AMENDMENT TO FAMILY SUPPORT AND VISITATION CONTRACT

BETWEEN THE

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

MCCONAUGHY DISCOVERY CENTER

AMENDMENT ONE, FEBRUARY 2011

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 **McConaughy Discovery Center, P.O. Box 299, Ogallala Nebraska 69153** (hereinafter "Contractor").

The Contract between the parties dated October 1 2010 is hereby amended as follows:

Article II.A. is amended to read:
The Department agrees to pay the Contractor a maximum amount not to exceed **$2,000,000.00** for the services specified herein.

All other terms and conditions remain in full force and effect.

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 DHHS:

Signature

Kerry T. Winterer, CEO
Department of Health and Human Services

DATE: 2/10/2011

FOR THE CONTRACTOR:

Signature

Title

DATE: 2/10/2011

FAMILY SUPPORT AND VISITATON CONTRACT

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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 **McConaughy Discovery Center, P.O. Box 299, Ogallala Nebraska 69153** (hereinafter "Contractor").

PURPOSE. The purpose of this contract is to provide Family Support and Visitation Services to the youth and families of the State of Nebraska. The Contractor must be able to deliver all services requested for state wards, children determined to be unsafe, adjudicated as delinquent, adjudicated as status offenders and/or adjudicated under child abuse and neglect. Services are to be provided in the Central, Northern or Western Service Areas.

I. TERM AND TERMINATION

A. TERM. This contract is in effect from October 1, 2010 until June 30, 2011.

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. DHHS shall pay the Contractor a total amount not to exceed **$1,000,000.00** for the services specified herein.
A. The Department agrees to pay the Contractor **$47.00 per hour** for direct, (face to face) contact time with the youth and family utilizing Family Support Services.
B. The Department agrees to pay the Contractor **$40.00 per hour** for direct, (face to face) contact time with the youth and family utilizing Supervised Visitation Services.
C. All service costs are included in the established rate for each service. No additional costs will be billed to the Department.
D. Transportation costs for children and families to receive services and for the

Contractor to provide services are included in the Consideration, unless otherwise defined in the Contract.

E. The Contractor understands and agrees that this Contract does not guarantee that the Department shall request such services. Furthermore, the Contractor understands and agrees that no minimum number of referrals for services from the Department shall be expected.
F. The Department reserves the right to withhold payment until required reports are received.
G. 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 the Department.
H. The Contractor agrees not to accept payment from the family of the youth under the terms of this Contract unless an established part of the Department's case plan includes a fee for services.
I. The Contractor is expected to submit the Department provided billing documents within ninety (90) days of the provision of service. The Contractor understands and agrees that any bills submitted for payment that are over a year from the date of service will not be paid.

III. SCOPE OF SERVICES

A. PROGRAM STANDARDS
   1. The Contractor will provide services to the following children and families identified by the Division of Children and Family Services.
      a. Children (ages 0 through 18) and families who are involved in a proceeding in the juvenile court system and placed in the custody of the Department (court involved) for reasons of abuse, neglect, status offense, and/or delinquency;
      b. All whole, half, or step sibling of these children who reside in the same household or are in placement under the care and supervision of the Department;
      c. The parents, stepparents, adoptive parents, or caretakers, such as relatives or significant others of the parent of the above children;
      d. Children and families the Department is assessing for child maltreatment reports; and
      e. Families in which a child is determined to be unsafe but the family agrees to participate in safety and change services without court involvement (non-court involved).
   2. Emphasis will focus on child/parental skill acquisition, improved family functioning, increase parent/child interactions and community engagement for support and sustainability once the child and/or community are no longer unsafe.
   3. The Department may end services immediately upon notice for such reasons as alleged child abuse or neglect, court discharge, or other causes determined by the Department to be in the best interest of the youth.
   4. If the Contractor has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, the Contractor shall report the matter to the Department's Hotline 1-800-

652-1999.

