

CONTRACT# 31585

Debra Stocker Contract

BETWEEN

THE NEBRASKA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

Deb Stocker.

This Contract is entered into, on February 1, 2008, (hereinafter, the Effective Date) by and between the State of Nebraska, Department of Health and Human Services, Division of Children and Family Services (hereinafter the "Department") and Deb Stocker, 3916 11th Avenue, Kearney, NE 68845 (hereinafter the "Contractor").

NOW, THEREFORE, the parties agree as follows:

ARTICLE I. TERM AND TERMINATION**A. TERM OF CONTRACT**

This contract shall be in effect from February 1, 2008 thru June 30, 2010 unless otherwise terminated as provided herein below.

B. TERMINATION

Either party hereto may terminate this Contract for any reason upon submission of written notice to the other party at least thirty (30) days prior to the effective date of termination. Subsections D, E, L, and Q of Article IV shall survive termination of this Contract.

ARTICLE II. SCOPE OF SERVICES

Provide mending of youth clothing for the Youth Rehabilitation & Treatment Center of Kearney.

A. PROGRAM STANDARDS.

Mending of youth clothing for Youth Rehabilitation & Treatment Center of Kearney.

B. ADMINISTRATIVE STANDARDS.

Mending of youth clothing will be completed as evidenced by observation of warehouse personnel.

ARTICLE III. DEPARTMENT'S OBLIGATIONS**A. CONSIDERATION**

The Department agrees to pay the Contractor:

\$5.00 per pair of jeans for hemming and \$15.00 per hour for all other mending

Not to exceed \$1,000.00 per year. Contract not to exceed \$2,500.00.

ARTICLE IV. GENERAL PROVISIONS

A. ASSIGNMENT

The Contractor agrees not to assign or transfer any interest, rights, or duties under this Contract to any person, firm, or corporation without prior written consent of the Department. In the absence of such written consent, any assignment or attempt to assign shall constitute a breach of this Contract.

B. SUBCONTRACTORS

The Contractor agrees that subcontractors will not be utilized in the performance of this Contract unless the Contractor has obtained prior written authorization for the use of subcontractors from the Department.

C. AMENDMENT

This Contract may not be modified except by amendment made in writing and signed by both parties or their duly authorized representatives.

D. CONFIDENTIALITY

The Contractor agrees that any and all information gathered in the performance of this Contract, either independently or through the Department, shall be held in the strictest confidence and shall be released to no one other than the Department without the prior written authorization of the Department, provided, that contrary Contract provisions set forth herein shall be deemed to be authorized exceptions to this general confidentiality provision.

E. DATA OWNERSHIP AND COPYRIGHT

- 1) All data collected as a result of this project shall be the property of the Department.
- 2) All materials, documents, reports, and data compilations produced by the Contractor in order to meet its obligation to the Department hereunder, are works-made-for-hire and shall be the sole property of the Department.
- 3) The Contractor may copyright any of the copyrightable material produced in conjunction with the performance required under this Contract. The Department and the United States Department of Health and Human Services hereby reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the copyrightable material for State or Federal Government purposes.

F. BREACH OF CONTRACT

- 1) Should the Contractor breach this Contract, the Department may, at its discretion, terminate this Contract immediately upon written notice to the Contractor. The Department shall pay the Contractor only for such performance as has been properly completed and is of use to the Department. The Department may, at its discretion, contract for provision of the services required to complete this Contract and hold the Contractor liable for all expenses incurred in such additional Contract over and above the total cost of performance set forth herein. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law.
- 2) The waiver by the Department of a breach of any provision of this Contract by Contractor shall not operate or be construed as a waiver of any subsequent breach by Contractor. No waiver shall be valid unless in writing and signed by the Director of the Department.

G. AVAILABILITY OF FUNDING

Due to possible future reductions in State and/or federal appropriations, the Department cannot guarantee the continued availability of funding for this Contract notwithstanding the

consideration stated above. In the event funds to finance this Contract become unavailable either in full or in part due to such reductions in appropriations, the Department may terminate the Contract or reduce the consideration upon notice in writing to the Contractor. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The Department shall be the final authority as to the availability of funds. The effective date of such contract termination or reduction in consideration shall be specified in the notice as the date of service of said notice or the actual effective date of the State and/or federal funding reduction, whichever is later. Provided, that reductions shall not apply to payments made for services satisfactorily completed prior to said effective date. In the event of a reduction in consideration, the Contractor may cancel this Contract as of the effective date of the proposed reduction upon the provision of advance written notice to the Department.

