



WASHOE COUNTY

Integrity Communication Service
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CM/ACM	_____
Finance	<u>JB</u>
DA	<u>PL</u>
Risk Mgt	<u>DE</u>
HR	<u>/</u>
Other	<u>CH</u>

STAFF REPORT BOARD MEETING DATE: February 28, 2016

DATE: Tuesday, February 14, 2017

TO: Board of County Commissioners

FROM: Paul Lipparelli, Assistant District Attorney, Civil Division
775-337-5713 PLipparelli@da.washoecounty.us

THROUGH: Christopher J. Hicks, District Attorney

SUBJECT: Recommend to approve Intrastate Interlocal Contract between the State of Nevada Acting through the Nevada Department of Health and Human Services, Division of Welfare and Supportive Services and Washoe County District Attorney, Child Support Division for the period of July 1, 2017 to June 30, 2021, [\$4,482,202 for FY2018, \$4,571,546 for FY19, \$4,662,677 for FY20, and \$4,755,631 for FY2021] for the purpose of providing child support establishment and enforcement services in Washoe County on cases that do not involve state administered public assistance to one of the parents (All Commission Districts).

SUMMARY

Consideration of agreement with State of Nevada for funding of child support enforcement funding similar to like agreements approved in past years.

Washoe County Strategic Objective supported by this item: Safe, Secure and Healthy Communities

PREVIOUS ACTION

On January 27, 2015, the Board approved a two-year extension to the current contract, extending the expiration date to July, 1, 2017.

On March 13, 2012 the Board approved a two-year contract, effective July, 1, 2012, with the option to extend 2 additional years.

On May 20, 2008, the Board approved the Interlocal Contract between the State and Washoe County for child support services in non-public assistance cases, which expired on June 30, 2012.

Similar agreements between the State of Nevada and Washoe County has been approved for years.

BACKGROUND

The United States Department of Health and Human Services administers grants to states for support of child support enforcement programs. States, in turn, enter into sub-grant agreements with local governments to hand down that federal funding. Through the proposed agreement the State of Nevada is able to ensure that it has met the requirements of the federal programs for the expenditure of the federal grants, the monitoring of the success of the local programs and the gathering of the data that is required to coordinate the nationwide effort across state lines.

Under the proposed contract with the state, the district attorney's office is responsible for meeting those mandates while establishing orders for child support payments, enforcing those orders, collecting payments and distributing them to parents and guardians who have custody of children. The district attorney is also required to cooperate in auditing and planning programs that improve the local, state and national programs.

The national program is infused with reimbursement mechanisms and incentives. There are also penalties for non-compliance. Through the incentive program, the child support enforcement program can qualify for funding that can be used to purchase equipment and make capital improvements to improve the program. The incentive funds are paid in subsequent years based on past performance

FISCAL IMPACT

Washoe County is reimbursed by the State for 66% of the operational costs of child support enforcement activities carried out by the District Attorney's Office (Internal Order 10001, Revenue GL 431100). The remaining 34% is funding by County General fund in Cost Center 106300.

The budget for this four-year contract is set at \$18,472,056 and breaks down per year as follows:

FY 2018	\$4,482,202
FY 2019	\$4,571,546
FY 2020	\$4,662,677
FY 2021	\$4,755,631

RECOMMENDATION

It is recommended that the Board of County Commissioners approve Intrastate Interlocal Contract between the State of Nevada Acting through the Nevada Department of Health and Human Services, Division of Welfare and Supportive Services and Washoe County District Attorney, Child Support Division for the period of July 1, 2017 to June 30, 2021, [\$4,482,202 for FY2018, \$4,571,546 for FY19, \$4,662,677 for FY20, and \$4,755,631 for FY2021] for the purpose of providing child support establishment and enforcement services in Washoe County on cases that do not involve state administered public assistance to one of the parents.

POSSIBLE MOTION

If the Board agrees with the recommendation, a possible motion would be: "Move to approve Intrastate Interlocal Contract between the State of Nevada Acting through the Nevada Department of Health and Human Services, Division of Welfare and Supportive Services and Washoe County District Attorney, Child Support Division for the period of July 1, 2017 to June 30, 2021, [\$4,482,202 for FY2018, \$4,571,546 for FY19, \$4,662,677 for FY20, and \$4,755,631 for FY2021] for the purpose of providing child support establishment and enforcement services in Washoe County on cases that do not involve state administered public assistance to one of the parents."