B. SERVICE STANDARDS:

1. Family Support Services: Family Support Services are utilized to provide skill development/acquisition to a child's parents or caretakers or to youth who are in need of skill development/acquisition to control their behaviors.
   a. Family Support Services provided to parents/caregivers shall focus on areas such as parent participation in child-directed interactions, use of positive social praise, and introduction of parent-directed activities including daily living activities such as bedtime rituals, toilet training, curfew, consequence, chores, use of appropriate coping skills to manage the parents'/caretakers' behavior, appropriate discipline or other specific interventions under the direction of Department staff via a safety/case plan.
   b. Family Support Services provided directly to youth must emphasize improvement in skill acquisition related to social and relationship skills, and /or the use of appropriate coping skills to manage his/her behaviors.
2. Supervised Visitation:
   a. Visitation services are provided when a child has been placed outside of the home.
   b. Supervision services are provided when a child has not been removed from the family home but supervision must occur to allow for one parent to interact with the child(ren) and safety concerns must be controlled and managed.
   c. Supervision may also be provided to accompany a child/family to court, to allow a child to participate in family significant events such as weddings, funeral, graduations, etc.
   d. The Contractor is required to provide documentation of family strengths and areas of concern related to parental/child interaction and/or sibling interaction observed during direct supervision.

C. ADMINISTRATIVE STANDARDS.

1. Court Testimony:
   a. The Contractor agrees, upon request of the Department, to provide testimony in court at no additional cost to the Department.
2. Record Keeping and Releasing of Information:
   a. The Contractor must be able to maintain a confidential record of any individual referred which is to be kept separate and apart from any consumer records maintained by the contractor for other entities than the Department.
   b. No photographs or slides or other identifying information regarding a child may be released for use on posters, in presentations, press releases, newsletters etc., without the written consent of the Department and agreement of the parent, if parental rights are intact.
3. Required Reports:
   a. The Contractor must submit a legible monthly progress report or provide legible documentation reports of each session or visit to the Department's designated Service Area Contract Liaison no later than the 15th of the month following the provision of service(s), or upon request by the Department if reports are needed sooner for court appearances or other special purposes.
      (1) The reporting format must be approved by the Department and at a

minimum include the type(s) of service provided, types of interventions, compliance and monitoring of safety plans, the families' involvement, and family strengths/progress/areas needing improvement.

(2) The reports may be sent electronically to the Service Area Contract Liaison. Signed originals must be provided upon request of the Department.

4. Incident Report: The Contractor shall immediately report (verbally) to Child and Family Service Specialist or Department On-Call Worker all significant events which will affect the youth's status (e.g., running away, aggressive behavior, suicidal ideation, minor illness that does not respond to treatment, major illness, accident, change in school status, etc.).
5. Critical Incident Report: The Contractor shall immediately report (verbally to the Child and Family Service Specialist or Department On-Call Worker any critical incident. The term Critical incident includes, but is not limited to:

a. Death of a child/youth resulting from abuse or neglect;
b. Near fatality, life threatening condition or serious injury of a child/youth resulting from abuse or neglect.
c. Suicide, or attempted suicide of a state ward or child/youth DHHS is involved with;
d. Death of a state ward or child/youth DHHS is working with by other means, accidental or non-accidental;
e. Death or non-accidental serious injury of a staff person while on the job;
f. Allegations or arrests of DHHS youth for serious illegal/criminal activity (i.e. homicide; manslaughter; near fatality of another person; sexual assault; assault – first or second degree; aggravated or armed robbery; etc,
g. Any other event that is highly concerning, poses potential liability, or is of emerging public interest;
h. Any other incident designated by the Division Director.

6. Other special reports may be requested by the Department as mutually agreed upon by both parties.

D. ORGANIZATIONAL STANDARDS:

1. STAFF STANDARDS:
   a. Background Checks:
      (1) The Contractor agrees to conduct a National Criminal History Check 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 Contract.
      (2) The Contractor 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 Contract. Such in-state background checks shall include a check of the following state registries:
      (a) The Sex Offender Registry maintained by the Nebraska State Patrol.
      (b) The Nebraska Child abuse and Neglect Central Register.
      (c) The Nebraska Adult Abuse and Neglect Central Register

(3) The Contractor shall complete the initial background checks before the individual has direct contact with any youth. If a background check results in a record being identified, the Contractor shall not allow the individual to have direct contact with any youth.

