

STATE FUNDS GRANT
BETWEEN
THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
LANCASTER COUNTY, NEBRASKA

This grant 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, NEBRASKA** (hereinafter "Grantee").

DHHS GRANT MANAGER:

Doug Kreifels
 NE Department of Health
 & Human Services
 5220 South 16th Street
 Lincoln, NE 68512
 doug.kreifels@nebraska.gov
 (402) 471-5138

PURPOSE. The purpose of this grant is: To reimburse Lancaster County for the personal service costs of deputy county attorneys associated with termination of parental rights action.

I. TERM AND TERMINATION

- A. TERM. This grant is in effect from October 1, 2017 the effective date through September 30, 2018, the completion date.
- B. TERMINATION. This grant 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 grant in accord with the provisions designated "FUNDING AVAILABILITY" and "BREACH OF GRANT." In the event either party terminates this grant, the Grantee shall provide to DHHS all work in progress, work completed, and materials provided by DHHS in connection with this grant immediately.

II. AMOUNT OF GRANT

- A. TOTAL GRANT. DHHS shall pay the Grantee a total amount, not to exceed \$104,500 (one hundred four thousand, five hundred dollars) for the activities specified herein.
- B. PAYMENT STRUCTURE. Payment shall be structured as follows:
 Payments for costs in the amount not to exceed \$26,125.00 per quarter will be made for The quarters ending in December 31, 2017, March 31, 2018, June 30, 2018, and September 30, 2018 upon submittal of activities and quarterly expenditures.

III. STATEMENT OF WORK

A. The Grantee shall:

1. Perform legal functions in compliance with Neb. Rev. Stat. §43-292 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 DHHS within 45 (forty-five) 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 (sixty) days from receipt of referral when factually and legally warranted;
 - e. Consulting, as needed or requested, with DHHS after review of a DHHS referral for termination of parental rights.
 - f. Discussing and interfacing with the Contractor for Case Management for purposes of termination of parental rights staffing and hearings, as requested by DHHS. DHHS acknowledges the Contractor for Case Management is at this time, by contract, permitted to have such discussions, and to schedule and attend termination of parental rights hearings, but that DHHS retains final approval authority on all Contractor for Case Management affidavits and ultimate decision-making authority on requests to file a Motion for termination of parental rights.
 - g. Involving an Indian child's tribal representative in discussions with DHHS and/or the Contractor for Case Management regarding possible filings for termination of parental rights;
 - h. Notifying an Indian child's tribe or tribes of pending termination of parental rights; and,
 - i. Identifying and securing qualified expert witness testimony for proceedings involving an Indian child.
2. Provide the Grant Manager information and documentation in a format acceptable to DHHS including, but not limited to:
 - a. Status of Referrals from October 1, 2017 through September 30, 2018
 - 1) New
 - 2) Non-Filing Notification
 - i. Less than 45 days
 - ii. More than 45 days
 - b. Terminations Filed
 - 1) DHHS Referred
 - i. Less than 60 days
 - ii. More than 60 days
 - 2) DHHS did not refer
 - c. Results of Termination Filing
 - 1) Mother
 - i. Termination
 - ii. Relinquishment
 - iii. Filing Dismissed
 - iv. Mother agreed to Guardianship
 - v. Unsuccessful Termination
 - vi. Parent is Deceased
 - 2) Father
 - i. Termination
 - ii. Relinquishment

- iii. Filing Dismissed
- iv. Father agreed to Guardianship
- v. Unsuccessful Termination
- vi. Parent is Deceased
- d. Appeal Filed to the:
 - 1) Entry of Termination;
 - 2) Denial of Termination;
- e. Result and Date of Appeal
 - 1) Affirmed
 - 2) Overturned
- f. Did the Child Become Free for Adoption?

B. DHHS shall:

1. Utilize a format which is mutually agreeable to the DHHS and the Grantee when making a referral to the Grantee for termination of parental rights;
2. Upon request of the Grantee, 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;
3. Cooperate with the Grantee for purposes of locating parents;
4. Meet with the Grantee, upon request, and discuss issues related to the filing of a termination of parental rights, discovery and trial;
5. After a termination of parental rights action has been referred to the Grantee, 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 Grantee of DHHS's intent to change its position and, if requested by Grantee, consulting in person with the Grantee about the reason for the DHHS change in position;
6. 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; and
7. Collaborate with the County Attorney in provision of information that can result in a permanency objective of guardianship for the child(ren).

IV. GENERAL TERMS AND ASSURANCES

B. ACCESS TO RECORDS AND AUDIT RESPONSIBILITIES.

1. All Grantee 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 grant shall be subject to audit at any reasonable time upon the provision of reasonable notice by DHHS. Grantee shall maintain all records for three (3) years from the date of final payment, except 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. The Grantee shall maintain its accounting records in accordance with generally accepted accounting principles. DHHS reserves and hereby exercises the right to require the Grantee to submit required financial reports on the accrual basis of accounting. If the Grantee's records are not normally kept on the accrual basis, the Grantee is not required to convert its accounting system but shall develop and submit in a timely manner such accrual information through an analysis of the documentation on hand (such as accounts payable).