INTRASTATE INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada
Acting By and Through Its

Department of Health and Human Services
Division of Welfare and Supportive Services
1470 College Parkway
Carson City, NV 89706

and

Washoe County District Attorney, Child Support Division
1 South Sierra Street
South Tower, 4th Floor
Reno, NV 89501

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, it is deemed that the services hereinafter set forth are both necessary and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
3. **CONTRACT TERM.** This Contract shall be effective: **July 1, 2017 (subject to Board of Examiners' approval) to June 30, 2021**, unless sooner terminated by either party as set forth in this Contract.
4. **TERMINATION.** The Contract may be terminated or not renewed by either party prior to the date set forth in paragraph (3), pursuant to NRS 425.375(2). Each party remains fully responsible for their performance under the terms of this contract during that time period. The parties expressly agree that this contract may be terminated immediately if for any reason DWSS, State and/or Federal funding ability to satisfy this Contract is withdrawn, limited, or impaired. All property purchased partially or fully with CSEP federal funds as indicated on the most recent inventory plus purchases in the interim time period will be disposed of in full compliance with federal laws, rules and regulations.
5. **NOTICE.** All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.

6. INCORPORATED DOCUMENTS. The parties agree that the services to be performed shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A: SCOPE OF WORK
ATTACHMENT B: BUDGET AND REIMBURSEMENT SCHEDULE
ATTACHMENT C: PENALTY/NOTICE/APPEAL PROCESS
ATTACHMENT D: POLICY AND FORMS DEVELOPMENT AND APPEAL PROCESS
ATTACHMENT E: INCENTIVE PAYMENTS
ATTACHMENT F: CASE RESPONSIBILITIES
ATTACHMENT G: INDIRECT COST RATE
ATTACHMENT H: IRS SAFEGUARDING CONTRACT LANGUAGE FOR GENERAL SERVICES

7. CONSIDERATION. The County through the DA's office agrees to provide the services set forth in paragraph (6) at a cost of \$18,472,056 per Attachment B with the total Contract or installments payable monthly, not exceeding \$18,472,056 total contract value; \$4,482,202 for FY18, \$4,571,546 for FY19, \$4,662,677 for FY20 and \$4,755,631 for FY21, (the approved annual budget). Any intervening end to an annual or biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

8. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations expressly provided

9. INSPECTION & AUDIT.

a. Books and Records. Each party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the other party, the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with any applicable regulations and statutes.

b. Inspection & Audit. Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the other party, the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained by each party for a minimum of three years and for five years if any federal funds are used in this Contract. The retention period runs from the date of termination of this Contract. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. BREACH; REMEDIES. Failure of either party to perform any obligation of this Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, the rights and remedies of the

parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing party reasonable attorneys' fees and costs.

11. LIMITED LIABILITY. The parties will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. To the extent applicable, actual contract damages for any breach shall be limited by NRS 353.260 and NRS 354.626.

12. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

13. INDEMNIFICATION. Neither party waives any right or defense to indemnification that may exist in law or equity.

14. INDEPENDENT PUBLIC AGENCIES. The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

15. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

16. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

17. ASSIGNMENT. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other party.

18. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law or this Contract, any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Contract shall be the joint property of both parties.

19. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

20. CONFIDENTIALITY. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Contract.

21. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth in paragraph (6).

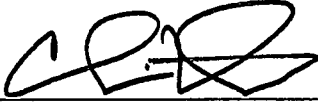
22. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

23. ENTIRE AGREEMENT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the State of Nevada Office of the Attorney General.

[This section intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

_____	_____	Chairman, Board of County Commissioners, Washoe County
Signature	Date	Title

_____	_____	Clerk, Washoe County
Signature	Date	Title
	1-27-16	District Attorney, Washoe County
Christopher J. Hicks	Date	Title

_____	_____	Administrator, Division of Welfare and Supportive Services
Steve H. Fisher	Date	Title

_____	_____	Director, Department of Health and Human Services
Richard Whitley	Date	Title

APPROVED BY BOARD OF EXAMINERS

Signature – Board of Examiners

On: _____
Date

Approved as to form by:

Deputy Attorney General for Attorney General

On: _____
Date

ATTACHMENT A

SCOPE OF WORK

The grant award from which this contract is paid is from the Child Support Enforcement, Catalog of Federal Domestic Assistance (CFDA) number 93.563. The federal agency that provides this grant is the Administration for Children and Families, Department of Health and Human Services. The expenditure of funds under this program are subject to the annual audit requirements under the Super Circular 2 CFR part 200, subpart F (Audit Requirements). Super Circular 2 CFR part 200, subpart F states in part: non-federal entities that expend \$750,000 or more in a fiscal year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provision of this part.

If sub-recipients are used for the execution of this contract, the DA must notify the sub-recipient of the above information.

