

**AGREEMENT BETWEEN
THE CITY OF LINCOLN, NEBRASKA
AND
CORNHUSKER PLACE OF LINCOLN-LANCASTER COUNTY, INC.**

THIS AGREEMENT is entered into this _____ day of October 2012, by and between the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City" and Cornhusker Place of Lincoln-Lancaster County, Inc., a Nebraska non-profit corporation, hereinafter referred to as "Cornhusker Place."

WHEREAS, the City proposes to engage Cornhusker Place in accordance with the terms and conditions set forth herein to provide protective custody service; and

WHEREAS, Cornhusker Place possesses certain skills, experience, facilities, and competency to perform these services, and the City desires to continue engaging Cornhusker Place in a contract for such special services on the terms herein provided:

NOW, THEREFORE, IN CONSIDERATION of the mutual obligations of the parties hereto, the parties do agree as follows:

I. EMPLOYMENT OF CORNHUSKER PLACE

The City hereby agrees to engage Cornhusker Place, and Cornhusker Place agrees to provide services as defined in the Scope of Services section.

II. SCOPE OF SERVICES

1. To undertake, perform, and complete in an expeditious, satisfactory, and professional manner care related to keeping the safe custody of clients with alcohol and drug problems who have been admitted to civil protective custody, as well as all of the services related thereto. Further, such services will be performed in conformance with state statutes and the rules and regulations of the State Department of Health and Human Services, including but not limited to Neb. Rev. Stat. § 53-1,121, as such statutes and rules and regulations may from time to time be amended.

2. To provide a room for the Lincoln Police Department and any other law enforcement agencies as designated by the City of Lincoln to conduct chemical testing and provide secure storage space for testing equipment and supplies. The City of Lincoln will notify Cornhusker Place in writing of the other law enforcement agencies to be allowed use of this room. This room shall be the area which is currently being used by the Lincoln Police Department and other law enforcement agencies. Cornhusker Place shall have access to this room, however, Cornhusker Place will not use or allow anyone not associated with this Agreement to use or occupy the room during the term of this Agreement. Cornhusker Place Shall be able to use this room to access the adjoining storage area. Cornhusker Place will give the Lincoln Police Department 48 hours notice prior to performing any painting, staining, sanding, or other activity before any activity affecting the ambient air of the

room. Access to this room shall be provided to the Lincoln Police Department and/or other law enforcement agencies as designated by the City of Lincoln, its officers, employees, agents or other designated representatives for the purpose of chemical testing 24 hours per day on each calendar day during the duration of this Agreement. Cornhusker Place shall provide routine cleaning services and routine maintenance in the room. The City shall be financially responsible for damage to this room that is over and above the damage that would occur from the normal intended use of the room. Prior to Cornhusker Place making such repairs, it should notify the City of Lincoln of the damage. Cornhusker Place shall make such repairs and bill the City for the total cost of repairing the damages.

3. To accept into Cornhusker Place's program/facility any person who has been issued a citation for DWI and/or any other related charges, whose needs do not exceed the capabilities of Cornhusker Place.

4. To assist in the release of any person from civil protective custody who meets Cornhusker Place's criteria for said release to a responsible person. A responsible party is defined as meeting all of the following criteria: a person 19 years of age or older, not under the influence of any mood altering chemical, including alcohol; a licensed driver or someone capable of and who does make arrangements for transportation; and a person who accepts responsibility for the person in custody by signing the release and advisement form provided by Cornhusker Place; and

5. To contact the Lincoln Police Department if a person who has been released to Cornhusker Place's custody or care requests to be booked into jail for the purposes of bonding out as opposed to being released to a responsible party.

III. TERM OF AGREEMENT

The term of this Agreement shall be for a period of three years commencing on October 1, 2013 and expiring on September 30, 2016.

