

**AGREEMENT  
BETWEEN  
CITY OF LINCOLN AND CEDARS YOUTH SERVICES**

**I. INTRODUCTION.**

This Agreement is between the City of Lincoln, Nebraska (City), on behalf of the Lincoln-Lancaster County Health Department (LLCHD), for the Healthy Families America program (HFA), and CEDARS Youth Services (Program Provider), with a place of business at 6601 Pioneers Blvd., Lincoln, NE 68506 and (402) 434-5437.

The purpose of this agreement is to provide home visiting services to promote positive parenting through prevention-focused, intensive home-based interventions using a nationally recognized, multidisciplinary model – HFA, consistent with the home visitation contract between the Nebraska Department of Health and Human Services (Department) and the Lincoln-Lancaster County Health Department attached as Appendix A.

**II. SERVICES.**

The City and Program Provider enter into this Agreement for the Program Provider to:

- A. Provide 1.5 FTE home visiting staff and 0.5 FTE leadership staff to assure a 1:6 leadership to home visiting staff and as outlined in V. Staff Standards, accepting family assignments as made by the City;
- B. Provide home visiting services with fidelity to the HFA model, using retention protocols to assure that the program explores the most effective service delivery to assure family engagement and retention, carrying a caseload of 23 families on the most intensive service level of HFA and up to 37 families at any combination of service levels of HFA.
- C. Provide required reports in accordance with the content and timeline required by the Department;
- D. Maintain and retain records as required by the Department, assuring documentation is completed within 72 hours of each family contact;
- E. Participate as equal partners in all activities related to HFA including organizing meetings of the HFA Advisory Committee and completing HFA affiliation and accreditation processes; and
- F. Cooperate fully with all reasonable requests of the City or as directed by the Department.

The City and Program Provider enter into this Agreement for the City to:

- A. Make assignments of families for all home visitors including those visited by Program Provider in accordance with the HFA model;
- B. Provide 2.0 FTE home visiting staff and leadership staff to assure a 1:6 ratio of leadership to home visiting staff and as outlined in V. Staff Standards;

- C. Provide home visiting services, with fidelity to the HFA model, using retention protocols to assure that the program explores the most effective service delivery to assure family engagement and retention, carrying a caseload of 30 families on the most intensive service level of HFA and up to 50 families at any combination of service levels of HFA;
- D. Provide office space including space for staff, interns, and volunteers assigned to HFA;
- E. Provide one laptop computer for each staff working for the Program Provider as a supervisor or family partner of HFA;
- F. Provide one landline phone each staff working for the Program Provider as a supervisor or family partner of HFA;
- G. Provide an electronic system of information management for HFA. Software selection shall be at the City's discretion; and
- H. Participate as equal partners in all activities related to HFA including organizing meetings of the HFA Advisory Committee and completing HFA affiliation and accreditation processes.

In addition, the City and Program Provider mutually agree to:

- A. Require all assigned staff to participate in training as required by HFA standards for accreditation;
- B. Provide voluntary home visits as required by HFA standards for accreditation using retention protocols to assure that the program explores the most effective service delivery to assure family engagement and retention;
- C. Provide services to a range of 53 families on the most intensive service level of HFA and up to 87 families at any combination of service levels of HFA; and
- D. Adhere to all HFA standards for accreditation, policies and procedures.

### **III. TERM.**

The term of this Agreement shall be from March 1, 2014 through June 30, 2015 and shall continue until completion of all the obligations of this Agreement. Upon expiration of the term prior to completion, City shall pay the Program Provider for any services completed up to the date of expiration.

### **IV. COMPENSATION.**

The City agrees to pay the Program Provider a total of \$143,520 for the term of this Agreement. The Program Provider shall be compensated on a monthly basis after the provision of services and the submission of reports and billing as outlined in Section II of this Agreement. Monthly payments will be made by the City for approved expenses as outlined in Appendix B.

### **V. STAFF STANDARDS**

1. Criminal History/Background Checks:
  - a) Newly Hired - The Program Provider agrees to perform in-state background checks on all newly hired employees, interns, and volunteers if it is foreseeable that that

individual may have contact with youth during the course of providing direct services in the performance of this Agreement. Such in-state background checks shall include a check of the following state registries:

- i. The Sex Offender Registry maintained by the Nebraska State Patrol.
- ii. The Nebraska Child Abuse and Neglect Central Register.
- iii. The Nebraska Adult Abuse and Neglect Central Register.

The Program Provider shall complete the initial background checks before the individual has direct contact with any youth in the performance of this Agreement. If a background check results in a record being identified, the Program Provider shall not allow the individual to have direct contact with any youth. The Program Provider agrees to perform out-of-state background checks on all newly hired employees, interns, and volunteers who have resided in Nebraska for less than two (2) years if it is foreseeable that that individual may have contact with youth during the course of providing direct services in the performance of this Agreement. The Program Provider shall complete the initial background checks before the individual has any direct contact with any youth. If an individual's prior state of residence does not maintain a Sex Offender Registry, Child Abuse and Neglect Central Register, an Adult Abuse and Neglect Central Register, or any such similar registry, the Contractor shall complete criminal background checks in the cities, counties, and states of previous residence. If a background check results in a record being identified, the Program Provider shall not allow the individual to have direct contact with any youth.

b) Current Staff – The Program Provider shall complete background checks every two (2) years for all current program employees. If a current program employee resided in a state other than Nebraska and that state does not maintain a Sex Offender Registry; Child Abuse and Neglect Central Register; an Adult Abuse and Neglect Central Register, or any such similar registry, the Program Provider shall complete a national, state, and local criminal background check. If a background check results in a record being identified, the Program Provider shall not allow the individual to have direct contact with any youth.

c) All background check documentation shall be maintained in staff personnel records. This includes documentation requested and received from states other than Nebraska.

