

AB#
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43958-03

**PERFORMANCE BASED STANDARDS
CONTRACT**

BETWEEN THE

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

AND

PERFORMANCE BASED STANDARDS (PbS) LEARNING INSTITUTE, INC.

This contract is entered into by and between the Nebraska Department of Health and Human Services, **Division of Children and Family Services-Office of Juvenile Services (DHHS-OJS)** or (hereinafter the "Department"), and **PbS Learning Institute, Inc.** located at **170 Forbes Road Suite 106 Braintree, MA 02184** (hereinafter the "Contractor").

PURPOSE. The Department is desirous of contracting for the provision of **PERFORMANCE BASED STANDARDS** for Juvenile Rehabilitation and Treatment programming at State of Nebraska, Youth Rehabilitation and Treatment Centers in Kearney and Geneva, NE. PbS sets national standards for safety, education, health/mental health services, security, justice and order within juvenile facilities and gives agencies the tools to collect data, analyze performance results, design improvements and measures effectiveness with subsequent data collections and performance outcome reports.

I. TERM AND TERMINATION

- A. TERM. This contract is in effect from July 1, 2009 until June 30, 2010.
- 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 30 (Thirty) days prior to the effective date of termination. The Department may also terminate this contract in accord with the provisions designated "AVAILABILITY OF FUNDING" and "BREACH OF CONTRACT." In the event either party terminates this contract, the Contractor shall provide to the Department all work in progress, work completed, and materials provided to it by the Department in connection with this contract immediately. Payment for services to the date of termination will be based on the consideration specified in Section II.

II. CONSIDERATION

A. The Department agrees to pay the Contractor the total amount not to exceed **\$17,000.00 (Seventeen Thousand Dollars)** for participation in Performance-based Standards for the period July 1, 2009 to June 30, 2010 for when meeting the criteria under "Scope of Service".

B. PAYMENT STRUCTURE.

1. The Contractor is responsible for any and all costs associated with the production and delivery of reports. No other charges may be submitted under the terms of this contract without prior approval and agreement of Department for the services specified herein.

2. The Contractor agrees to submit invoices quarterly.

C. OVERPAYMENTS.

Should the Department overpay the Contractor for services rendered or make payments in error for services that were not provided, the Contractor will notify the Department within the next regular billing cycle. The Contractor understands that any and all overpayments remain the property of the Department and that the Department retains the right to recover any and all amounts overpaid. The Department reserves the right to offset overpaid amounts by withholding or reducing future payments.

III. SCOPE OF SERVICES

A. The Contractor agrees to provide the following deliverables and services to the Department's Youth Rehabilitation and Treatment Centers located in Kearney and Geneva, Nebraska:

- 1) Conference calls pre/post visit;
- 2) One (1) site visit to each participating facility;
- 3) Two (2) reviews by PbS coach of definitional compliance and comprehensive reports;
- 4) Two (2) reviews by PbS coach of Performance Profile Reports (PPR);
- 5) Review of reports and aid in developing Facility Improvement Plans (FIP);
- 6) Training through periodic (2-4) Distance Learning Conferences (DLC);
- 7) On-going consultations with one-site assigned PbS coach;
- 8) Technical assistance, including PbS help desk, support by telephone and email, from PbS staff during;
- 9) Participation in PbS Distance Learning Conference;
- 10) On-line tools facility improvement planning and links to resources;
- 11) On-going information via PbS e-newsletter;
- 12) Access to all PbS resources and training videos on the website;
- 13) Networking with other participating facilities on the PbS community forum;

- 14) Travel expenses for site visits to each participating facility: airfare, lodging, meals and ground transportation;
- 15) Provide links for on-line data entry two (2) times per year (April and October);
- 16) Participation in two (2) PbS data collections reporting improvement cycles;
- 17) Draft site report with data collections review analysis;
- 18) Provide downloadable outcome measure reports;
- 19) Provide bi-annual site reports with field averages;
- 20) Provide Jurisdictional Profile Reports;
- 21) Provide summary reports of Youth and Staff Climate Survey;
- 22) Provide research/PbS Aggregate Analysis Report;
- 23) Provide Detention/Correctional Report; and
- 24) Provide Critical Outcome Report.