H. RELEASE, INDEMNITY, AND RISK MANAGEMENT

- 1) The Contractor shall assume all risk of loss and hold the Department, its employees, agents, assignees, and legal representatives harmless from all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments and all expenses incident thereto, for injuries to persons and for loss of, damage to, or destruction of property arising out of or in connection with this Contract and proximately caused by the negligent or intentional acts or omissions of the Contractor, its officers, employees, assignees, or agents.
- 2) The Department, if liable, is limited to the extent provided by the Nebraska Tort Claims Act, NEB. REV. STAT. §§ 81-8,209 to 81-8,235 (2004), the Nebraska Contract Claims Act, NEB. REV. STAT. §§ 81-8,302 to 81-8,306 (2004), and the Nebraska Miscellaneous Claims Act, NEB. REV. STAT. §§ 81-8,294 to 81-8,301 (2004); and any other applicable provisions of law. The Department does not assume liability for the action of its Contractors.

I. INDEPENDENT CONTRACTOR

The Contractor is an independent Contractor and neither it nor any of its employees shall for any purpose be deemed employees of the Department. The Contractor shall employ and direct such personnel as it requires to perform its obligations under this Contract, exercise full authority over its personnel, and comply with all worker's compensation, employer's liability and other federal, state, county, and municipal laws, ordinances, rules and regulations required of an employer providing services as contemplated by this Contract.

J. DRUG-FREE WORKPLACE

The Contractor hereby assures the Department that it will operate a drug-free workplace in accordance with State guidelines and has implemented a drug-free workplace policy, which is available to the Department on request.

K. LOBBYING

- 1) If the Contractor receives federal funds through the Department, for full or partial payment under this Contract, then no Federal appropriated funds will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract or (a) the awarding of any Federal Agreement; (b) the making of any Federal grant; (c) the entering into of any cooperative agreement; and (d) the extension, continuation, renewal, amendment, or modification of any Federal Agreement, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, the Contractor shall complete and submit Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

L. RESEARCH

The Contractor may not engage in research utilizing the information obtained through the performance of this Contract without the express written consent of the Director of the Department. The term "research" shall mean the investigation, analysis, or review of information, other than aggregate statistical information, which is used for purposes unconnected with this Contract.

M. WORKERS' COMPENSATION

In the event that the Nebraska Workers' Compensation Act NEB. REV. STAT. §§ 48-101 to 48-1,117 (Supp. 2005) (the Act) applies to the Contractor and the Contractor has employees involved in the carrying out of this Contract, the Contractor shall certify that it has obtained a policy providing coverage under the Act for its employees or will obtain proof of such coverage within thirty (30) days after the commencement of this Contract and shall provide the Department with proof of such coverage. In the event that the Act applies to the Contractor and the Contractor has obtained approval from the Department to subcontract some of its work under this Contract, the Contractor shall insure that all of its subcontractors have obtained workers' compensation insurance and will file proof of such insurance with the Department.

N. NON-DISCRIMINATION

The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, as amended; the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. §§ 701 et seq., as amended; the Americans With Disabilities Act of 1990, Pub. L. 101-336, 42 U.S.C. §§ 12101 et seq.; and the Nebraska Fair Employment Practice Act, NEB. REV. STAT. §§ 48-1101 to 48-1125 (2004), as amended, in that there shall be no discrimination against any employee who is employed in the performance of this Contract, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex or marital status. This provision shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Contractor. The Contractor further agrees to insert similar provisions in all sub-contracts for services allowed under this Contract under any program or activity.

O. FEDERAL FINANCIAL ASSISTANCE

The Contractor agrees that its performance under this Contract will comply with all applicable provisions of 45 C.F.R. §§ 87.1-87.2 (2005) et seq. The Contractor further agrees that it shall not use direct federal financial assistance to engage in inherently religious activities, such as worship, religious instruction, and/or proselytization.

