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TERMINATION OF PARENTAL RIGHTS CONTRACT

BETWEEN THE

**NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF CHILDREN AND FAMILY SERVICES
AND**

LANCASTER COUNTY

C-10-0203
49723-26
43635-04

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POLICY UNIT

This contract is entered into by and between the Nebraska Department of Health and Human Services, **DIVISION OF CHILDREN AND FAMILY SERVICES** (hereinafter "DHHS"), and **LANCASTER COUNTY** (hereinafter "Contractor").

PURPOSE. The purpose of this contract is to provide funding to assist the Lancaster County Attorney to take legal action to terminate parental rights so that children can have permanency through adoption.

I. TERM AND TERMINATION

- A. TERM. This contract is in effect from July 1, 2010 until June 30, 2012.
- B. TERMINATION. This contract may be terminated at any time upon mutual written consent or by either party for any reason upon submission of written notice to the other party at least Thirty (30) days prior to the effective date of termination. DHHS may also terminate this contract in accord with the provisions designated "FUNDING AVAILABILITY" and "BREACH OF CONTRACT." In the event either party terminates this contract, the Contractor shall provide to DHHS all work in progress, work completed, and materials provided to it by DHHS in connection with this contract immediately.

II. CONSIDERATION

- A. TOTAL PAYMENT. The DHHS agrees to pay the Contractor the total amount not to exceed \$209,000 (Two hundred nine thousand dollars) for the services specified herein.
1. PAYMENT STRUCTURE. Payments in the amount of \$26,125 per quarter will be made beginning with the July 1, 2010 to September 30, 2010 quarter with the final quarter ending June 30, 2012 upon submittal of a summary of activities and quarterly expenditures for the quarter.

III. SCOPE OF SERVICES

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**LANCASTER COUNTY
CLERK**

A. The Contractor shall do the following:

1. Perform legal functions in compliance with Neb. Rev. Stat. §43-292 (Reissue 2008) to assist in freeing children for adoption or making possible an appropriate alternative permanency objective. Functions include:
 - A. Reviewing DHHS referrals for termination of parental rights within 45 days of receipt thereof;
 - B. Determining factual and legal sufficiency of DHHS referrals for termination of parental rights;
 - C. Notifying the DHHS within 45 days of receipt of the referral if a filing will not occur and the specific reasons for that decision;
 - D. Preparing and filing termination of parental rights filings within 60 days from receipt of referral when factually and legally warranted;
 - E. Consulting, as needed or requested, with DHHS staff after review of DHHS referral for termination of parental rights.
2. Provide the following reports to the DHHS, in a format mutually agreed upon by the DHHS and the Contractor:
 - A. With the quarter beginning July 1, 2010, provide quarterly reports, due no later than one month from the end of the quarter, to include:
 - 1) Total number of referrals including:
 - a) Total referrals pending from prior quarters;
 - b) Total new referrals received from the DHHS during the quarter;
 - c) Total number of referrals in which notification was provided to the DHHS that a filing would not occur and reason for the decision and, of these:
 - i) Total number in which notification was provided to the Department within 45 days from receipt of referral;
 - ii) Total number in which notification was provided to the Department longer than 45 days from receipt of referral.
 - 2) Total number of termination cases filed by Contractor during the quarter:
 - a) For which a referral was made by DHHS
 - b) For which no referral was made by DHHS
 - 3) Total number of termination cases scheduled for trial on date(s) during the quarter, but for which no trial was held during the quarter
 - 4) Total number of termination trials held including:
 - a) Total number of termination trials in progress carried over from prior quarters;
 - b) Total number of termination trials during the quarter resulting in an order of termination of mother's rights;
 - c) Total number of termination trials during the quarter resulting in an order of termination of father's rights;
 - d) Total number of children whose parent's(s') rights were terminated during the quarter; and
 - e) Total number of termination trials in which the court did not order a termination of parental rights.

- f) Total number of termination trials in progress carried over to the next quarter.
- 5) Total number of filings to appeal the entry of a termination order and, of these:
 - a) Total number pending a decision carried over from prior quarters;
 - b) Total number of new appeals filed during the quarter and pending a decision;
 - c) Total number affirming termination;
 - d) Total number in which the termination was reversed;
 - e) Total number pending a decision at the end of the quarter.
- 6) Total number of filings to appeal a court's denial of a termination of parental rights order, and, of these:
 - a) Total number pending a decision carried over from prior quarters;
 - b) Total number of new appeals filed during the quarter and pending a decision;
 - c) Total number affirming denial of termination;
 - d) Total number in which the denial of termination was reversed;
 - e) Total number pending a decision at the end of the quarter.
- 7) Total number of relinquishments by parents to the DHHS and accepted by the DHHS after a termination of parental rights action has been filed, and, of these:
 - a) Total number of mothers who relinquished;
 - b) Total number of fathers who relinquished,
 - c) Total number of children affected;
- 8) Number of consented guardianships entered after a termination of parental rights action has been filed, and, of these:
 - a) Total number of mothers who agreed to guardianship;
 - b) Total number of fathers who agreed to guardianship;
 - c) Total number of children affected.