IV. COMPENSATION

1. The City agrees to pay \$343,357 for the first year (2013/2014) of services required by this Agreement. The compensation for each remaining year shall be adjusted each year on October 1 by the increase/decrease in the consumer price index, all items. The Consumer Price Index for All Urban Consumers (CPI-U) as published by the U.S. Department of Labor, Bureau of Labor Statistic shall be the index utilized. The percentage change for the most recent calendar year will be the period that is measured and this change applied on October 1. The CPI series to be utilized is series ID: CUUROOOOASAO.

2. The City will pay Cornhusker Place in two equal installments. The payments are due on or before October 31st and on or before March 31st.

V. CITY SURPLUS

Cornhusker Place may be allowed to obtain City surplus equipment as it may from time to time become available on such terms and conditions as specified by the City.

VI. SERVICES TO BE CONFIDENTIAL

All services, including reports, opinions, and information to be furnished under this Agreement shall be considered confidential and shall not be divulged, in whole or in part, to any person other than to duly authorized representatives of the City, without the prior written approval of the City. The City acknowledges that Cornhusker Place is required to provide information to the State of Nebraska and Region V.

VII. TERMINATION OF AGREEMENT FOR CAUSE

The City may terminate this Agreement upon giving written notice to Cornhusker Place of such termination because any of the following:

- A. Failure to perform the required services in a satisfactory and timely manner.
- B. Breach of any of the terms and conditions of this Agreement.

Termination rights under this section may be exercised only after the non-breaching party gives the breaching party fifteen (15) days written notice of the failure to perform as required by the terms of the Agreement. In the event of termination as provided herein, Cornhusker Place shall be paid for all services satisfactorily performed up to the date of termination. The amount due shall be prorated for the months of services provided. Cornhusker Place shall promptly repay to the City any remaining portion of the pre-payment moneys on a pro rata basis.

VIII. TERMINATION OF CONVENIENCE

Either party has the right to terminate this Agreement for any reason including such party's convenience. If either party terminates this Agreement for convenience, such party shall provide 180 day written notice of the same to the other party. In the event of termination as provided herein, Cornhusker Place shall be paid for all services satisfactorily performed up to the date of termination. The amount due shall be prorated for the months of services provided. Cornhusker Place shall promptly repay to the City any remaining portion of the pre-payment moneys on a pro rata basis.

IX. ASSIGNABILITY

Cornhusker Place shall not 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 Cornhusker Place from City under this Agreement

may be assigned without such approval, but notice of any such assignment shall be furnished promptly to the City.

X. INTEREST OF CORNHUSKER PLACE

Cornhusker Place covenants that it presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Cornhusker Place further covenants that in the performance of this Agreement no person having any such interest shall be employed or retained by it under this Agreement. The City understands that Cornhusker Place has or may have a contract(s) with Region V for beds and/or services.

XI. INSURANCE

In connection with this Agreement, Cornhusker Place shall carry insurance in the following kinds and minimum limits as indicated:

A. General Liability Insurance shall be maintained during the life of this contract, naming and protecting Cornhusker Place and the City of Lincoln as an additional 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 by Cornhusker Place. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

1. All acts or omission- \$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.

B. During the term of this Agreement, Cornhusker Place shall maintain as its own expense the following professional liability insurance for Cornhusker Place.

1. Professional liability insurance or self insurance coverage in the amount of \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate 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 may be a claims made policy, however, Cornhusker Place 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, Cornhusker Place may provide the required insurance in the form of tail coverage. Cornhusker Place 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 Cornhusker Place:

1. Cornhusker Place shall provide a certificate of insurance to City of Lincoln as evidence that professional liability insurance is in force;
2. Cornhusker Place's shall provide a certificate of insurance for its General Liability Insurance and naming the City of Lincoln as an additional insured;
3. Cornhusker Place shall provide proof of Workers' Compensation Insurance, where appropriate.

XII. HOLD HARMLESS

To the fullest extent permitted by law, Cornhusker Place 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, and that are caused in whole or in part by the intentional or negligent act or omission of Cornhusker Place or anyone for whose acts it may be liable. This section shall not require the Cornhusker Place to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the negligence of the City.