P. PUBLIC COUNSEL

In the event the Contractor provides health and human services to individuals on behalf of the Department under the terms of this Contract, Contractor shall submit to the jurisdiction of the Public Counsel under NEB. REV. STAT. §§ 81-8,240 to 81-8,254 (2004) with respect to the provision of services under this Contract. This clause shall not apply to Contracts between the Department and long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act, NEB. REV. STAT. §§ 81-2237 to 81-2264 (2004).

Q. ACCESS TO RECORDS AND AUDIT LIABILITY

All Contractor books, records, and documents relating to work performed or monies received under this Contract shall be subject to audit at any reasonable time upon the provision of reasonable notice by the Department. These records shall be maintained for a period of six (6) 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 this Contract, the Contractor shall agree that it will be held liable for audit exceptions, and shall return to the Department all payments made under this 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 Department in the course of an audit.

R. GOVERNING LAW

This Contract shall be subject to, governed by, and construed according to the laws of the State of Nebraska, without regard to principles of conflict of laws.

S. SEVERABILITY

If any term or condition of this 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 this Contract did not contain the particular provision held to be invalid.

T. PROMPT PAYMENT

If applicable, payment will be made in conjunction with the State of Nebraska Prompt Payment Act, NEB. REV. STAT. §§ 81-2401 to 81-2408 (2004). The Department may request that payment be made electronically instead of by State warrant.

U. CONFLICTS OF INTEREST

In the performance of this Contract, the Contractor agrees to avoid all conflicts of interest and all appearances of conflicts of interest; the Contractor will notify the Director of any such instances encountered in the course of his/her work so that other arrangements can be made to complete the work.

V. INCORPORATED BY REFERENCE AND INTEGRATION

- 1) All references in this Contract to laws, rules, regulations, guidelines, directives, and attachments which set forth standards and procedures to be followed by the Contractor in discharging its obligations under this Contract shall be deemed incorporated by reference and made a part of this Contract with the same force and effect as if set forth in full text, herein.
- 2) This written Contract represents the entire agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this Contract.

- 3) The Headings set forth in this Contract are for convenience only and will not control or affect the meaning or construction of the provisions of this Contract.
- 4) This Contract may be signed in counterpart originals, which collectively shall have the same legal effect as if all signatures had appeared on the same physical document. This Contract may be signed and exchanged by facsimile transmission, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

W. FORCE MAJEURE

The performance by either party hereunder is excused to the extent of circumstances beyond such party's reasonable control, such as flood, tornado, earthquake, or other natural disaster, epidemic, war, material destruction of facilities, fire, acts of God, etc. In such event, the parties will use their best efforts to resume performance as soon as reasonably possible under the circumstances giving rise to the party's failure to perform. In the event that a party experiences a force majeure event, such party shall notify the other party(ies) of such force majeure condition. The terms of this Section shall not exempt, but merely suspend, the notifying party's performance under this Contract, until such time as it is reasonably possible for said party to resume its performance hereunder.

X. NEBRASKA TECHNOLOGY ACCESS STANDARDS

The Contractor agrees to ensure compliance with current Nebraska Access Technology Standards. The intent is to ensure that all newly procured information technology equipment; software and services can accommodate individuals with disabilities. Information technology products, systems, and services including data, voice, and video technologies, as well as information dissemination methods will comply with the Nebraska Technology Access Standards. A complete listing of these standards can be found at website <http://www.nitc.state.ne.us/standards/accessibility/> and are part of the Department's General Provisions.

Y. DEBARMENT, SUSPENSION OR DECLARED INELIGIBLE

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Z. NOTICES

Any written notices required by this Contract shall be sent to the following addresses:

For the Department:

Terri Nutzman
Juvenile Services Administrator
Division of Children & Family Services
PO Box 95044
Lincoln, NE 68508

For the Contractor:

Deb Stocker
3916 11th Avenue
Kearney, NE 68848

IN WITNESS THEREOF, the parties have duly executed this Contract hereto, and each party acknowledges the receipt of a duly executed copy of this Contract with original signatures.

FOR THE DEPARTMENT:

Todd C Reckling
Signature

Todd Reckling, Administrator
Policy Section
Division of Children & Family Services
Department of Health and Human Services

DATE: 02/19/2008

FOR THE CONTRACTOR:

Deb Stocker
Signature

Title
Deb Stocker
Printed Name

DATE: 2/29/08