B. DHHS shall do the following:

1. Prior to making a referral for termination of parental rights to the Contractor, review the entire case and any relevant previous history of DHHS involvement with the subject family and parents.
2. Utilize a format which is mutually agreeable to the DHHS and the Contractor when making a referral to the Contractor for termination of parental rights,
3. Upon request of the Contractor, provide all necessary information regarding the referral for termination of parental rights including, but not limited to, copies of necessary portions of the DHHS case file.
4. Research the current whereabouts of parents and provide such information to the Contractor so the Contractor can obtain the necessary service of process for termination of parental rights.
5. Make reasonable efforts to locate absent parents and prepare an affidavit in support of motion for publication upon the request of the Contractor.

6. Meet with the Contractor, upon request, and discuss issues related to the filing of a termination of parental rights, discovery and trial.
7. After a termination of parental rights action has been filed, in collaboration with the Contractor, prepare a chronological timeline/progression of case events, which lead to Termination referral and filing, in a format mutually agreeable to the Department and the Contractor.
8. After a termination of parental rights action has been referred to the Contractor, DHHS shall not change its position on whether termination of parental rights is warranted in a case or in the best interest of a child affected by that case, without first providing written notice to the Contractor of DHHS's intent to change its position and, if requested by Contractor, consulting in person with the Contractor about the reason for the DHHS change in position.
9. Collaborate with the County Attorney to provide information to parents or their attorneys that can assist in the parent's decision regarding voluntary relinquishment of parental rights.
10. Collaborate with the County Attorney in provision of information that can result in a permanency objective of guardianship for the child.
11. Collaborate with the County Attorney to develop a mutually agreed upon format for reports required by the contract.

IV. GENERAL PROVISIONS

A. ACCESS TO RECORDS AND AUDIT RESPONSIBILITIES.

1. All Contractor 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 contract shall be subject to audit at any reasonable time upon the provision of reasonable notice by DHHS. Contractor shall maintain all records for five (5) years from the date of final payment, except that records that fall under the provisions 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 DHHS. All records shall be maintained in accordance with generally accepted business practices.
2. The Contractor shall provide DHHS any and all written communications received by the Contractor from an auditor related to Contractor's internal control over financial reporting requirements and communication with those charged with governance including those in compliance with or related to Statement of Auditing Standards (SAS) 112 *Communicating Internal Control related Matters Identified in an Audit* and SAS 114 *The Auditor's Communication with Those Charged With Governance*. The Contractor agrees to provide DHHS with a copy of all such written communications immediately upon receipt or instruct any auditor it employs to deliver copies of such written communications to DHHS at the same time copies are delivered to the

Contractor, in which case the Contractor agrees to verify that DHHS has received a copy.

3. The Contractor shall immediately correct any material weakness or condition reported to DHHS in the course of an audit and notify DHHS that the corrections have been made.
4. In addition to, and in no way in limitation of any obligation in this contract, the Contractor shall be liable for audit exceptions, and shall return to DHHS all payments made under this contract for which an exception has been taken or which has been disallowed because of such an exception, upon demand from DHHS.

B. AMENDMENT. This contract may be modified only by written amendment, executed by both parties. No alteration or variation of the terms and conditions of this contract shall be valid unless made in writing and signed by the parties.

C. ANTI-DISCRIMINATION. The Contractor 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; and the Nebraska Fair Employment Practice Act, NEB. REV. STAT. §§ 48-1101 to 48-1125. Violation of said statutes and regulations will constitute a material breach of contract. The Contractor shall insert this provision in all subcontracts.

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

E. ASSURANCE. If DHHS in good faith, has reason to believe that the Contractor does not intend to, is unable to, or has refused to perform or continues to perform all material obligations under this contract, DHHS may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at DHHS's option, be the basis for terminating this contract.

F. BREACH OF CONTRACT. DHHS 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. DHHS 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 DHHS'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 DHHS's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. DHHS may, at its discretion, contract for any services required to complete this contract and hold the

Contractor liable for any excess cost caused by Contractor's default. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law.

- G. CONFIDENTIALITY. Any and all information gathered in the performance of this contract, either independently or through DHHS, shall be held in the strictest confidence. This provision shall survive termination of this contract.
- H. CONFLICTS OF INTEREST. In the performance of this contract, the Contractor shall avoid all conflicts of interest and all appearances of conflicts of interest. The Contractor shall immediately notify DHHS of any such instances encountered so that other arrangements can be made to complete the work.
- I. DATA OWNERSHIP AND COPYRIGHT. All data collected as a result of this project shall be the property of DHHS. The Contractor shall not copyright any of the copyrightable material produced in conjunction with the performance required under this contract without written consent from DHHS. DHHS hereby reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the copyrightable material for state government purposes. This provision shall survive termination of this contract.
- J. 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.
- K. DOCUMENTS INCORPORATED BY REFERENCE. 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.
- L. DRUG-FREE WORKPLACE. Contractor certifies that it maintains a drug-free workplace environment to ensure worker safety and workplace integrity. Contractor shall provide a copy of its drug-free workplace policy at any time upon request by DHHS.
- M. FORCE MAJEURE. Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this 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 this contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under this contract which are reasonably related to the Force Majeure Event shall be suspended, and the affected party shall do everything reasonably necessary to resume performance as soon as possible. Labor disputes with the impacted party's own

employees will not be considered a Force Majeure Event and will not suspend performance requirements under this contract.