To the fullest extent permitted by law, the City shall indemnify defend and hold harmless Cornhusker Place 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, and that are caused in whole or in part by the intentional or negligent act or omission of the City or anyone for whose acts it may be liable. This section shall not require the City to indemnify or hold harmless Cornhusker Place for any losses, claims, damages, and expenses arising out of or resulting from the negligence of Cornhusker Place.

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.

XIII. NOTICE

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to the following addresses:

City
Finance Department
Attn: Steve Hubka
555 South 10th Street
Lincoln, NE 68508

Cornhusker Place
Executive Director
721 "K" Street
Lincoln, NE 68508

XIV. INDEPENDENT CONTRACTOR

It is agreed that City is interested only in the results obtained and that Cornhusker Place shall perform as an independent contractor. Cornhusker Place is, for all purposes arising out of this Agreement, an independent contractor, and it shall not be deemed an employee of the City. It is expressly understood and agreed that Cornhusker Place shall in no event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits.

XV. LIVING WAGE

If applicable, Cornhusker Place agrees to pay all employees, as defined by ordinance, employed in the performance of this Agreement, a base wage of not less than the City Living Wage per Section 2.81.010 of the Lincoln Municipal Code.

XVI. EQUAL EMPLOYMENT

Cornhusker Place agrees in connection with the performance of this Agreement that Cornhusker Place shall fully comply with the requirements of Title 11 of the Lincoln Municipal Code, and Nebraska Revised Statutes Section 48-1122, and shall not discriminate against any employee, or applicant for employment because of race, color, religion, sex, disability, national origin, age, or marital status. In the employment of persons, Cornhusker Place shall fully comply with all provisions of applicable federal, state, and local law and shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, national origin, age, or marital status.

XVII. FAIR LABOR STANDARDS

Cornhusker Place shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Reissue Revised Statutes, as amended.

XVIII. 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.

XIX. 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.

XX. 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.

XXI.

AUDIT AND REVIEW

The Consultant 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.

XXII.

FEDERAL IMMIGRATION VERIFICATION

In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Cornhusker Place agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise 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. Cornhusker Place shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. Cornhusker Place shall require any subcontractor to comply with the provisions of this section.

XXIII. CAPACITY

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

IN WITNESS WHEREOF, the City and Cornhusker Place have executed this Agreement as of the date first written above.

**CORNHUSKER PLACE OF LINCOLN
LANCASTER COUNTY, INC.**
a Nebraska non-profit corporation,

CITY OF LINCOLN, NEBRASKA
a municipal corporation,

Phil Tegeler, Executive Director

Chris Beutler, Mayor

CITY OF LINCOLN

Request for: Ordinance
 Resolution

(Do Not Write in this Space)

Bill Control No. 12R-205 Date: 10/26

Docketing Date 11/5 P.H. 11-19-12

(To Be Entered by City Clerk)

DATE October 25, 2012	REQUEST MADE BY Rick Peo	DEPARTMENT Law Dept.
DESIRED DOCKET DATE: Nov. 5, 2012	IF EMERGENCY, GIVE REASON (See Art. 6, Sec. 2 of Charter)	
Emergency Measure Required: <input type="checkbox"/> Yes <input type="checkbox"/> No		

REASONS OR JUSTIFICATION FOR PROPOSED LEGISLATION

Approving an Agreement between the City of Lincoln and Cornhusker Place of Lincoln-Lancaster County, Inc. for the provision of protective custody services for those individuals with alcohol and drug abuse problems and for space for the Lincoln Police Department to conduct chemical testing and related services for a three-year term from October 1, 2013 through September 30, 2016.

REQUESTOR <input type="checkbox"/> DOES <input type="checkbox"/> DOES NOT	WISH TO REVIEW AND APPROVE THIS ORDINANCE PRIOR TO ITS INTRODUCTION	<u>[Signature]</u> DIRECTOR'S SIGNATURE	<u>10-26-2012</u> DATE
--	--	--	---------------------------

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

Return two (2) copies to City Clerk for Docket Number