



State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

DEPARTMENT OF HUMAN SERVICES

PALMER DePAULIS
Executive Director

Division of Child and Family Services

BRENT PLATT
Director

AGREEMENT # 2011-01

UTAH DEPARTMENT OF HUMAN SERVICES DIVISION OF CHILD AND FAMILY SERVICES LETTER OF AGREEMENT

1. **PARTIES:** This agreement is between:

**Utah State Department of Human Services,
Division of Child and Family Services (DCFS),
195 North 1950 West, Salt Lake City, Utah 84116** referred to as DCFS, and

**Utah Department of Health,
Division of Community and Family Health Services (DCFHS),
288 North 1460 West, Salt Lake City, Utah 84116,** referred to as DCFHS.

MAILING ADDRESS:

**PO Box 144671
44 N. Mario Capecchi Drive
Salt Lake City, UT 84114 – 4671**

2. **PURPOSE:**

Provides for DCFHS FHC staff to track, monitor and evaluate health care services for children in the custody of DCFS as specified in Attachment B.

3. **AGREEMENT PERIOD:**

Effective **01 July 20010** and terminates on **30 June 2011** unless terminated sooner in accordance with the terms and conditions of this Letter of Agreement.

4. **COSTS:**

\$ will be transferred to the DCFHS according to the following account codes for services specified in this Agreement:

Cost Allocation for DCFS Regions (for DCFS use only)	
Region	Amount
Eastern	\$

Northern	\$
Salt Lake Valley	\$
Southwest	\$
Western	\$
Total:	\$

PAYING AGENCY (DEBIT)				
FUND	DEPT	UNIT CODE	APPROPR UNIT	ACTIVITY
1000	200	6111	KHB	HGFA
RECEIVING AGENCY (CREDIT)				
FUND	DEPT	UNIT CODE	APPROPR UNIT	ACTIVITY
1000	270	4671	LFF	

5. MUTUAL OBLIGATION:

Both parties are agencies of Utah State government and, as such, are bound to observe the state and federal requirements and applicable conditions as contained in the Standard Terms and Conditions.

6. ATTACHMENTS INCLUDED AS PART OF THIS AGREEMENT:

- a. Attachment A -- Standard Terms and Conditions
- b. Attachment B -- Special Provisions

7. DOCUMENTS INCORPORATED INTO THIS AGREEMENT BY REFERENCE BUT NOT ATTACHED:

- a. All documents specified in any attachment to this Agreement.
- b. All other governmental laws, regulations, or actions applicable to services provided herein.

IN WITNESS WHEREOF, the parties sign and cause the Agreement to be executed:

UTAH DEPARTMENT OF HUMAN SERVICES	UTAH DEPARTMENT OF HEALTH
_____ Brent Platt, Director Date Division of Child and Family Services	_____ Marc Babitz M.D., Director Date Division of Family Health and Preparedness
FUNDS APPROVED AND AVAILABLE:	
_____ Paul Reid, Finance Director Date Division of Child and Family Services	_____ Holly Williams R.N., MS, Bureau Director Date Bur. of Children with Special Health Care Needs

_____ Kim Romero, Financial Services Manager Date Div. of Community and Family Health Services
_____ Shari A. Watkins, CPA, Director Date Office of Fiscal Operations

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS

1. AUTHORITY:

Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.

2. CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:

The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. LAWS AND REGULATIONS:

The Contractor and any and all supplies, services, equipment, and construction furnished under this contract will comply fully with all applicable Federal and State laws and regulations.

4. RECORDS ADMINISTRATION:

The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

5. CONFLICT OF INTEREST:

Contractor represents the following: it is a political subdivision, agency or municipality of the State of Utah; it maintains a written policy requiring its Representatives to disclose their Conflicts of Interest in accordance with 67-16-8, Utah Code Annotated, 1953, as amended; it will monitor its operations for compliance with its conflict-of-interest policy; and it can reasonably assure the

State that Representatives with a potential Conflict of Interest shall not:

- (a) make or influence decisions or set policies that affect this contract;
- (b) monitor the performance of this contract; or
- (c) become involved in or otherwise benefit from the performance of this contract.