2. Staff Qualifications: The Program Provider must assure that all staff assigned to HFA meet staff qualifications as required by current HFA accreditation standards. The Program Provider must assure that all clinical staff utilized in the delivery of services meet the licensing standards required by the State of Nebraska Divisions of Medicaid and Long Term Care and Public Health. All registered nurses providing services under this Agreement must be licensed to practice in the State of Nebraska and be in good standing with the State of Nebraska Division of Public Health.

3. Supervisor Qualifications: The Program Provider must assure that the direct supervisor of home visiting staff providing services in the delivery of this Agreement has a minimum of a bachelor level degree and at least three (3) years of experience in providing community based services to children and families.

4. Staff Training:

a) Newly Hired: The Program Provider must assure that new staff assigned to HFA complete the training required for HFA accreditation including general orientation, training on policies and procedures, community resources, confidentiality, professional boundaries, staff safety, child abuse and neglect indicators and reporting requirements, and intensive role specific training before providing direct services to families served by HFA. Intensive role specific training includes HFA Core Training. The Program Provider must assure that all new staff assigned to HFA complete HFA Core Training, provided by a certified trainer, within six months of hire. The Program Provider must assure that all new leadership staff assigned to HFA successfully complete HFA Supervisory Training in addition to HFA Core Training, which is typically the last full day of HFA Core Training. Staff hired on or after July 1, 2014 must complete all online courses and pass all post-training assessments required by HFA accreditation standards within the specified timeframe.

b) Current Staff: The Program Provider must assure that staff hired before July 1, 2014 complete the majority of online courses and pass the accompanying post-training assessments required by HFA accreditation standards within the specified timeframe.

#### **VI. TERMINATION FOR BREACH.**

Either party has the right to terminate this Agreement if the other party fails to perform as required in this Agreement. Termination rights under this section may be exercised only after the non-breaching party notifies the breaching party of the failure to perform in writing upon giving the other party forty-five (45) days written notice. Upon termination, the City shall pay Program Provider for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

#### **VII. TERMINATION FOR CONVENIENCE.**

City has the right to terminate this Agreement for any reason for its own convenience. If City terminates this Agreement for convenience, City shall provide Program Provider with forty-five (45) days written notice of the termination. Upon termination, the City shall pay Program Provider for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

#### **VIII. TERMINATION FOR LACK OF FUNDING.**

The City may terminate this Agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of City. In the event of unavailability of funds to pay any amounts due under this Agreement, City shall immediately notify the Program Provider and this Agreement shall terminate without penalty or expense to City. Upon termination, the City shall pay Program Provider for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

## **IX. DUTIES GENERALLY.**

The Program Provider agrees as follows:

- A. To timely and professionally complete the services as described above, and to furnish their labor and pay all their own costs, including any taxes, required to complete their services.
- B. To furnish everything reasonably necessary to complete the services unless specifically provided otherwise in this Agreement.
- C. To apply for and obtain any and all necessary permits, certifications, licenses, variances, and approvals required by any applicable law or regulations that relate to the services.
- D. To conduct all activities related to the services in a lawful manner.
- E. Provide and perform all necessary labor in a professional and workmanlike manner and in accordance with the provisions of this Agreement.

## **X. INDEPENDENT CONTRACTOR.**

City is interested only in the results produced by this Agreement. The Program Provider has sole and exclusive charge and control of the manner and means of performance. The Program Provider shall perform as an independent contractor and it is expressly understood that neither the Program Provider nor any of its staff are employees of City and, thus they are not entitled to any City benefits including, but not limited to, overtime, retirement benefits, workers' compensation, sick leave, or injury leave.

## **XI. INSURANCE.**

- A. Program Provider shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting Program Provider and the City of Lincoln, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Program Provider and Program Provider's employees, or those directly or indirectly employed by Program Provider. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:
  1. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
  2. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
  3. Personal Injury Damage - \$1,000,000 each Occurrence; and
  4. Contractual Liability - \$1,000,000 each Occurrence; and
  5. Products Liability and Completed Operations - \$1,000,000 each Occurrence; and
  6. Medical Expenses (any one person) - \$10,000;
  7. Fire Damage (any one fire) - \$100,000
- B. Program Provider shall maintain as its own expense during the life of this Agreement, the following:

1. Professional Liability Insurance or self insurance coverage in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate covering the Program Provider and its employees for alleged malpractice, professional negligence, failure to provide care, breach of contract or other claim based upon failure to obtain informed consent for treatment; or
  2. Professional Liability Insurance with a minimum amount of \$1,000,000 per claim in a claims made policy. The Program Provider must continue to maintain professional liability insurance for this Agreement's required dollar amount for at least a period of two (2) years after the expiration or termination of this Agreement. To satisfy this obligation, the Program Provider may provide the required insurance in the form tail coverage. The Program Provider shall provide proof of continued coverage upon request. This subsection survives any termination or expiration of this Agreement.
- C. The following shall be provided and attached to this Agreement by the Program Provider:
1. A copy of a valid Nebraska applicable professional license; and
  2. A Certificate of Insurance for its General Liability Insurance and Professional Liability Insurance. The City of Lincoln shall be specifically named as an additional insured on the General Liability Insurance; and
  3. Proof of Worker's Compensation Insurance, where appropriate.
- D. Program Provider is required to provide the City with thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement.

## **XII. INDEMNIFICATION.**

To the fullest extent permitted by law, Program Provider shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Program Provider, or anyone for whose acts any of them may be liable. This section will not require Program Provider to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

## **XIII. AUDIT PROVISION.**

The Program Provider shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

In addition, all Program Provider books, records, and documents regardless of physical form, including data maintained in computer files or on magnetic, optical, or other media, relating to work performed or monies received under this Agreement shall be subject to audit at any reasonable time upon the provision of reasonable notice by the City. Program Provider shall maintain all records for five (5) years from the date of final payment, except that records that fall under the provision of the Health Insurance Portability and Accountability Act (HIPAA) shall be maintained for six (6) full years from the date of final payment. In addition to the foregoing retention periods, all records shall be maintained until all issues related to an audit, litigation, or other action are resolved to the satisfaction of the City and the Nebraska DHHS. All records shall be maintained in accordance with generally accepted business practices.

