be categorized by total Home Delivery Meals and total Congregate Meals served during the billing period. Invoices should break out on separate line items the charges for home delivered meals (food portion), congregate meals (food portion), labor, and paper goods (HDM trays, etc.) Tooele AAA shall pay the invoice amount within thirty (30) days of date of the invoice from Switchpoint.

**III. BASIS OF FINANCIAL TERMS**

The financial terms of this Agreement have been negotiated between the parties upon the condition that Switchpoint will operate its Services at the same points of service and remain in operation under the same operating standards as agreed at the time of execution of this Agreement. If Tooele desires Switchpoint to change the operation or scope of its Services, Tooele AAA and Switchpoint shall mutually agree on the appropriate financial adjustments for the requested changes.



# ATTACHMENT A

## Price Schedule

Meal Preparation for Tooele County  
Price per Meal

### Home Delivered Meal Program

Regular Senior Daily Meal \$ \_\_\$4.25\_\_\_\_\_/Meal

Diabetic Meal \$ \_\_\$4.25\_\_\_\_\_/Meal

Paper goods \$ \_\_\$0.70\_\_\_\_\_/Meal

### Senior Center Meal Program

Regular Senior Daily Meal \$ \_\_\$4.25\_\_\_\_\_/Meal

Diabetic Meal \$ \_\_\$4.25\_\_\_\_\_/Meal

Labor/Wages \$ \_\_\$800.00\_\_\_/per week