6. CONTRACTOR, AN INDEPENDENT CONTRACTOR:

The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.

7. INDEMNITY CLAUSE:

Consistent with the terms of the Governmental Immunity Act (Title 63, Chapter 30 of the Utah Code), the Contractor and the State are each responsible and liable for any wrongful or negligent acts which that party itself commits or which are committed by its officers, agents, volunteers, or employees. Neither party waives any defenses otherwise available under the Governmental Immunity Act.

8. EMPLOYMENT PRACTICES CLAUSE:

The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

9. SEPARABILITY CLAUSE:

A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

10. RENEGOTIATION OR MODIFICATIONS:

This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of the contract. Automatic renewals will not apply to this contract.

11. DEBARMENT:

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 (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must

notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

12. TERMINATION:

Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. NONAPPROPRIATION OF FUNDS:

The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

14. SALES TAX EXEMPTION:

The State of Utah's sales and use tax exemption number is 11736850-010-STC. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

15. WARRANTY:

The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the Contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The Contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:**

Except as identified in writing and expressly approved by the State Division of Purchasing, Contractor agrees that the contract and related Sales Orders and Invoices will be public documents, and may be available for distribution. Contractor gives the State express permission to make copies of the contract, the response to the solicitation, and related Sales Orders and Invoices in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

17. **DELIVERY:**

Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.

18. **ORDERING AND INVOICING:**

All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.

19. **PAYMENT:**

Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card (major credit card).

20. **PATENTS, COPYRIGHTS, ETC.:**

The Contractor will release, indemnify and hold the State, its officers, agents, and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

21. **ASSIGNMENT/SUBCONTRACT:**

Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.

22. **DEFAULT AND REMEDIES:**

Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.

23. FORCE MAJEURE:

Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

24. PROCUREMENT ETHICS:

The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-1002, Utah Code Annotated, 1953, as amended).

25. CONFLICT OF TERMS:

Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. Atth. A: State of Utah Standard Terms and Conditions; 2. State of Utah Contract Signature Page(s); 3. State Additional Terms and Conditions; 4. Contractor Terms and Conditions.

26. ENTIRE AGREEMENT: This Agreement, including all Attachments, and documents incorporated hereunder, and the related State Solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

ATTACHMENT B

SPECIAL PROVISIONS

1. **PARTIES:**

This Agreement is between the Utah Department of Human Services, Division of Child and Family Services (DCFS), and the Utah Department of Health, Division of Community and Family Health Services (DCFHS), each an agency of the State of Utah.

2. **DEFINITIONS** (as used in this attachment):

BCI:

Bureau of Criminal Identification,

CORE Training:

Training on child welfare specific services, procedures, and philosophy,

CSHCN:

Children With Special Health Care Needs, Utah Department of Health,

DCFHS:

Division of Community and Family Health Services, Utah Department of Health,

DCFS:

Division of Child and Family Services, Utah Department of Human Services,

FHC:

Fostering Healthy Children Program, Utah Department of Health

FTE means Full Time Equivalent,

GRAMA:

Government Records and Management Act,

MI-706:

Utah Medical Assistance Payment Reimbursement Agreement,

SAFE:

Child Welfare Automated Data System, and

Health Care:

Medical, dental and mental health.

3. **PURPOSE OF THE CONTRACT:** Provides for DCFHS FHC staff to track, monitor and evaluate health care services for children in the custody of DCFS as specified in the special provisions below.

4. **PERIOD:**

This contract is effective July 1, 2010 and terminates June 30, 2011 unless terminated sooner in accordance with the terms and conditions of this Agreement.