#### **XIV. FAIR EMPLOYMENT / ANTI-DISCRIMINATION**

The Program Provider shall comply with all applicable local state and federal statutes and regulations regarding civil rights and equal opportunity employment including Title VI of the Civil Rights Act of 1964; the Rehabilitation Act of 1973, Public Law 93-112; the Americans with Disabilities Act of 1990, Public Law 101-336; the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125; and Lincoln Municipal Code Chapter 11.08. This means in part that Program Provider shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the previously mentioned statutes and regulations.

#### **XV. FAIR LABOR STANDARDS.**

The Program Provider shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

#### **XVI. NEBRASKA LAW.**

This Agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

#### **XVII. INTEGRATION, AMENDMENTS, ASSIGNMENT.**

This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party.

## **XVIII. SEVERABILITY & SAVINGS CLAUSE.**

Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate any other section or subdivision of a section thereof.

## **XIX. PRIVACY.**

### **A. Privacy Rule:**

- 1) Program Provider, in its capacity as a Business Associate, shall carry out its obligations under this Agreement in compliance with the privacy regulations pursuant to Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F - Administrative Simplification, Sections 261, et seq., as amended ("HIPAA") and the American Recovery and Reinvestment Act of 2009 (ARRA), to protect the privacy of any personally identifiable protected health information ("PHI") that is collected, processed, or learned as a result of the Services provided hereunder. In conformity therewith, Program Provider agrees that it will:
  - (a) Not use or further disclose PHI except as permitted under this Agreement or required by law;
  - (b) Use appropriate safeguards to prevent use or disclosure of PHI except as permitted by this Agreement;
  - (c) To mitigate, to the extent practicable, any harmful effect that is known to Program Provider of a use or disclosure of PHI by Program Provider in violation of this Agreement.
  - (d) Report to LLCHD any use or disclosure of PHI not provided for by this Agreement of which Program Provider becomes aware;
  - (e) Assure that any agents or subcontractors to whom Program Provider provides PHI, or who have access to PHI, agree to the same restrictions and conditions that apply to Program Provider with respect to such PHI;
  - (f) Make PHI available to LLCHD upon request of an individual who has a right of access as required under HIPAA within thirty (30) days of the request by LLCHD regarding the individual;
  - (g) Incorporate any amendments to PHI when notified to do so by LLCHD;
  - (h) Provide an accounting of all uses or disclosures of PHI made by Program Provider as required under the HIPAA privacy rule within sixty (60) days;
  - (i) Make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining LLCHD's compliance with HIPAA; and
  - (j) At the termination of this Agreement, return or destroy all PHI received from, or created or received by Program Provider on behalf of LLCHD, and, if return is not feasible, the protections of this agreement will extend to such PHI.
- 2) The specific uses and disclosures of PHI that may be made by Program Provider on behalf of LLCHD include those Services enumerated within this Agreement.

- B. Security Rule:
- 1) Program Provider, in its capacity as a Business Associate, shall carry out its obligations under this Agreement in compliance with the security regulations pursuant to Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F - Administrative Simplification, Sections 261, et seq., as amended ("HIPAA") and ARRA, regarding the security of electronic protected health information ("e-PHI") that is received as a result of the Services provided hereunder. In conformity therewith, Program Provider, Inc. agrees that it will:
    - (a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the covered entity as required in the regulations;
    - (b) Assure that any agent of Program Provider, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect protected health information; and
    - (c) Report to LLCHD any security incident of which it becomes aware.
- C. Notwithstanding any other provisions of this Agreement, this Agreement may be terminated by the City, in its sole discretion, if the City determines that Program Provider has violated a term or provision of this Agreement pertaining to Program Provider's obligations as a Business Associate of the City, or if Program Provider engages in conduct which would, if committed by the City, result in a violation of the HIPAA privacy rule or HIPAA security rule by the City.

#### **XX.ASSIGNABILITY.**

The Program Provider shall hire no employee, nor assign any interest in this Agreement, delegate any duties or work required under this Agreement, or transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to Program Provider from the City under this Agreement may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the City.

#### **XXI. INDEMNIFICATION/USE OF CITY EQUIPMENT.**

The City shall not be responsible nor be held liable for any damage consequent upon the use, misuse, or failure of any City-owned equipment used by or supplied to the Program Provider or anyone directly or indirectly employed by Program Provider. The Program Provider's acceptance or use of any such equipment shall mean that Program Provider accepts full responsibility for any loss or damage to the equipment while the equipment was used or under the control of Program Provider, or anyone directly or indirectly employed by Program Provider. In addition to paying for any such damage to the equipment itself, the Program Provider agrees to exonerate, indemnify, and hold harmless the City from and against any and all claims for any damage whatsoever resulting from the use, misuse or failure of such equipment. Such indemnification

applies regardless of whether such damage or loss is occasioned by any employee or property of Program Provider, the City or other persons. Such indemnification shall not be qualified or reduced in any way because the subject equipment may be furnished, rented or loaned to Program Provider by the City, or because the Program Provider did not carry insurance to cover loss or damage to the subject equipment. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement. This section survives any termination of this Agreement.

## **XXII. ELIGIBILITY TO WORK**

The Program Provider shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. §1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Program Provider is an individual or sole proprietorship, the following applies:

1. The LPHD must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).
2. If the LPHD indicates on such attestation form that he or she is a qualified alien, the LPHD agrees to provide the US Citizenship and Immigration Services documentation required to verify the LPHD's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The LPHD understands and agrees that lawful presence in the United States is required and the LPHD may be disqualified or the contract terminated if such lawful presence cannot be verified as required by *Neb. Rev. Stat.* §4-108.