The following acronyms/definitions are used throughout the attachments to this contract:

Chief	Chief of Child Support Enforcement
CFR	Code of Federal Regulations
CSEP	Child Support Enforcement Program
DA	District Attorney
DHHS	State of Nevada, Department of Health and Human Services
GSA	U.S. General Services Administration
DWSS	Division of Welfare and Supportive Services
Federal Funds	Federal Financial Participation & Child Support Incentive Fund Payments
FTI	Federal Tax Information
GASB/GAAP	Government Accounting Standards Board/Generally Accepted Accounting Principles, and used as applicable.
IV-D	Social Security Act, Title IV, Part D
NOMADS	Nevada Operations of Multi-Automated Data Systems
OCSE	Federal Office of Child Support Enforcement
OMB	Office of Management and Budget
PAO	Program Area Office for the Child Support Enforcement Program
PA	Public Assistance Cases
SDU	State Disbursement Unit
State	State of Nevada
TANF	Temporary Assistance for Needy Families

I. The County Agrees:

- A. To allocate funds for the provision of services contracted in this Contract with the understanding that federally recognized administrative costs shall be reimbursed and incentive payments shall be paid by DHHS-DWSS, at the level authorized by Congress for Title IV, Part D, of the Social Security Act IV-D.
- B. To assure that funding levels allow for an organizational structure and sufficient staff to fulfill child support enforcement functions as outlined in this Contract.
- C. Any federal penalties and interest assessed by a federal agency against the State of Nevada may be shared between the County and the State based upon their relative responsibility.
- D. Any federal financial penalties assessed to counties may be appealed as outlined in Attachment C. No recovery is to occur prior to exhausting the appeal process. Upon exhausting the appeal process, if it is determined the County is responsible for repayment, reasonable notice will be provided indicating the method by which the penalty will be recovered.
- E. To have in place and maintain accounting standards and systems consistent with uniform accounting procedures prescribed by federal and state requirements. These standards must conform to GASB and/or GAAP as applicable and as established by the American Institute of Certified Public Accountants.
- F. To maintain accounting and fiscal record keeping systems sufficient to ensure that claims for available funds are submitted in accordance with applicable state and federal requirements and retain such records as required by applicable state and federal regulations.
- G. To have policies and procedures to ensure timely tracking and monitoring of expenditures compared to budgeted/allocated amounts.
- H. To ensure building facilities providing child support services are accessible to individuals with disabilities and identified by the international symbol of accessibility or provide services at an alternate accessible site when structural modifications are not practical.
- I. To comply with Americans with Disability Act and all regulations adopted pursuant thereto.

II. The District Attorney Agrees:

- A. NRS 425.370 and 425.380(1) require counties to provide child support enforcement services for local applicants. Under this Interlocal Contract the county offices will receive the approved federal reimbursement for providing IV-D services for these local cases, intrastate and interstate cases as defined under 45 CFR 304.20.
- B. Cases will be assigned to the County based on Attachment F.
- C. To provide services to any case, prepare and maintain procedures and records in accordance with Title IV, Part D of the Social Security Act, federal regulations and policy, as maintained by OCSE, state statutes, regulations and DWSS policies, policy transmittals, policy & procedures and regulations including but not limited to establishing paternity, establishing a support obligation, and/or the enforcement of a support obligation, and/or to establish or enforce medical support.
- D. To input IV-D child support information, orders and accurate balances into the statewide computer system. The responsibility for errors and the related cost of those errors, if they can be determined with substantial certainty to be county error, will be reimbursed by the County through reduction of federal financial participation. The notice of appeal process is outlined in Attachment C.
- E. To process all undistributed collections within the DA's control, as set forth in the federal regulations.
- F. To follow policy, review and make reasonable efforts to ensure orders and balances are accurate prior to transferring from one office to another.
- G. To provide for the administration and management of CSEP within the county and any other county cases that may be assigned to the DA, contained in Section II, Part B.
- H. To act as the coordinating agency within the county to assure compliance with the management requirements of this Contract, and to submit all claims for reimbursement in accordance with Attachment B.
- I. To use the federal/state mandated forms required by the program. The Counties may develop forms consistent with state and federal IV-D requirements for local use.
- J. To permit authorized state and federal personnel to monitor and/or audit the activities, procedures, cases and accounting records that are subject to this Contract; to provide all requested information within their possession and control during the complete audit process; and to develop corrective action plans to rectify any exceptions noted in monitoring and/or audit reports that place their office out of compliance with this Contract, federal statutes or regulations, or state

statutes or regulations, to the extent that the noted exceptions are unique to the local office; and to assist in the development of corrective action plans by the State and to implement said plans to the extent that the noted exceptions are systemic throughout the state. Audit reports include federally mandated self-assessment reviews, financial audits, and other audits, reviews or studies authorized by the Chief. If requested information is not provided and/or corrective action plans are not submitted in a timely manner, federal and state reimbursements and/or incentive payments may be withheld until requested information and/or acceptable corrective action plans are submitted and approved.