5. COST AND METHOD OF PAYMENT:

- a. On a quarterly basis, DCFS will report to DCFHS their in-kind donations for federal matching purposes. DCFS will provide in-kind support which includes, but is not limited to, basic office space and basic office setup (office set-up is in accordance with local office standards to include a desk, chair, file drawers, light, and a phone), Local Area Network (LAN) computer support, computer software, copier and printer usage.
- b. DCFHS shall be billed directly for other related costs which includes, but are not limited to, personnel, travel, cell phones, pagers, motor pool, computer and office supplies, etc. Where possible, in DCFS regional offices, direct billing for costs such as phone lines, fax machine usage, computer and office supplies usage shall occur.
- c. All other costs shall be billed directly to DCFHS.
- d. Purchases made by either DCFS or DCFHS shall ultimately belong to the respective agencies.
- e. DCFHS shall report to DCFS all expenditures made pursuant to this Agreement, each quarter, no later than 20 days after the last day of the quarter.

DCFS agrees to reimburse to DCFHS all such expenses as allowed by this Agreement up to the maximum amount of \$1,011,778.70 for state fiscal year 2011 by interdepartmental transfer **within 30 days from receipt of such expenditure reports.**
- f. DCFS shall hold quarterly cost reviews with both Departments.
- g. DCFS agrees to repay any reimbursements that are disallowed as a result of Federal Title XIX audits which reflect a discrepancy in % of children on Medicaid, incorrect matching of expenditures or incorrect reporting of in kind donations for federal matching purposes.
- h. DCFHS agrees to repay any reimbursements that are disallowed as a result of Federal Title XIX audits that reflect a discrepancy in % of estimated CHEC eligible activities or incorrect matching of expenditures or in kind donations. DCFHS agrees to participate with Medicaid in periodic time studies, to verify CHEC eligible activities.

6. VEHICLE USE STANDARDS:

DCFHS shall comply with Utah State Rule "R27-3 Vehicle Use Standards" in regards to vehicle use:

- 1) This rule is established pursuant to Section 63A-9-401(1)(d), which authorizes the Division of Fleet Operations (DFO) to establish the requirements for the use of state vehicles, including business and personal use practices, and commute standards.
- (2) This rule defines the vehicle use standards for state employees while operating a state vehicle.

7. EMPLOYMENT PROVISIONS:

- a. DCFHS shall provide staff and management for Health Care Teams operating within CSHCN as follows: (These FTEs may be adjusted as necessary to accommodate increases in client caseload, cost-of-living adjustments and market salary adjustments.)

	Staff	FTE	TOTAL
Administrative Staff:			1.0
	Public Health Program Manager	1.0	
Support Staff:			3.5
	Office Tech	.5	
	HPS I	2.0	
	HPS II (LPN)	1.0	
Eastern Region			2.5
	Health Care Coord.	.5	
	R.N. III	2.0	
Northern Region			8.0
	Health Care Coord.	1.0	
	R.N. III	6.0	
	Transporter	1.0	
Salt Lake Valley Region			12
	Health Care Coord.	2.0	
	R.N. III	10.0	
Southwestern Region			3
	Health Care Coord.	.5	
	R.N. III	2.5	
Western Region			5.5
	Health Care Coord.	1.0	
	R.N. III	4.5	

- b. DCFHS will ensure employees who will be working with DCFS in this contract shall complete the following:
- (1) BCI Check on all individuals hired that will be using the SAFE database.
 - (2) Completion of access procedures for SAFE data systems.

- (3) The FHC Program Manager will attend CORE training and provide in-service training to the FHC staff members in collaboration with DCFS.
- (4) Appropriate and current health care licensure for job description, including all necessary training to maintain licensure requirements.
- (5) Annually arrange for DCFS to provide an in-service on the Practice Model for health care team members. Within 12 months, as offered by DCFS, attend training on an overview of the DCFS Practice Model.