(4) The Contractor agrees to perform out-of state background check on all newly hired employees, interns, and volunteer 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 Contract. The Contractor shall complete the initial background checks before the individual has 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 a criminal background checks in the cities, counties and states of previous residence. If a background check results in a record being identified, the Contractor shall not allow the individual to have direct contact with any youth.

(5) Current Employees—The Contractor shall complete background checks every two (2) years for all current employees. If a current employee residing in a state, other then 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 Contractor shall complete a national, state and local criminal background check. If a background check results in a record being identified, the Contractor shall not allow the individual to have direct contact with any youth.

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

(7) If a background check results in a record being identified, the Contractor shall develop a process to review and determine if they want to request Department approval to hire said employee. Requests for an exception shall be made in writing to the Service Area Contract Liaison and will included the name and background information, along with supporting documentation form the Contractor as to why they believe that such person does not pose a threat to children or families. The Contractor shall utilize the criteria set forth in DHHS Policy 390 NAC 7-004.02d 2 and 3 when a background record is identified. The Department shall have 45 days to respond to such an exception. All documentation related to the process is maintained in the contractor's staff personnel records.

(a) This requirement MUST be completed on all existing employees within 30 days of the execution of this contract.

b. STAFF QUALIFICATIONS:

(1) Staff providing Family Support services shall have a minimum of a Bachelors Degree unless a staff equivalency petition is approved as in (3) below.

(2) Visitation Services staff must be at least 19 years of age and have obtained a high school diploma or GED, and have a minimum two years experience in the human services field. The experience could include: social work, counseling/guidance, psychology, sociology, human development, mental health education, or a closely related human service field.

(3) Staff Equivalency Determination Process for Educational Qualifications
The Contractor may petition the Department, in writing, for a determination of equivalent qualifications regarding a potential employee who does not meet the qualifications set forth above. The petition for equivalent qualification shall contain:
(1) The name of the potential employee who is the subject of the petition.
(2) A reference to the qualification to be reviewed.
(3) A statement from the Contractor that specifies what experience and education qualifies the staff person to perform the duties of the position.
Each petition shall be evaluated on a case by case basis, and shall be submitted to the Service Area Contract Liaison.

(3) <u>All staff providing transportation services</u> to children and families shall:
(a) Be at least 19 years of age;
(b) Possess a current and valid driver's license;
(c) Have no more than three points assessed against his/her Nebraska driver's license, or meet a comparable standard in the state where s/he is licensed to drive;
(d) Currently have no limitations that would interfere with safe driving;
(e) Use seat belts and child passenger restraint devices as required by law;
(f) Not smoke while transporting the client;
(g) Not transport the client while under the influence of alcohol or any drug that impairs the ability to drive safely;
(h) Not provide transportation if s/he has a communicable disease which may pose a threat to the health and well-being of the client;
(i) Complete a defensive driving course as sanctioned by the Nebraska Safety Council or similar agency; and
(j) Have and maintain the minimum automobile liability and medical insurance coverage as required by law.

2. <u>Transportation Standards:</u>
a) The Contractor agrees to provide and use safety belts and child safety restraints for all passengers in accordance with Nebraska State Statutes including but not limited to:
(1) All children up to six years of age being transported by such vehicle use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213.

3. <u>CONFLICT RESOLUTION</u>: Should the Contractor have any concerns with the provision of care and subsequent reimbursement, the Contractor shall first initiate a communication with the Departments assigned case manager. If resolution is

not achieved, the contractor shall contact the following in order until resolution is achieved:

a) The Service Area Contract Liaison
b) The Resource Development Administrator
c) The Service Area Administrator;
d) The Central Office Contract Liaison who will move the issue up to the level of the Director if necessary.