## **XXIII. DRUG-FREE WORKPLACE**

Program Provider certifies that it maintains a drug-free workplace environment to assure worker safety and workplace integrity. Program Provider shall provide a copy of its drug-free workplace policy at any time upon request by the City or Nebraska DHHS.

## **XXIV. RESEARCH**

Program Provider shall not engage in research utilizing the information obtained through performance of this Agreement without the express written authorization of the City and

Nebraska DHHS. The term "research" means, for purposes of this Agreement, the investigation, analysis, or review of information, other than aggregate statistical information, which is used for purposed unconnected with this Agreement. This provision shall survive termination of this Agreement.

**XXV. NOTICES**

Notices regarding this Agreement shall be made in writing and shall be effective upon receipt. Written notices, including all reports and other written communications required by this contract shall be sent to the following addresses:

FOR CITY:

Andrea Haberman  
Lincoln-Lancaster County Health Department  
3140 "N" Street  
Lincoln, Nebraska 68509

FOR PROGRAM PROVIDER:

Katie McLeese Stephenson  
COO, CEDARS Youth Services  
6601 Pioneers Boulevard  
Lincoln, Nebraska 68506

**XXVI. CAPACITY.**

The undersigned person representing the Program Provider does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind the Program Provider to this Agreement.

IN WITNESS WHEREOF, the Program Provider and City do hereby execute this Agreement.

  
\_\_\_\_\_  
James R. Blue  
CEO & President, CEDARS Youth Services  
6601 Pioneers Blvd.,  
Lincoln, Nebraska 68506

5/5/14  
\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Chris Beutler  
Mayor of Lincoln  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

\_\_\_\_\_  
Date of Signature

Client#: 39634

CEDAR8

**ACORD**<sup>TM</sup>

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

06/20/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>INSPRO Insurance</b> P.O. Box 6847 Lincoln, NE 68506 402 483-4500	<b>CONTACT NAME:</b> Tonya Wagner	
	<b>PHONE (A/C, No, Ext):</b> 402-483-4500	<b>FAX (A/C, No):</b> 402-483-7977
<b>E-MAIL ADDRESS:</b> twagner@insproins.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A :</b> Philadelphia Insurance Co.		
<b>INSURER B :</b> SFM Mutual Insurance Co		
<b>INSURER C :</b>		
<b>INSURER D :</b>		
<b>INSURER E :</b>		
<b>INSURER F :</b>		

**INSURED**  
**CEDARS Youth Services and**  
**CEDARS Foundation, Inc.**  
 6601 Pioneers Blvd  
 Lincoln, NE 68506

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			PHPK1037800	07/01/2013	07/01/2014	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 3,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:							PRODUCTS - COMP/OP AGG	\$ 3,000,000
								\$
A	AUTOMOBILE LIABILITY			PHPK1037800	07/01/2013	07/01/2014	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident)	\$
								\$
A	UMBRELLA LIAB			PHUB425076	07/01/2013	07/01/2014	EACH OCCURRENCE	\$ 15,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB	<input checked="" type="checkbox"/> CLAIMS-MADE					AGGREGATE	\$ 15,000,000
	DED	<input checked="" type="checkbox"/> RETENTION \$10000						\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			039413203	07/01/2013	07/01/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					E.L. EACH ACCIDENT	\$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	N	N/A				E.L. DISEASE - EA EMPLOYEE	\$ 500,000
							E.L. DISEASE - POLICY LIMIT	\$ 500,000
A	Professional Liab			PHPK1037800	07/01/2013	07/01/2014	1,000,000 Each 3,000,000 Agg	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 City of Lincoln is listed as additional insured in regards to General Liability.

**CERTIFICATE HOLDER**

Lincoln/Lancaster County Health  
 Department  
 3140 N Street  
 Lincoln, NE 68510

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE  


Appendix A

14R-61

Introduce: 2-24-14

RESOLUTION NO. A- ~~88113~~

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the attached Addendum One to Contract Award to the Home Visiting

3 Services Contract 59298 04 between the City of Lincoln, on behalf of the Lincoln-

4 Lancaster County Health Department, and the State of Nebraska, to provide evidence-

5 based home visiting services for the State of Nebraska for a term of February 10, 2014

6 through June 30, 2015 with four optional annual renewals, in accordance with the terms,

7 conditions and assurances contained in said Addendum One to Contract Award, which

8 is attached hereto as Exhibit "A", is hereby approved and the Mayor is hereby

9 authorized to execute said Addendum on behalf of the City.

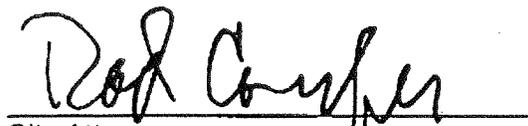
10 The City Clerk is directed to return the executed copies of the Addendum to Judy

11 Halstead, Director of the Lincoln-Lancaster County Health Department.

Introduced by:

  
 AYES: Camp, Christensen,  
 Cook, Emery, Eskridge, Fellers,  
 Gaylor Baird; NAYS: None.

Approved as to Form & Legality:

  
 City Attorney

**ADOPTED**  
 MAR 03 2014  
**BY CITY COUNCIL**

Approved this 5<sup>th</sup> day of March, 2014:  
  
 Mayor

# CITY OF LINCOLN

Request for:  Ordinance  
 Resolution

(Do Not Write in this Space)

Bill Control No. 14R-61 Date: 2/12

Docketing Date 2/24 PH: 3/3/14

(To Be Entered by City Clerk)

DATE <b>February 5, 2014</b>	REQUEST MADE BY Judith A. Halstead	DEPARTMENT Health
DESIRED DOCKET DATE:	IF EMERGENCY, GIVE REASON (See Art. 6, Sec. 2 of Charter)	
Emergency Measure Required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Director's Est'd Time/Testimony <input checked="" type="checkbox"/> 0 - No Hearing (Consent Agenda) <input type="checkbox"/> 1 - Short <input type="checkbox"/> 2 - Average <input type="checkbox"/> 3 - Long		

**REASONS OR JUSTIFICATION FOR PROPOSED LEGISLATION**

This is a multi-year grant from the Nebraska Department of Health & Human Services for home visitation services provided by Community Health Services/Lincoln-Lancaster County Health Department. Grant dollars for this project are appropriated from the Nebraska Legislature with the intent to assure healthy pregnancy & birth outcomes and positive parenting. LLCHD has received this funding since 2008. Funding pays for 3.5 home visitors, supervision, training and strategic planning with partners. Payment for services provided February 2014-June 2015 may be up to \$596,365.