8. SERVICE PROVISIONS:

a. DCFS shall:

- (1) Retain primary responsibility for case compliance and adherence to legal stipulations pertaining to the Department of Human Services. DCFS case workers will retain the ultimate responsibility of overall case management for the children in DCFS custody, which includes the completion of appropriate health care services as defined in DCFS policy and as recommended by the child's health care provider(s).

b. DCFHS in accordance with DCFS policy, shall:

- (1) Track and monitor each child in foster care and ensure the child receives regular health care in accordance with accepted health care practice and as currently exemplified in the EPSDT/CHEC standards.
- (2) Work in conjunction with the Community Health Partners to recruit and develop liaisons with health care providers and to develop regional health resources for children. DCFS, members of the health care community and the Fostering Healthy Children Program will coordinate to develop a plan for improving statewide health care resources in response to needs and barriers identified and prioritized.
- (3) Enter available health data into the SAFE data system (as defined by DCFS Region plan and DCFHS).
- (4) Provide consultation or health education to DCFS in the following areas:
 - (a) Individual case staffing or cases upon request.
 - (b) 24-hour meetings (multi-meetings or family meetings).
 - (c) Transfer case staffing upon request.
 - (d) Participate in the health portion of DCFS caseworker training.
 - (e) Health training and consultation to out-of-home providers on an individual or group basis and upon request.
 - (f) Periodic training on related health care topics.
 - (g) Attend or send report for Citizen Review Boards.
 - (h) Home visits as requested.

- (5) Assist DCFS with oversight of the DCFS MI-706 funds. This will include the review and prior authorization by nursing staff of all requests to expend MI-706 funds for children who have had Medicaid eligibility determined and require health care services not covered by Medicaid or the child's HMO. The Fostering Healthy Children Program will assure MI-706 funding will be used only when other resources are not available.
 - (6) In the DCFS Northern Region provide transportation for children in protective custody who are placed in the DCFS shelter facilities.
- c. In collaboration, the DCFS caseworker and DCFHS health care team shall work together to:
- (1) Complete a health history on all children entering out-of-home care and maintain health information for each child. Health information should be obtained from parents, out of home providers, primary health care provider and third party payors.
 - (2) Ensure an effective, on-going link in the services of health care for children in custody.
 - (3) Coordinate and collaborate between all individuals involved in the child's care to include foster parents, caseworkers, and natural parents. For those children with special health care needs, planning of services should be coordinated with the natural parents, as appropriate, and the child's primary health care provider, out of home providers, and other agencies as required.
 - (4) Identify and develop an individualized service plan with appropriate referral and follow-up to meet the health care needs of each child in DCFS custody.
 - (5) Establish a health information system to compile data and reports on the health care needs and services of children served by DCFS.
 - (6) Utilize Medicaid and third party coverage for health care services for children in custody and ensure proper utilization of MI-706 funds.
 - (7) Develop and monitor agency health policies and procedures.
 - (8) Identify children with extraordinary medical, mental health and dental conditions using the Health Status Outcome Measures.
 - (9) Complete discharge planning or exit consultation with natural parents.

9. REPORTS:

- a. DCFS shall complete the following reports:
- (1) Monthly Health Care compliance reporting.
 - (2) Computerized information system reporting.

- (3) Health Status Outcome Measure reporting as defined by the Health Care Community.
- b. DCFHS shall:
 - (1) Provide mutually agreed upon reports to DCFS including: progress, needs, and barriers regarding health care for children served by DCFS.

10. PROTECTION AND USE OF CLIENT RECORDS:

- a. All medical records and other identifiable client health data produced pursuant to this Agreement shall become the property of the Division of Child and Family Services.
- b. DCFS shall:
 - (1) Upon receipt, maintain all records in accordance with DHS Code of Ethics from the DEPARTMENT OF HUMAN SERVICES POLICY AND RESOURCE MANUAL (revised June 30, 2000).
- c. DCFHS shall:
 - (1) Transfer to DCFS through the DCFS SAFE system or by other appropriate means, medical records and other identifiable client health data, including source documents, as necessary to meet the terms of this Agreement, and;
 - (2) Refer all requests for release of such records to the DCFS GRAMA Officer, in no case releasing such records directly to the requestor.
 - (3) Help facilitate the process of sharing client health and medical information with health care providers, including Health Maintenance Organizations (HMO's), by assisting the health care provider to make contact with the foster parent or other out-of-home care provider. DCFHS staff can share the name and phone number, but not the address, of the foster parent or other out-of-home care provider with the health care provider to help facilitate this process.