- K. To participate in the State Child Support Enforcement Annual Strategic Planning process.
- L. To send staff to state or national conferences on child support issues, training workshops, classes or discussion groups on child support issues, as determined by the county's or state's needs which include but are not limited to management, attorneys and case managers. Additional staff will be allowed and encouraged to attend these training conferences, based on the need for representation in the different program areas.
- M. To comply with federal statutes, federal regulations, state statutes, state regulations and program policies established by the Chief to the extent they do not violate the U.S. Constitution or Nevada Constitution.
- N. To notify the Chief within five (5) working days of any known appeal or writ of a child support action to the Nevada Court of Appeals or the Nevada Supreme Court.
- O. To provide a copy of the Employee Performance Bond with the annual budget request to the State.
- P. To notify the Chief of all ordinances, policies, and state legislation proposed by the county that may have an impact on CSEP.
- Q. To assure that persons responsible for handling cash receipts of child support collections do not participate in accounting or operation functions which would permit them to conceal in the accounting records the misuse of child support receipts.
- R. To assure compliance with Title IV-D performance standards as identified in 45 CFR 302 and 303, except for those duties assigned to SDU.
- S. To assist the DWSS in publicizing the program in compliance with 45 CFR 302.30.
- T. To present IV-D cases in court proceedings in accordance with Attachment F, including but not limited to, federal court, bankruptcy court, family court or any

other hearing or administrative processes regarding child support issues concerning these cases.

- U. To assist with inquiries including those generated by the governor's office, the administrator's office or other government official's office, if the information being sought is not in the automated system, by responding to inquiries within two (2) business days.
- V. To notify DWSS of negotiations of proposed settlements in active or former public assistance cases and refrain from entering into compromises or settlements of debts to the State, until approved by the State as outlined in state policy.
- W. To notify and obtain prior approval of the Chief pursuant to 2 CFR Part 200 for the purchase of any type of system technology to process child support cases for which CSEP federal funds are being sought or reimbursement will be denied.
- X. To lodge any disagreements with draft policy or forms in compliance with Attachment D.
- Y. To maintain an ongoing inventory of all county equipment purchases with an individual unit cost as defined in the State Administrative Manual, Chapter 1500, and where CSEP federal funds were used.
- Z. To maintain inventory items for the full duration of its useful life, as defined by state budgeting procedures, 2 CFR part 200, and Subpart G of 45 CFR, Part 95. The approval of the Chief must be secured if use of the item is intended to be transferred outside the responsibilities of CSEP or the item is to be excessed before the end of its useful life.
- AA. To support DWSS, local hospitals and birthing centers to improve paternity establishment percentages in accordance with policy.
- BB. To comply with Americans with Disability Act and all regulations adopted pursuant thereto.
- CC. To comply with federal requirements pertaining to limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and 45 CFR 80.
- DD. To comply with state policy regarding Administrative and Civil Rights complaint procedures.
- EE. To agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:
 - (a) Any federal, state, county or local agency, legislature, commission, council or board;
 - (b) Any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or
 - (c) Any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.

Nothing in paragraph one (1) above precludes a county from providing outreach activities or education pursuant to federal law and guidance documents issued by OCSE.

- FF. To comply with current federal requirements pertaining to safeguarding and maintaining the confidentiality of federal tax information in accordance with the Internal Revenue Code and Internal Revenue Service Publication 1075 including Exhibit 7 of IRS Publication (Attachment H).

[This Section intentionally left blank]

III. The Division Agrees:

- A. To provide statewide administration and secure compliance for all IV-D functions under the State Plan.
- B. To provide services through the Nevada Central Registry per 45 CFR 302.36, including receiving the interstate referral packet, reviewing the documents, entering case information into the automated system, requesting any additional information needed from the referring state agency, and forwarding the referral packet to the appropriate county within the time frames set forth in 45 CFR 303.7.
- C. To receive, distribute, and disburse payments through SDU in accordance with state and federal requirements.
- D. To provide the required services for non-IV-D cases, including accurately entering the case information into NOMADS for Federal Case Registry, the correct receipt and timely disbursement of payments, and prompt handling of case inquiries.
- E. To coordinate with county staff regarding complaints or clarifying federal/state policy in a timely manner. Requests for payment information or case status may be referred to the voice response unit or to the appropriate office.
- F. To provide parent locate services per 45 CFR 302.35.
- G. To provide complete, accurate and timely federal reports and self-assessment reports by using a valid, random sample of reliable data.
- H. To provide training, and training regions including written materials, instructions and directions, related to the use of the automated system or state policy as requested by the county and approved by the Chief, as necessary for compliance with the terms of this agreement, prior to implementation of enhancement or code promotion.
- I. To forgo the promotion of automation changes pending consultation with DAs to determine concerns and readiness for code introduction.
- J. To coordinate the development and submission of legislative proposals in concert with the State's Courts and DAs and to timely notify the counties of any proposed legislation concerning child support enforcement prior to legislative hearings.
- K. To act as the liaison agency with the Federal OCSE in implementing and disseminating new regulations; coordinating federal audits; and developing correctional plans to keep the Program in compliance with federal regulations.