**FILED**  
**FEB 07 2014**  
**CITY CLERK'S**  
**OFFICE**

<b>REQUESTOR</b> <input type="checkbox"/> DOES <input checked="" type="checkbox"/> DOES NOT WISH TO REVIEW AND APPROVE THIS ORDINANCE PRIOR TO ITS INTRODUCTION	DIRECTOR'S SIGNATURE: <u>Judith A. Halstead</u> DATE: <u>2-7-14</u>
--	--

**TO BE USED BY THE FINANCE DEPARTMENT**

BUDGET REVIEW	DATE:	ACCOUNT NUMBER AND APPROPRIATE BALANCES	DATE:	FUND AVAILABILITY APPROVED	DATE:
DIRECTOR OF FINANCE SIGNATURE					

**DISTRIBUTION**  
 Submit one original to City Clerk

City Council Introduction:

Bill Number 14R-61

Public Hearing:

## FACT SHEET

**TITLE:** State Appropriated Home Visiting Services

**SPONSOR:**

**OTHER DEPARTMENTS AFFECTED:**

**OPPONENTS:**

None

**APPLICANT:** Health Department

**STAFF RECOMMENDATION:** Approve

**REASON FOR LEGISLATION:** Multi-year contract (February 10, 2014 – June 30, 2015 with four optional annual renewals).

## DISCUSSION

This is a multi-year contract between the Nebraska Health and Human Services/Division of Public Health and the City of Lincoln/Lincoln-Lancaster County Health Department to provide home visitation services to families at risk for poor pregnancy, birth, and child development outcomes and child maltreatment. The health department has received this funding since 2008. Payment for services provided February 2014-June 2015 may be up to \$596,365.

**POLICY OR PROGRAM CHANGE:** None. Have had this contract previously.

**COST OF TOTAL PROJECT:** Up to \$596,365.00.

**SOURCE OF FUNDS:** Appropriated funds from the NE Legislature.

**CITY:**

**NON CITY:**

**BENEFIT COST:**

**FACT SHEET PREPARED BY:** Andrea Haberman, RN, MSN, Community Health Services Manager

**REVIEWED BY:** Judith A. Halstead, MS, Health Director

ADDENDUM ONE to Contract Award  
Terms and Conditions  
Contract 59298 04 Provide evidence-based home visiting services for the State of Nebraska  
Between  
The State of Nebraska and The City of Lincoln on behalf of the Lincoln-Lancaster County Health  
Department (LLCHD)

The following Terms and Conditions, Addendum One of Contract 59298 04 have been reviewed and agreed upon between LLCHD "Contractor" and the State of Nebraska "State". This addendum will become part of the contract to Provide evidence-based home visiting services for the State of Nebraska. The terms and conditions of this Addendum shall supersede, prevail and govern in the case of any inconsistencies with the Terms and Conditions indicated in Section III of the Request for Proposal, except that any section herein marked "Reserved" shall have no effect on the Terms and Conditions indicated in Section III of the Request for Proposal.

By signing this Addendum the Contractor guarantees compliance with the provisions stated herein, agrees to the terms and conditions and certifies Contractor maintains a drug free work place environment.

### III. TERMS AND CONDITIONS

By signing the "Request For Proposal For Contractual Services" form, the bidder guarantees compliance with the provisions stated in this Request for Proposal, agrees to the terms and conditions and certifies bidder maintains a drug free work place environment.

Bidders are expected to closely read the Terms and Conditions and provide a binding signature of intent to comply with the Terms and Conditions; provided, however, a bidder may indicate any exceptions to the Terms and Conditions by (1) clearly identifying the term or condition by subsection, (2) including an explanation for the bidder's inability to comply with such term or condition which includes a statement recommending terms and conditions the bidder would find acceptable. Rejection in whole or in part of the Terms and Conditions may be cause for rejection of a bidder's proposal.

#### A. GENERAL

The contract resulting from this Request for Proposal shall incorporate the following documents:

1. Amendment to Contract Award with the most recent dated amendment having the highest priority;
2. Contract Award and any attached Addenda;
3. The signed Request for Proposal form and the Contractor's Proposal;
4. Amendments to RFP and any Questions and Answers; and
5. The original RFP document and any Addenda.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to Contract Award with the most recent dated amendment having the highest priority, 2) Contract Award and any attached Addenda, 3) the signed Request for Proposal form and the

Contractor's Proposal, 4) Amendments to RFP and any Questions and Answers, 5) the original RFP document and any Addenda.

Any ambiguity in any provision of this contract which shall be discovered after its execution shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

Once proposals are opened they become the property of the State of Nebraska and will not be returned.

**B. RESERVED**

**C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION**

The contractor shall comply with all applicable local, State and Federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Request for Proposal.

**D. PERMITS, REGULATIONS, LAWS**

The contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of the contract. The contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders and regulations.

**E. OWNERSHIP OF INFORMATION AND DATA**

The State of Nebraska shall have the unlimited right to publish, duplicate, use and disclose all information and data developed or derived by the contractor pursuant to this contract.