2. The Grantee shall provide DHHS any and all written communications received by the Grantee from an auditor related to Grantee'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) 115 *Communicating Internal Control related Matters Identified in an Audit* and SAS 114 *The Auditor's Communication with Those Charged With Governance*. The Grantee 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 Grantee, in which case the Grantee agrees to verify that DHHS has received a copy.
 3. The Grantee shall immediately commence follow-up action on findings arising from audits or other forms of review. Follow-up action includes responding to those conducting such examinations with clear, complete views concerning the accuracy and appropriateness of the findings. If the finding is accepted, corrective action, such as repaying disallowed costs, making financial adjustments, or taking other actions should proceed and be completed as rapidly as possible. If the Grantee disagrees, it should provide an explanation and specific reasons that demonstrate that the finding is not valid.
 4. In addition to, and in no way in limitation of any obligation in this grant, the Grantee shall be liable for audit exceptions, and shall return to DHHS all payments made under this grant for which an exception has been taken or which has been disallowed because of such an exception, upon demand from DHHS.
- C. AMENDMENT. Except as provided in the NOTICES section, below, this grant may be modified only by written amendment executed by both parties. No alteration or variation of the terms and conditions of this grant shall be valid unless made in writing and signed by the parties.
- D. ANTI-DISCRIMINATION. The Grantee shall comply with all applicable local, state and federal statutes and regulations regarding civil rights and equal opportunity employment, including **but not limited to** Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq.; the Rehabilitation Act of 1973, 29 U.S.C. §§ 794 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.; the Age Discrimination in Employment Act, 29 U.S.C. § 621; 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 this grant. The Grantee shall insert a similar provision into all subawards and subcontracts.
- E. ASSIGNMENT. The Grantee shall not assign or transfer any interest, rights, or duties under this grant 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 grant.
- F. ASSURANCE. If DHHS, in good faith, has reason to believe that the Grantee does not intend to, is unable to, has refused to, or discontinues performing material obligations under this grant, DHHS may demand in writing that the Grantee give a written assurance of intent to perform. Failure by the Grantee to provide written assurance within the number of days specified in the demand may, at DHHS's option, be the basis for terminating this grant.
- G. BREACH OF GRANT. DHHS may immediately terminate this grant and agreement, in whole or in part, if the Grantee fails to perform its obligations under the grant in a timely and proper manner. DHHS may withhold payments and provide a written notice of default to the Grantee, allow the Grantee to correct a failure or breach of grant 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 Grantee time to correct a failure or breach of this grant does not waive DHHS's right to immediately terminate the grant for the same or different grant breach which may occur at a different time. DHHS may, at its discretion, obtain any services required to complete this grant and hold the Grantee liable for any excess cost caused by Grantee's default. This provision shall not preclude the pursuit of other remedies for breach of grant as allowed by law.

- H. COMPLIANCE WITH LAW. The Grantee shall comply with all applicable law, including but not limited to all applicable federal, state, county and municipal laws, ordinances, rules, and regulations.
- I. CONFIDENTIALITY. Any and all confidential or proprietary information gathered in the performance of this grant, 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 grant provisions set forth herein shall be deemed to be authorized exceptions to this general confidentiality provision.
- J. CONFLICTS OF INTEREST. In the performance of this grant, the Grantee shall avoid all conflicts of interest and all appearances of conflicts of interest. The Grantee shall not acquire an interest either directly or indirectly which will conflict in any manner or degree with performance and shall immediately notify DHHS in writing of any such instances encountered.
- K. DATA OWNERSHIP AND COPYRIGHT. DHHS shall own the rights in data resulting from this project or program. The Grantee may not copyright any of the copyrightable material and may not patent any of the patentable products produced in conjunction with the performance required under this grant 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.
- L. DEBARMENT, SUSPENSION OR DECLARED INELIGIBLE. The Grantee certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any state or federal department or agency.
- M. DOCUMENTS INCORPORATED BY REFERENCE. All references in this grant to laws, rules, regulations, guidelines, directives, and attachments which set forth standards and procedures to be followed by the Grantee in discharging its obligations under this grant shall be deemed incorporated by reference and made a part of this grant with the same force and effect as if set forth in full text, herein.
- N. DRUG-FREE WORKPLACE. Grantee certifies that it maintains a drug-free workplace environment to ensure worker safety and workplace integrity. Grantee shall provide a copy of its drug-free workplace policy at any time upon request by DHHS.
- O. FORCE MAJEURE. Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under this grant 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 grant. 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 grant 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 grant.