- L. To distribute incentive payments as outlined in Attachment E within thirty (30) days of receipt of federal incentive funds, and reimburse county expenses within thirty (30) days of receiving reimbursement requests, for current billings.
- M. To post complete and accurate reports and information on the State Child Support web pages and to provide the DA's office complete and accurate reports, and information including, but not limited to, development of case processing matrix reports by federal functional area (locate, establishment, paternity establishment, medical support, enforcement) sorted at the office, unit, team and case manager levels.
- N. To operate, maintain and update and/or replace the child support enforcement computer system; to provide user access to online programs within DWSS' control; to develop, implement and make available, through the State intranet, complete and accurate system training documentation and such information as necessary to research the cause of any suspect data; and, to provide fixes and/or enhancements as requested by the DA and approved by the Chief as necessary for the DA's office to fulfill its contractual obligations.
- O. To publicize the Program in compliance with 45 CFR 302.30.
- P. To notify all participating county DAs within five (5) working days of any known appeal or writ to the Nevada Court of Appeals or the Nevada Supreme Court.
- Q. To provide training and/or written instructions to the DA's office on any planned changes, new policy or procedure prior to implementation of the change, new policy or procedure in accordance with Attachment D.
- R. To develop a statewide corrective action plan in the event that noted federal audit exceptions may be systemic throughout the state, and are not limited to the operation and management of a single office.
- S. To rebate to the county its proportionate share of federal incentive monies which were withheld, and/or penalties imposed, if those monies are rebated to the State by the federal government following implementation of the corrective action plan or a successful appeal, waiver or setting aside of the federal financial action.
- T. To provide regular and ongoing oversight, including onsite reviews and the provision of technical assistance and training.

IV. All Parties mutually agree:

A. DWSS shall notify the DA's office in writing of DA's office's:

- 1) Failure to submit required reports or requested data;
- 2) Failure or violation of federal or state program requirements or the requirements of this Interlocal Contract; or
- 3) Failure to meet minimum federal standards on a federal performance measure.

The letter shall specifically identify the relevant failure or violation.

- B. DWSS shall require the submittal of a corrective action plan by the DA's office within a period of time specified in the letter. The corrective action plan must identify actions to be taken by DWSS and/or DA to remedy deficiencies and anticipated time frames for those actions to be completed and be approved by the Chief. Refusal to provide and implement an acceptable corrective action plan within the required time period will be grounds for DWSS to withhold CSEP federal funds.
- C. Prior to withholding any CSEP federal funds, DWSS will provide an additional notice in writing to the DA's office specifying the failure to provide or implement the corrective action plan.
- D. The appeal process specified in Attachment C, Sections 5-10, must be exhausted prior to withholding CSEP federal funds.

ATTACHMENT B

BUDGET AND REIMBURSEMENT SCHEDULE

I. FUNDING

Federal Financial Participation will be provided at the applicable matching rate, which is currently 66% for approved IV-D activities. The County will be responsible for the remaining balance.

II. BUDGET

- A. An annual DA's budget for child support must be submitted to the Chief by April 15 of each year or 30 days after receipt of annual instructions provided by the Chief, whichever is later. The budget must follow the annual instructions. Reimbursements will not be made until the budget has been approved by the Chief.
- B. During even numbered years the DA must provide projected two year budgets commencing on July 1 of the even numbered years and ending on June 30 two years later. This information will be used to obtain authority from the state legislature to reimburse the counties.
- C. Out-of-state travel in which Title IV-D reimbursement is requested, requires prior approval by the Chief of the CSEP or designee. The travel must be for the purpose of administration of the Title IV-D Program. Travel is approved at the prevailing GSA rate.
- D. Expenditures requiring prior approval are outlined in 2 CFR Part 200, 45 CFR 95.611 and State Administrative Manual, chapter 1500.
- E. The DA must maintain appropriate records pertaining to expenditures.
- F. Claims must be submitted in the state approved format within thirty days of the end of the month in which the expenses are incurred, unless the Chief grants an approval for an extension. Claims not submitted within 90 days of the end of the month in which the funds are expended will be rejected and no reimbursement will occur.
- G. Delay in claim payment may occur for the prior State Fiscal Year (SFY), which ends on June 30, for claims submitted after the end of the third week in July of each year.
- H. All budgeted items must be reasonable and necessary for the operation of the program and accomplishing its goals and objectives.
- I. All budgeted items must be allowable under federal regulation and state policy.
- J. The county will be reimbursed 100% of paternity testing costs. The county may also be reimbursed 100% for other paternity related costs upon prior approval of the Chief. Fees collected by the county for such costs must be forwarded directly to the state to ensure the county does not collect from both the Title IV-D program and the natural father.