The contractor must guarantee that it has the full legal right to the materials, supplies, equipment, and other rights or titles (e.g. rights to licenses transfer or assign deliverables) necessary to execute this contract. The contract price shall, without exception, include compensation for all royalties and costs arising from patents, trademarks and copyrights that are in any way involved in the contract. It shall be the responsibility of the contractor to pay for all royalties and costs, and the State must be held harmless from any such claims.

**F. INSURANCE REQUIREMENTS**

The contractor shall not commence work under this contract until he or she has obtained all the insurance required hereunder and such insurance has been approved by the State. If contractor will be utilizing any subcontractors, the contractor is responsible for obtaining the certificate(s) of insurance required herein under from any and all subcontractor(s). Contractor is also responsible for ensuring subcontractor(s) maintain the insurance required until completion of the contract requirements. The contractor shall not allow any subcontractor to commence work on his or her subcontract until all similar insurance required of the subcontractor has been obtained and approved by the contractor. Approval of the insurance by the State shall not limit, relieve or decrease the liability of the contractor hereunder.

If by the terms of any insurance a mandatory deductible is required, or if the contractor elects to increase the mandatory deductible amount, the contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

**1. WORKERS' COMPENSATION INSURANCE**

The contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractor's employees to be engaged in work on the project under this contract and, in case any such work is sublet, the contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. This policy shall include a waiver of subrogation in favor of the State. The amounts of such insurance shall not be less than the limits stated hereinafter.

**2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE**

The contractor shall either be fully self-insured, take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance, or maintain a combination of self-insurance and Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect contractor and any subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter. If the contractor maintains self-insurance, the Contractor shall provide satisfactory evidence of self-insurance and/or Commercial General Liability and Automobile Liability insurance including the retention limits associated therewith.

*The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury and Contractual Liability coverage. This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered excess and non-contributory. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned and Hired vehicles.*

**3. INSURANCE COVERAGE AMOUNTS REQUIRED**

**a. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY**

Coverage A	Statutory
Coverage B	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

**b. COMMERCIAL GENERAL LIABILITY**

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 any one person
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Fire Damage	\$50,000 any one fire

	Medical Payments	\$5,000 any one person
c.	<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
	Bodily Injury/Property Damage	\$1,000,000 combined single limit
d.	<b>UMBRELLA/EXCESS LIABILITY</b>	
	Over Primary Insurance	\$1,000,000 per occurrence

**4. EVIDENCE OF COVERAGE**

The contractor should furnish the State, with their proposal response, a certificate of insurance coverage or other form of evidence demonstrating insurance coverage or its equivalent complying with the above requirements to the attention of the Buyer, Administrative Services, State Purchasing Bureau, 301 Centennial Mall S, 1<sup>st</sup> Fl, Lincoln, NE 68508 (facsimile 402-471-2089). These certificates or the cover sheet shall reference the RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration and amounts and types of coverage afforded. If the State is damaged by the failure of the contractor to maintain such insurance, then the contractor shall be responsible for all reasonable costs properly attributable thereto.

Notice of cancellation of any required insurance policy must be submitted to Administrative Services State Purchasing Bureau when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

**G. COOPERATION WITH OTHER CONTRACTORS**

The State may already have in place or choose to award supplemental contracts for work related to this Request for Proposal, or any portion thereof.

1. The State reserves the right to award the contract jointly between two or more potential contractors, if such an arrangement is in the best interest of the State.
2. The contractor shall agree to cooperate with such other contractors, and shall not commit or permit any act which may interfere with the performance of work by any other contractor.

**H. INDEPENDENT CONTRACTOR**

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under the contract. The contractor's employees and other persons engaged in work or services required by the contractor under the contract shall have no contractual relationship with the State; they shall not be considered employees of the State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against the contractor, its officers or its agents) shall in no way be the responsibility of the State. The contractor will hold the State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits from the State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay or retirement benefits.

**I. CONTRACTOR RESPONSIBILITY**

The contractor is solely responsible for fulfilling the contract, with responsibility for all services offered and products to be delivered as stated in the Request for Proposal, the contractor's proposal, and the resulting contract. The contractor shall be the sole point of contact regarding all contractual matters.

If the contractor intends to utilize any subcontractors' services, the subcontractors' level of effort, tasks and time allocation must be clearly defined in the contractor's proposal. The contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal, in the performance of the contract, without the prior written authorization of the State. Following execution of the contract, the contractor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the contract.

**J. CONTRACTOR PERSONNEL**

The contractor warrants that all persons assigned to the project shall be employees of the contractor or specified subcontractors, and shall be fully qualified to perform the work required herein. Personnel employed by the contractor to fulfill the terms of the contract shall remain under the sole direction and control of the contractor. The contractor shall include a similar provision in any contract with any subcontractor selected to perform work on the project.

Personnel commitments made in the contractor's proposal shall not be changed without prior notice to the State. Replacement of key personnel, shall be with personnel of equal or greater ability and qualifications.

The State reserves the right to require the contractor to reassign or remove from the project any contractor or subcontractor employee.

In respect to its employees, the contractor agrees to be responsible for the following:

1. any and all employment taxes and/or other payroll withholding;
2. any and all vehicles used by the contractor's employees, including all insurance required by state law;
3. damages incurred by contractor's employees within the scope of their duties under the contract;
4. maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing State law; and
5. determining the hours to be worked and the duties to be performed by the contractor's employees.

Notice of cancellation of any required insurance policy must be submitted to the State when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

**K. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION**

The contractor shall not knowingly, at any time, recruit or employ any State employee or agent who has worked on the Request for Proposal or project, or who had any influence on decisions affecting the Request for Proposal or project.

**L. CONFLICT OF INTEREST**

By submitting a proposal, bidder certifies that there does not now exist any relationship between the bidder and any person or entity which is or gives the appearance of a conflict of interest related to this Request for Proposal or project.

The bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest.

The bidder certifies that it will not employ any individual known by bidder to have a conflict of interest.