- P. FRAUD OR MALFEASANCE. DHHS may immediately terminate this grant for fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the grant by Grantee, its employees, officers, directors, volunteers, shareholders, or subcontractors.
- Q. FUNDING AVAILABILITY. DHHS may terminate the grant, in whole or in part, in the event funding is no longer available. Should funds not be appropriated, DHHS may terminate the award with respect to those payments for the fiscal years for which such funds are not appropriated. DHHS shall give the Grantee written notice thirty (30) days prior to the effective date of any termination. The Grantee 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 Grantee be paid for a loss of anticipated profit.
- R. GOVERNING LAW. The award shall be governed in all respects by the laws and statutes of the United States and the State of Nebraska. Any legal proceedings against DHHS or the State of Nebraska regarding this award shall be brought in Nebraska administrative or judicial forums as defined by Nebraska State law.
- S. HOLD HARMLESS.
1. The Grantee shall defend, indemnify, hold, and save harmless DHHS 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 DHHS, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Grantee, and its employees, but only to the extent that the Grantee may be held liable for the claims pursuant to the provisions of the Nebraska Political Subdivision Tort Claims Act, and except to the extent such Grantee's liability is attenuated by any action of DHHS that 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 Grantees.
- T. INDEPENDENT ENTITY. The Grantee is an Independent Entity and neither it nor any of its employees shall, for any purpose, be deemed employees of DHHS. The Grantee shall employ and direct such personnel, as it requires, to perform its obligations under this grant, 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 grant.
- U. REIMBURSEMENT REQUEST. Requests for payments submitted by the Grantee, whether for reimbursement or otherwise, shall contain sufficient detail to support payment. Any terms and conditions included in the Grantee's request shall be deemed to be solely for the convenience of the parties.
- V. INTEGRATION. This written grant 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 grant.

- W. NEBRASKA NONRESIDENT INCOME TAX WITHHOLDING. Grantee 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 Grantee 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/fill-in/f_w-4na.pdf

- X. NEBRASKA TECHNOLOGY ACCESS STANDARDS. The Grantee shall review the Nebraska Technology Access Standards, found at <http://www.nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the grant comply with the applicable standards. In the event such standards change during the Grantee's performance, DHHS may create an amendment to the grant to request that Grantee comply with the changed standard at a cost mutually acceptable to the parties.
- Y. NEW EMPLOYEE WORK ELIGIBILITY STATUS. The Grantee 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 Grantee is an individual or sole proprietorship, the following applies:

1. The Grantee 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 Grantee indicates on such attestation form that he or she is a qualified alien, the Grantee agrees to provide the U.S. Citizenship and Immigration Services documentation required to verify the Grantee's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Grantee understands and agrees that lawful presence in the United States is required and the Grantee may be disqualified or the grant terminated if such lawful presence cannot be verified as required by NEB. REV. STAT. § 4-108.

- Z. PUBLICATIONS. Grantee shall acknowledge the project was supported by DHHS in all publications that result from work under this grant.
- AA. PROGRAMMATIC CHANGES. The Grantee shall request in writing to DHHS for approval of programmatic changes. DHHS shall approve or disapprove in whole or in part in writing within thirty (30) days of receipt of such request.

- BB. 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.

Automated Clearing House (ACH) Enrollment Form Requirements for Payment.

The Grantee shall complete and sign the State of Nebraska ACH Enrollment Form and obtain the necessary information and signatures from their financial institution. The completed form must be submitted before payments to the Grantee can be made. Download ACH Form:

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

- CC. PUBLIC COUNSEL. In the event Grantee provides health and human services to individuals on behalf of DHHS under the terms of this award, Grantee 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 grant. This clause shall not apply to subawards 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.
- DD. RESEARCH. The Grantee shall not engage in research utilizing the information obtained through the performance of this grant 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 grant.
- EE. SEVERABILITY. If any term or condition of this grant 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 grant did not contain the particular provision held to be invalid.
- FF. SUBGRANTEES OR SUBCONTRACTORS. The Grantee shall not subgrant or subcontract any portion of this award without prior written consent of DHHS. The Grantee shall ensure that all subcontractors and subgrantees comply with all requirements of this grant and applicable federal, state, county and municipal laws, ordinances, rules and regulations.
- GG. SURVIVAL. All provisions hereof that by their nature are to be performed or complied with following the expiration or termination of this grant, including but not limited to those clauses that specifically state survival, survive the expiration or termination of this grant.
- HH. TIME IS OF THE ESSENCE. Time is of the essence in this grant. 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 Grantee remaining.
- II. NOTICES. Notices shall be in writing and shall be effective upon mailing. Unless otherwise set forth herein, all Grantee reporting requirements under the grant shall be sent to the DHHS Grant Manager identified on page 1. Written notices regarding termination of this grant or breach of this grant shall be sent to the DHHS Grant Manager identified on page 1, and to the following addresses:

FOR DHHS:

Nebraska Department of Health and
Human Services - Legal Services
Attn: Contracts Attorney
301 Centennial Mall South
Lincoln, NE 68509-5026

FOR GRANTEE:

Bruce Prenda
Lancaster County
Attorney's Office
575 South 10th St.
Lincoln, NE 68508
402-441-8112

DHHS may change the DHHS Grant Manager to be notified under this section via letter to the Grantee sent by U.S. Mail, postage prepaid, or via email.

IN WITNESS THEREOF, the parties have duly executed this grant hereto, and acknowledge that the individual signing below has authority to legally bind the party to this grant.

FOR DHHS:

FOR GRANTEE:

Matthew T. Wallen
Director
Department of Health and Human Services
Division of Children and Family Services

Todd Wiltgen
Chair
Lancaster County Board of Commissioners

DATE: _____

DATE: _____