ATTACHMENT C

PENALTY/NOTICE/APPEAL PROCESS

- I. Any federal penalties and interest assessed by a Federal agency against the State of Nevada may be shared between the counties and the state based upon their relative responsibility. The assessment for each county through the DA's office will be deducted first from undistributed incentive payments until exhausted and then from monthly CSEP Federal Funds thereafter until the penalty is fully collected. Offices will be notified thirty (30) days prior to any withholding of CSEP Federal Funds. The pass through of any federal penalties which may be imposed as the result of audits will be governed by terms of the agreements in effect during the audited year(s) in question. The Chief will provide written notice to counties announcing the intent to pass through a federal penalty not later than 60 days after the penalty is final.
 - II. Penalties or interest assessed against counties will not be withheld until federal corrective action periods are exhausted and the federal agency confirms satisfactory corrective action has not been achieved.
 - A. Penalties or interest assessed against counties will be limited to the percentage of TANF recipients in the responsible county for the federal fiscal year coinciding with the penalty year multiplied by the total TANF block grant awarded to Nevada for the federal fiscal year against which the penalty is being assessed multiplied by the percentage of federal penalty imposed against the Nevada TANF block grant OR the amount of the current state fiscal year county match (34%), whichever is less.
- EXAMPLE:
In FFY17, the TANF population in county X is 1.6% of Nevada's total TANF recipients. The total TANF block grant in FFY 17 is \$42,194,077. The federal penalty assessed against Nevada in FFY 17 is \$1,200,000. County X's penalty is \$19,240 which is less than the current state fiscal year county match (34%).
- III. Prior to any penalty being imposed by the Chief, counties determined to be responsible, as set forth in Section I of Attachment C, must enter into good faith discussions with the Chief to establish relative level of responsibility and proper assignment of penalties and interest.
 - IV. If negotiations under Section II of this Attachment fail, the Chief will notify the County through the DA's office, in writing of any penalties or interest to be assessed against the County. The Chief's notice will include a detailed explanation of the reason for the assessment of penalties and interest and, if the

penalties and interest are pro-rated throughout the state, a statement of the pro-ration. The Chief will provide written notice thirty (30) days prior to recovery of penalties or interest.

- V. If the County disagrees with the Chief's final decision to recover penalties or interest, the county may within thirty (30) calendar days from the date of the notice, submit a written appeal to the Administrator DWSS. The County appeal must contain arguments and documentation why the Chief should not recover penalties or interest. If the County fails to submit an appeal within the specified timeframes, the Chief will pursue the recovery of penalties or interest.
- VI. The Administrator of DWSS may request additional information and will make a written decision specifically addressing the arguments and documentation submitted by the County within sixty (60) calendar days after receipt of the appeal or all requested information is received, whichever is later.
- VII. If the County disagrees with the Administrator's decision it may file a written request within fifteen (15) calendar days after issuance of the Administrator's decision seeking reconsideration by the Penalty Review Committee. The counties must file their request for reconsideration with the Chief. The Penalty Review Committee will be comprised of seven total members made up of the following: 1) Three members from the counties being assessed a penalty; 2) Three members from the state; 3) One member to serve as chairperson of the committee who is mutually acceptable to both the state and involved counties. The committee will confer and review information presented by the parties relevant to the assessment of penalties and prepare a written recommendation of resolution for presentation to the Director of DHHS. The Committee may request additional information and will make a written decision specifically addressing the arguments and documentation submitted by the parties within sixty (60) calendar days after receipt of the appeal or receipt of all requested information, whichever is later.
- VIII. The Director of DHHS may request additional information and will make a written decision giving consideration to the Counties written appeals to the Administrator, the Administrator's decision and the recommendation of the Committee. The Director will issue a written decision within sixty (60) calendar days after receipt of the recommendation from the Committee or when all requested information is received, whichever is later. The Directors decision shall contain specific findings and conclusions if it deviates from the recommendation forwarded by the Committee.
- IX. The decision of the Director of DHHS issued pursuant to section VIII of this Attachment is the final agency decision and may be appealed to District Court.
- X. DWSS agrees to forego the recovery of assigned penalties or interest from a county until all levels of appeal outlined in this Attachment have been exhausted.

ATTACHMENT D

POLICY AND FORMS DEVELOPMENT AND APPEAL PROCESS

- I. Draft policy or forms will be provided to the DA offices by DWSS with a minimum of a thirty (30) day comment period.
- II. During the comment period the DA offices must provide information in writing if they disagree with or have comments on the draft proposal initiated by DWSS. The response must provide arguments and documentation why the draft policy should be changed. Any written comments received after the comment period, unless an extension is granted by the Chief, may not delay implementation of the draft proposal or be eligible for the appeal process.
- III. The Chief will issue a decision in writing and within thirty (30) days after reviewing all timely comments on policy or form proposals initiated by DWSS and to all policy proposals initiated by the DA offices indicating what action will be taken.
- IV. If the County through the DA's office disagrees with the Chief's decision on timely comments on policy or forms initiated by DWSS or rejection of a policy initiated by the DA offices, an appeal may be submitted in writing to the Administrator of DWSS within fifteen (15) days of receipt of the letter referred to in paragraph III. The appeal must contain written arguments and documentation why the Chief should not take the action described in paragraph III.
- V. The Administrator of DWSS may request additional information and will make a written decision within thirty (30) days of receipt of the appeal or all information, whichever is later. The decision by the Administrator of DWSS is final.
- VI. This appeal procedure does not apply to the adoption of regulations which follow the public hearing process or which are mandated by federal regulation.