**M. RESERVED**

**N. ERRORS AND OMISSIONS**

The bidder shall not take advantage of any errors and/or omissions in this Request for Proposal or resulting contract. The bidder must promptly notify the State of any errors and/or omissions that are discovered.

**O. BEGINNING OF WORK**

The bidder shall not commence any billable work until a valid contract has been fully executed by the State and the successful contractor. The contractor will be notified in writing when work may begin.

**P. ASSIGNMENT BY THE STATE**

The State shall have the right to assign or transfer the contract or any of its interests herein to any agency, board, commission, or political subdivision of the State of Nebraska. There shall be no charge to the State for any assignment hereunder.

**Q. ASSIGNMENT BY THE CONTRACTOR**

The contractor may not assign, voluntarily or involuntarily, the contract or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party, without the prior written consent of the State, which will not be unreasonably withheld.

**R. RESERVED**

**S. GOVERNING LAW**

The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this Request for Proposal or any resultant contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law. The contractor must be in compliance with all Nebraska statutory and regulatory law.

**T. ATTORNEY'S FEES**

In the event of any litigation, appeal or other legal action to enforce any provision of the contract, the contractor agrees to pay all expenses of such action, as permitted by law, if the State is the prevailing party.

**U. ADVERTISING**

The contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. News releases pertaining to the project shall not be issued without prior written approval from the State.

**V. STATE PROPERTY**

The contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the contractor's use during the performance of the contract. The contractor shall reimburse the State for any loss or damage of such property, normal wear and tear is expected.

**W. SITE RULES AND REGULATIONS**

The contractor shall use its best efforts to ensure that its employees, agents and subcontractors comply with site rules and regulations while on State premises. If the contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to between the State and the contractor.

**X. NOTIFICATION**

During the bid process, all communication between the State and a bidder shall be between the bidder's representative clearly noted in its proposal and the buyer noted in Section II, A. Procuring Office and Contact Person of this RFP. After the award of the contract, all notices under the contract shall be deemed duly given upon delivery to the staff designated as the point of contact for this Request for Proposal, in person, or upon delivery by U.S. Mail, facsimile, or e-mail. Each bidder should provide in its proposal the name, title and complete address of its designee to receive notices.

1. Except as otherwise expressly specified herein, all notices, requests or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth above, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) days following deposit in the mail.
2. Whenever the contractor encounters any difficulty which is delaying or threatens to delay its timely performance under the contract, the contractor shall immediately give notice thereof in writing to the State reciting all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by the State of any of its rights or remedies to which it is entitled by law or equity or pursuant to the provisions of the contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

For the duration of the contract, all communication between contractor and the State regarding the contract shall take place between the contractor and individuals specified by the State in writing. Communication about the contract between contractor and individuals not designated as points of contact by the State is strictly forbidden.

**Y. EARLY TERMINATION**

The contract may be terminated as follows:

1. The State and the contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon 30 days written notice to the contractor. Such termination shall not relieve the contractor of warranty or other service obligations incurred under the terms of the contract. In the event of cancellation the contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

3. The State may terminate the contract immediately for the following reasons:

- a. if directed to do so by statute;
- b. contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
- c. a trustee or receiver of the contractor or of any substantial part of the contractor's assets has been appointed by a court;
- d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its contractor, its employees, officers, directors or shareholders;
- e. an involuntary proceeding has been commenced by any party against the contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) days; or (ii) the contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the contractor has been decreed or adjudged a debtor;
- f. a voluntary petition has been filed by the contractor under any of the chapters of Title 11 of the United States Code;
- g. contractor intentionally discloses confidential information;
- h. contractor has or announces it will discontinue support of the deliverable;
- i. second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau.

**Z. FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS**

The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the contractor written notice thirty (30) days prior to the effective date of any termination, and advise the contractor of the location (address and room number) of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. The contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the contractor be paid for a loss of anticipated profit.

**AA. BREACH BY CONTRACTOR**

The State may terminate the contract, in whole or in part, if the contractor fails to perform its obligations under the contract in a timely and proper manner. The State may, by providing a written notice of default to the contractor, allow the contractor to cure a failure or breach of contract within a period of thirty (30) days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested or in person with proof of delivery. Allowing the contractor time to cure a failure or breach of contract does not waive the State's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the contractor, the State may contract the service from other sources and hold the contractor responsible for any excess cost occasioned thereby.

**BB. ASSURANCES BEFORE BREACH**

If any document or deliverable required pursuant to the contract does not fulfill the requirements of the Request for Proposal/resulting contract, upon written notice from the State, the contractor shall deliver assurances in the form of additional contractor resources at

no additional cost to the project in order to complete the deliverable, and to ensure that other project schedules will not be adversely affected.

**CC. PENALTY**

In the event that the contractor fails to perform any substantial obligation under the contract, the State may withhold all monies due and payable to the contractor, without penalty, until such failure is cured or otherwise adjudicated.

**DD. RETAINAGE**

The State may withhold two percent (2%) of each payment due as retainage. The entire retainage amount will be payable upon successful completion of the project. Upon completion of the project, the contractor will invoice the State for any outstanding work and for the retainage. The State may reject the final invoice by identifying the specific reasons for such rejection in writing to the contractor within 45 calendar days of receipt of the final invoice. Otherwise, the project will be deemed accepted and the State will release the final payment and retainage in accordance with the contract payment terms.

**EE. RESERVED**

**FF. FORCE MAJEURE**

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The State may grant relief from performance of the contract if the contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the contractor. To obtain release based on a Force Majeure Event, the contractor shall file a written request for such relief with the State Purchasing Bureau. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

**GG. PROHIBITION AGAINST ADVANCE PAYMENT**

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

**HH. PAYMENT**

State will render payment to contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the contractor as solely determined by the State. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). The State may require the contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the contractor prior to the Effective Date, and the contractor hereby waives any claim or cause of action for any such services.