N. FUNDING AVAILABILITY. DHHS may terminate the contract, in whole or in part, in the event funding is no longer available. Should funds not be appropriated, DHHS may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. DHHS shall give the Contractor written notice thirty (30) days prior to the effective date of any termination. 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.

O. GOVERNING LAW. The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against DHHS or the State of Nebraska regarding this contract shall be brought in Nebraska administrative or judicial forums as defined by Nebraska State law. The Contractor shall comply with all Nebraska statutory and regulatory law.

P. HOLD HARMLESS.

1. The Contractor shall assume all risk of loss and hold the State of Nebraska, 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, for civil rights liability, 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 State of Nebraska shall assume all risk of loss and hold Contractor, 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, for civil rights liability, 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 State of Nebraska, its officers, employees, assignees, or agents.

3. DHHS's liability is limited to the extent provided by the Nebraska Tort Claims Act, the Nebraska Contract Claims Act, and the Nebraska Miscellaneous Claims Act; and any other applicable provisions of law. DHHS does not assume liability for the action of its Contractors. Contractor does not assume liability for the action of DHHS.

Q. INDEPENDENT CONTRACTOR. The Contractor is an Independent Contractor and neither it nor any of its employees shall for any purpose be deemed employees of DHHS. 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 workers' 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.

- R. **INVOICES.** Invoices for payments submitted by the Contractor shall contain sufficient detail to support payment. Any terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties.
- S. **INTEGRATION.** 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.
- T. **Nebraska NONRESIDENT INCOME TAX WITHHOLDING.** Contractor acknowledges that Nebraska law requires DHHS to withhold Nebraska income tax if payments for personal services are made in excess of six hundred dollars (\$600) to any contractor who is not domiciled in Nebraska or has not maintained a permanent place of business or residence in Nebraska for a period of at least six months. This provision applies to individuals, to a corporation if 80% or more of the voting stock of the corporation is held by the shareholders who are performing personal services, and to a partnership or limited liability company if 80% or more of the capital interest or profits interest of the partnership or limited liability company is held by the partners or members who are performing personal services.

The parties agree, when applicable, to properly complete the Nebraska Department of Revenue Nebraska Withholding Certificate for Nonresident Individuals Form W-4NA or its successor. The form is available at:

http://www.revenue.ne.gov/tax/current/f_w-4na.pdf or
http://www.revenue.ne.gov/tax/current/fill-in/f_w-4na.pdf

- U. **NEBRASKA TECHNOLOGY ACCESS STANDARDS.** The Contractor shall review the Nebraska Technology Access Standards, found at <http://www.nitc.state.ne.us/standards/accessibility/tacfinal.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.
- V. **NEW EMPLOYEE WORK ELIGIBILITY STATUS.** The Contractor 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 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 newly 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.
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the U.S. 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.

W. **PROMPT PAYMENT.** Payment shall be made in conjunction with the State of Nebraska Prompt Payment Act, NEB. REV. STAT. §§ 81-2401 through 81-2408. Unless otherwise provided herein, payment shall be made by electronic means.

ACH Enrollment Form Requirements for Payment

"It is the responsibility of the vendor to complete and sign the State of Nebraska ACH Enrollment Form and to obtain the necessary information and signatures from their financial institution. The completed form must be submitted before payments to the vendor can be made."

Download ACH Form:

http://www.das.state.ne.us/accounting/nis/address_book_info.htm

X. **PUBLIC COUNSEL.** In the event Contractor provides health and human services to individuals on behalf of DHHS under the terms of this contract, Contractor shall submit to the jurisdiction of the Public Counsel 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.

Y. **RESEARCH.** The Contractor shall not engage in research utilizing the information obtained through the performance of this contract without the express written consent of DHHS. 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.

Z. 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.

AA. SUBCONTRACTORS. The Contractor shall not subcontract any portion of this contract without prior written consent of DHHS. The Contractor shall ensure that all subcontractors comply with all requirements of this contract and applicable federal, state, county and municipal laws, ordinances, rules and regulations.

BB. 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 DHHS shall not waive any rights of DHHS nor constitute a waiver of the requirement of timely performance of any obligations on the part of the Contractor remaining to be performed.

NOTICES. Notices shall be 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 DHHS:

Margaret Bitz
DHHS Division of Children and Family Services
P.O. Box 95026
Lincoln, NE 68339
402-471-9457

FOR CONTRACTOR:

Gary Lacey
Lancaster County Attorney
575 South 10th. Street
Lincoln, NE 68508
402-441-7321

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 DHHS:



Todd L. Reckling
Director
Department of Health and Human Services
Division of Children and Family Services

FOR CONTRACTOR:



Bernie Heier
Chairman
Board of Commissioners of
Lancaster County, Nebraska

DATE: 04/23/2010

DATE: 5/4/10