ATTACHMENT E

INCENTIVE PAYMENTS

The Child Support Performance Act of 1998 and 45 CFR 305 requires incentive payments to be based on the states' performance. The state's distribution of incentives will be limited to the amount of a federal award granted to and received by Nevada. This attachment describes how incentives will be calculated and disbursed to the Nevada IV-D offices.

I. CALCULATION OF INCENTIVES

The incentives will be distributed to the IV-D offices (DA and state) based on their performance in four areas: 1) Paternity Establishment; 2) Cases with Orders; 3) Collections on Current Support; and 4) Collections on Arrears. Fifteen (15) percent of any incentives awarded and received after the effective date of this contract will be retained by the Program for statewide program enhancements recommended by the Enhancements Subcommittee of the Child Support Enforcement Task Force, which is comprised of state and county partners as identified in the Child Support Enforcement Task Force Governing Document. The state will calculate IV-D office incentives based on information provided by the automated system. The office figures will be posted monthly on the Child Support Enforcement website. The final annual report and completed worksheets (Exhibit B) will be provided to the IV-D offices within thirty (30) days of when the state's incentive information is received by the state from the Federal Government.

A. Definitions Of Performance Measurements

1. Paternity Establishment Percentage (PEP)

Total number of children in IV-D caseload as of the end of the Federal Fiscal Year, who were born-out-of-wedlock with paternity established or acknowledged divided by the total number of children in the IV-D caseload as of the end of the preceding Federal Fiscal Year who were born out-of-wedlock. The PEP is a measure of children in the caseload at a point-in time. Paternities include those established by: 1) voluntary acknowledgment; and 2) all types of order, including court, administrative, and default. However, a paternity can only be counted once either when a voluntary acknowledgment is completed or when an order determining paternity is established.

2. Cases with an Order

Number of IV-D cases with child support orders divided by the total number of IV-D cases. Support orders include all types of legally enforceable orders, including court, default and administrative. Since the measure is a case count at a point-in-time, modifications to an order do not affect the count.

3. Collections on Current Support

Total dollars collected for current support in IV-D cases divided by total dollars owed for current support in IV-D cases. Measures the amount of current support collected as compared to the total amount owed. Current support is money applied to current support obligations and does not include payment plans for payment toward arrears. This measure would be computed monthly and the total of all months reported at the end of the year.

4. Collection on Arrears

Total number of eligible IV-D cases paying toward arrears divided by the total number of IV-D cases with arrears due. This measure would include those cases where all of the past-due child support was disbursed to the family, or all of the past due child support was retained by the state because all the past due child support was assigned to the state. If some of the past due child support was assigned to the state and some was owed to the family, only those cases where some of the support actually was disbursed to the family would be included.

This measure would be computed monthly and the total of all months reported at the end of the year.

B. Completing Incentive Worksheet

The state will complete the Incentive Worksheet (Exhibit B) as follows:

1. Determine IV-D Office Performance Level

For the four performance measurements, determine the IV-D office performance level.

2. Determining Applicable Percentage With Respect To The Four Performances Measures

Use the federal charts (Exhibit A) to determine the appropriate percentage for each performance level.

3. Determining Total Incentive Collections

The collection base for the IV-D office is determined by multiplying collections for Nevada TANF and former TANF cases by three and adding collections for all other case types.

4. Determining IV-D Office Collection Base

The total incentive collections are multiplied by the applicable percentage for each performance measurement. The total for each are then added together to determine the total collection base.

5 Determining the IV-D office Percentage of the Incentive Pool

Add the collection base for all IV-D offices to determine the state collection base. Divide the IV-D office collection base by the state collection base to arrive at the IV-D office percentage of incentive pool (Exhibit B).

6. Determining IV-D Office Incentives

Multiply the amount of incentives awarded by OCSE, by the IV-D office percentage of the incentive pool to determine the IV-D office's incentives for the year.

II. DISTRIBUTION OF INCENTIVES TO THE IV-D OFFICES

A. Reinvestment

Section 458A (f) of the Social Security Act requires states to use incentive payments to supplement and not supplant funds used by the state in its IV-D Program. The act requires states to maintain or exceed program expenditures for the base federal fiscal year 1998.

If the state fails to meet this requirement, incentives will be reduced by OCSE to Nevada. These reduced incentives will be the amount disbursed to the offices by the formula described in I. B.

B. Data Reliability

Section 452 (g) (2) (c) of the Social Security Act requires data to be complete and reliable. If OCSE determines the data reported is not reliable and incentives are not distributed to the State, no incentives will be distributed to the IV-D offices. OCSE will evaluate the data for the outcome measurements proposed in 45 CFR 305. Federal audit staff may determine data is unreliable for specific measurements.