4. OVERPAYMENTS: Should the Department overpay the Contractor for services rendered or make payments in error for services that were not provided, the Contractor shall 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 shall offset overpaid amounts by withholding or reducing future payments.
5. TOBACCO SMOKE PROHIBITED: Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to child under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The Contractor agrees to comply with the requirements of the Act and shall not allow smoking within any portion of any indoor facility used for the provision of services for child defined by the Act.
   The Contractor agrees to prohibit smoking in any vehicle operated by its employees and staff when transporting child while providing services under this Contract.
6. INSURANCE:
   a) The Contractor shall maintain the following types of insurance for the duties performed under this contract:
      (1) General liability,
      (2) Workers Compensation, as required by Nebraska law,
      (3) Automobile, both non-owned and hired car,
      (4) Professional liability,
      (5) Errors and omissions, if applicable to the duties performed under this contract, and,
      (6) Premises and property.

b) The Contractor shall provide to the Department within thirty (30) days of execution of this Contract a certificate of insurance for the above mentioned insurance. Notice of cancellation of any insurance policies must be submitted immediately to the Service Area Contract Liaison or designee, along with evidence that the Contractor has obtained replacement coverage for the canceled policy(s), to ensure that there is no break in coverage.

HIV TESTING PROHIBITIED: The Department does not allow HIV antibody testing or other screening testing for the AIDS virus of a state ward without informed consent in writing from the Child and Family Services Specialist or designee. When consent is obtained, testing must be performed according to written Department policy, which includes procedures for ensuring confidentiality and for use of the state's AIDS Counseling, Testing, Referral and Partner Notification Sites (CTRPN's) when appropriate. In all cases, appropriate pre-test and post-test counseling must be provided. Because the OSHA Act of 1981 requires that all facilities provide a safe working environment, OSHA has adopted the CDC's requirement for Universal Precautions. Therefore, HIV antibody testing or any other AIDS virus testing is never considered necessary as a prerequisite for obtaining services. The Contractor and the Service Are Contract Liaison or designee shall jointly consult regarding obtaining an HIV antibody test on any ward when, despite having taken universal precautions, some exposure to HIV was possible.

When informed consent is requested for such Contractor staff exposure, the Service Area Contract Liaison or designee shall request the Contractor's written OSHA policies (that comply with state law when appropriate) describing the need for informed consent from the ward's guardian, the process by which the testing and the results of testing are kept confidential and not placed in the youth's record, and the fact that the Child and Family Service Specialist or designee hall be notified of the results of such confidential testing.

IV. GENERAL PROVISIONS

A. ACCESS TO RECORDS AND AUDIT RESPONSIBILITIES.

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 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.

1. 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.

2. 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.

3. 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 and shall be released to no one other than DHHS without the prior written authorization of DHHS, 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.

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. FEDERAL FINANCIAL ASSISTANCE. The Contractor will comply with all applicable provisions of 45 C.F.R. §§ 87.1-87.2. The Contractor shall not use direct federal financial assistance to engage in inherently religious activities, such as worship, religious instruction, and/or proselytization.

N. 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.

O. 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.

P. 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.

Q. HOLD HARMLESS.

1. The Contractor shall defend, indemnify, hold, and save harmless the State of Nebraska 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 of Nebraska, 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 of Nebraska which directly and proximately contributed to the claims.

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

R. 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.

S. 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.

T. 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.

U. LOBBYING.

1. No Federal appropriated funds shall 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.

V. 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

W. 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.

X. 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 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.

Y. 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

Z. 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.

AA. 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.

BB. 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.

CC. 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.

DD. 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: FOR CONTRACTOR:

Sherri Haber
DHHS
P.O. Box 95026
Lincoln Nebraska 68509-5026
Sherri Haber

Jeannine J. Lane
P.O. Box 299
Ogallala, NE 69153

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:

Kerry T. Winterer, CEO
Department of Health and Human Services

FOR CONTRACTOR:

Jeannine J. Lane, C.E.O
McConaughy Discovery Center

DATE: 10/15/2010

DATE: 10/15/2010