**II. INVOICES**

Invoices for payments must be submitted by the contractor to the agency requesting the services with sufficient detail to support payment. N-MIECHV will provide a standardized report form and invoice template to be used for invoices. The terms and conditions included in the contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless

the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**JJ. AUDIT REQUIREMENTS**

All contractor books, records and documents relating to work performed or monies received under the contract shall be subject to audit at any reasonable time upon the provision of reasonable notice by the State. These records shall be maintained for a period of five (5) full years from the date of final payment, or until all issues related to an audit, litigation or other action are resolved, whichever is longer. All records shall be maintained in accordance with generally accepted accounting principles.

In addition to, and in no way in limitation of any obligation in the contract, the contractor shall agree that it will be held liable for any State audit exceptions, and shall return to the State all payments made under the contract for which an exception has been taken or which has been disallowed because of such an exception. The contractor agrees to correct immediately any material weakness or condition reported to the State in the course of an audit.

**KK. TAXES**

The State is not required to pay taxes of any kind and assumes no such liability as a result of this solicitation. Any property tax payable on the contractor's equipment which may be installed in a state-owned facility is the responsibility of the contractor.

**LL. INSPECTION AND APPROVAL**

Final inspection and approval of all work required under the contract shall be performed by the designated State officials. The State and/or its authorized representatives shall have the right to enter any premises where the contractor or subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

**MM. CHANGES IN SCOPE/CHANGE ORDERS**

The State may, at any time with written notice to the contractor, make changes within the general scope of the contract. Changes in scope shall only be conducted with the written approval of the State's designee as so defined by the State from time to time. (The State retains the right to employ the services of a third party to perform any change order(s)).

The State may, at any time work is in progress, by written order, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the State may find necessary or desirable. The contractor shall not claim forfeiture of contract by reasons of such changes by the State. Changes in work and the amount of compensation to be paid to the contractor for any extra work so ordered shall be determined in accordance with the applicable unit prices of the contractor's proposal.

Corrections of any deliverable services or performance of work required pursuant to the contract shall not be deemed a modification requiring a change order.

**NN. SEVERABILITY**

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**OO. CONFIDENTIALITY**

All materials and information provided by the State or acquired by the contractor on behalf of the State shall be regarded as confidential information. All materials and information provided by the State or acquired by the contractor on behalf of the State shall be handled in accordance with Federal and State Law, and ethical standards. The contractor must ensure the confidentiality of such materials or information. Should said confidentiality be breached by a contractor; contractor shall notify the State immediately of said breach and take immediate corrective action.

It is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

**PP. RESERVED**

**QQ. RESERVED**

**RR. PRICES**

All prices, costs, terms and conditions outlined in the proposal shall remain fixed and valid commencing on the opening date of the proposal until an award is made (and for bidder receiving award prices shall remain as bid for the duration of the contract unless otherwise so stated in the contract) or the Request for Proposal is cancelled.

Contractor represents and warrants that all prices for services, now or subsequently specified are as low as and no higher than prices which the contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services.

Contractor also represents and warrants that all prices set forth in the contract and all prices in addition, which the contractor may charge under the terms of the contract, do not and will not violate any existing federal, state or municipal law or regulations concerning price discrimination and/or price fixing. Contractor agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by these specifications.

**SS. RESERVED**

**TT. RESERVED**

**UU. INDEMNIFICATION**

**1. GENERAL**

The contractor agrees to defend, indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified

parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the contractor, its employees, subcontractors, consultants, representatives, and agents, except to the extent such contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

## **2. INTELLECTUAL PROPERTY**

The contractor agrees it will at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the contractor or its employees, subcontractors, consultants, representatives, and agents; provided, however, the State gives the contractor prompt notice in writing of the claim. The contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the contractor has indemnified the State, the contractor shall at the contractor's sole cost and expense promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the contractor, and the State may receive the remedies provided under this RFP.

## **3. PERSONNEL**

The contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the contractor.

## **VV. NEBRASKA TECHNOLOGY ACCESS STANDARDS**

Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-101.html> and ensure that products and/or services provided under the contract comply with the applicable standards. In the event such standards change during the contractor's performance, the State may create an amendment to the contract to request that contract comply with the changed standard at a cost mutually acceptable to the parties.

## **WW. ANTITRUST**

The contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

## **XX. DISASTER RECOVERY/BACK UP PLAN**

The contractor shall have a disaster recovery and back-up plan, of which a copy should be provided to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue services as specified under these specifications in the event of a disaster.

**YY. TIME IS OF THE ESSENCE**

Time is of the essence in this contract. The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations on the part of the contractor remaining to be performed.

**ZZ. RECYCLING**

Preference will be given to items which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use as per state statute (Neb. Rev. Stat. §81-15, 159).

**AAA.DRUG POLICY**

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

**BBB.EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

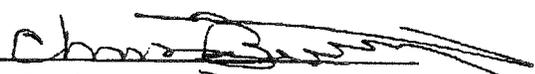
1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at [www.das.state.ne.us](http://www.das.state.ne.us).
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

**CCC.RESERVED**

**DDD.PUBLIC COUNSEL**

In the event the Contractor provides health and human services to individuals on behalf of DHHS under the terms of this award, the Contractor shall submit to the jurisdiction under NEB. REV. STAT. §§ 81-8,240 through 81-8,254 with respect to the provision of services under this contract. This clause shall not apply to contracts between DHHS and long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

"State"	"Contractor"
By: 	By: 
Name: <u>Bo Botelho</u>	Name: <u>CHRIS BEUTLER</u>
Title: <u>AS Materiel Administrator</u>	Title: <u>MAYOR OF LINCOLN</u>
Date: <u>3/31/14</u>	Date: <u>March 5, 2014</u>

Department of Health and Human Services

By: 

Name: KERRY J WINTEREN

Title: CSO

Date: 3/27/2014