IV. DEPARTMENT RESPONSIBILITIES

A. The Department and YRTC's shall be responsible for the following:

- 1) Assigning a staff person within OJS Central Office to serve as State Coordinator;
- 2) Assigning a staff person at both Youth Rehabilitation and Treatment Center to serve as site coordinators; and
- 3) Complete all PbS Learning Institute, Inc. data collection protocols;
- 4) Adhere to the PbS Learning Institute, Inc. privacy policy;
- 5) Maintain a PbS team that includes the State Coordinator, Facility Administrator, Site Coordinator as well as representatives of all facility program areas (such as health, education, mental health);
- 6) Meet deadlines for data collection, data entry, review of draft and final reports and Facility Improvement Plans (FIP's);
- 7) Work with PbS Coaches and staff to analyze site reports and to prepare FIP's; and
- 8) Work with PbS coaches and staff to implement best practices and policies.

V. GENERAL PROVISIONS

A. ACCESS TO RECORDS AND AUDIT RESPONSIBILITIES.

1. All Contractor books, records, and documents regardless of physical form, and 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 the Department. These records shall be maintained as follows: all records shall be maintained for five (5) years from the date of final payment and records that fall under the provisions of 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 Department. All records shall be maintained in accordance with generally accepted accounting principles.

2. The Contractor agrees to provide the Department 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 the Department 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 the Department at the same time copies are delivered to the Contractor, in which case the Contractor agrees to verify that the Department has received a copy.
 3. The Contractor agrees to immediately correct any material weakness or condition reported to the Department in the course of an audit and notify the Department that the corrections have been made.
 4. In addition to, and in no way in limitation of any obligation in this contract, the Contractor agrees that it will be 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, upon demand from the Department.
- B. **AMENDMENT**. This contract may be modified only by written amendment, duly 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 hereto. Every amendment shall specify the date on which its provisions shall be effective.
- C. **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.
- D. **AVAILABILITY OF FUNDING**. Due to possible future reductions in 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 this contract or reduce the consideration upon notice in writing to the Contractor. 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 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

terminate this contract as of the effective date of the reduction upon the provision of advance written notice to the Department.

E. 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 party.

F. 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. This provision shall survive termination of this contract.

G. 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 Department of any such instances encountered in the course of his/her work so that other arrangements can be made to complete the work.

H. DATA OWNERSHIP AND COPYRIGHT. All data collected as a result of this project shall be the property of the Department. The Contractor may copyright any of the copyrightable material produced in conjunction with the performance required under this contract. The Department 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.

I. 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.

J. 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.

- K. **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.
- L. **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.
- M. **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.
- N. **HOLD HARMLESS**.
1. The Contractor agrees to 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 expenses incident thereto, for injuries to persons and for loss of, damages to, or destruction of property arising out of or in connection with Contractor's performance under this contract and proximately caused by the negligent or intentional acts or omission of the Contractor, its officers, employees, assignees, or agents.
 2. The Department'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. The Department does not assume liability for the action of its Contractors.
- O. **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 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.

- P. **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.
- Q. **NEBRASKA TECHNOLOGY ACCESS STANDARDS.** The Contractor shall review the Nebraska Access Technology 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.
- R. **NON-DISCRIMINATION.** The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; the Americans With Disabilities Act of 1990, Public Law 101-336; and the Nebraska Fair Employment Practice Act, 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 further agrees to insert similar provisions in all sub-contracts for services allowed under this contract under any program or activity.
- S. **PROMPT PAYMENT.** Payment will be made in conjunction with the State of Nebraska Prompt Payment Act. The Department may request that payment be made electronically instead of by State warrant.
- T. **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 through 81-8,254 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.
- U. **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 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.

V. 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.

W. SUBCONTRACTORS. The Contractor agrees that before subcontractors may be utilized in the performance of this contract, the Department must give prior written approval. If the Contractor subcontracts a portion of the work involved in this contract, it shall ensure that the subcontractor complies 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.

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 THE DEPARTMENT:

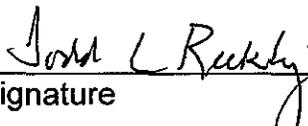
Terry J. Nutzman, Administrator
Office of Juvenile Services
PO Box 95026
301 Centennial Mall South
Lincoln, NE 68509-5026
(402) 471-8403
(402) 471-9034 fax

FOR THE CONTRACTOR:

PbS Learning, Inc.
170 Forbes Road Suite 106
Braintree, MA 02184
Ph: (888) 727-5482

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:



Signature

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

FOR THE CONTRACTOR:



Signature

Kim Godfrey
Director

DATE: JUNE 08, 2009

DATE: 6.16.09