C. Case Assignment Rules

Federal regulations require that a case can only be counted once within the state for reporting and incentive purposes. Interstate cases may be included in both the

initiating and responding states' caseload. Cases will be assigned to the appropriate county or program area office (PAO) based on the following rule:

Intrastate Cases

If the IV-D office transfers a case to another County office or PAO to provide services, the case will be included in the receiving County or PAO caseload.

[This section intentionally left blank]

EXHIBIT A

To determine the applicable percentage for each performance measurement, use the following tables:

If the paternity establishment performance level is:

<u>At least</u>	<u>But less than</u>	<u>The applicable percentage is</u>
80%		100%
79%	80%	98%
78%	79%	96%
77%	78%	94%
76%	77%	92%
75%	76%	90%
74%	75%	88%
73%	74%	86%
72%	73%	84%
71%	72%	82%
70%	71%	80%
69%	70%	79%
68%	69%	78%
67%	68%	77%
66%	67%	76%
65%	66%	75%
64%	65%	74%
63%	64%	73%
62%	63%	72%
61%	62%	71%
60%	61%	70%
59%	60%	69%
58%	59%	68%
57%	58%	67%
56%	57%	66%
55%	56%	65%
54%	55%	64%
53%	54%	63%
52%	53%	62%
51%	52%	61%
50%	51%	60%
0%	50%	0%

Notwithstanding the preceding sentence, if the paternity establishment performance level of a IV-D office for a fiscal year is less than 50% but exceeds by at least 10 percentage points the paternity establishment performance level of the IV-D office for the immediately preceding fiscal year, then the applicable percentage with respect to the IV-D office's paternity establishment performance level is 50%.

If the support order performance level is:

<u>At least</u>	<u>But less than</u>	<u>The applicable percentage is</u>
80%		100%
79%	80%	98%
78%	79%	96%
77%	78%	94%
76%	77%	92%
75%	76%	90%
74%	75%	88%
73%	74%	86%
72%	73%	84%
71%	72%	82%
70%	71%	80%
69%	70%	79%
68%	69%	78%
67%	68%	77%
66%	67%	76%
65%	66%	75%
64%	65%	74%
63%	64%	73%
62%	63%	72%
61%	62%	71%
60%	61%	70%
59%	60%	69%
58%	59%	68%
57%	58%	67%
56%	57%	66%
55%	56%	65%
54%	55%	64%
53%	54%	63%
52%	53%	62%
51%	52%	61%
50%	51%	60%
0%	50%	0

Notwithstanding the preceding sentence, if the support order performance level of a IV-D office for a fiscal year is less than 50% but exceeds by at least 10 percentage points the support order performance level of the IV-D office for the immediately preceding fiscal year, then the applicable percentage with respect to the IV-D office's support order performance level is 50%.

If the current payment performance level is:

<u>At least</u>	<u>But less than</u>	<u>The applicable percentage is</u>
80%		100%
79%	80%	98%
78%	79%	96%
77%	78%	94%
76%	77%	92%
75%	76%	90%
74%	75%	88%
73%	74%	86%
72%	73%	84%
71%	72%	82%
70%	71%	80%
69%	70%	79%
68%	69%	78%
67%	68%	77%
66%	67%	76%
65%	66%	75%
64%	65%	74%
63%	64%	73%
62%	63%	72%
61%	62%	71%
60%	61%	70%
59%	60%	69%
58%	59%	68%
57%	58%	67%
56%	57%	66%
55%	56%	65%
54%	55%	64%
53%	54%	63%
52%	53%	62%
51%	52%	61%
50%	51%	60%
49%	50%	59%
48%	49%	58%
47%	48%	57%
46%	47%	56%
45%	46%	55%
44%	45%	54%
43%	44%	53%
42%	43%	52%
41%	42%	51%
40%	41%	50%
0%	40%	0

Notwithstanding the preceding sentence, if the current payment performance level of a IV-D office for a fiscal year is less than 40% but exceeds by at least 10 percentage points the current payment performance level of the IV-D office for the immediately preceding fiscal year, then the applicable percentage with respect to the IV-D office's current payment performance level is 50%.

If the arrearage payment performance level is:

At least	But less than	The applicable percentage is
80%		100%
79%	80%	98%
78%	79%	96%
77%	78%	94%
76%	77%	92%
75%	76%	90%
74%	75%	88%
73%	74%	86%
72%	73%	84%
71%	72%	82%
70%	71%	80%
69%	70%	79%
68%	69%	78%
67%	68%	77%
66%	67%	76%
65%	66%	75%
64%	65%	74%
63%	64%	73%
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51%	52%	61%
50%	51%	60%
49%	50%	59%
48%	49%	58%
47%	48%	57%
46%	47%	56%
45%	46%	55%
44%	45%	54%
43%	44%	53%
42%	43%	52%
41%	42%	51%
40%	41%	50%
0%	40%	0

Notwithstanding the preceding sentence, if the arrearage payment performance level of a IV-D office for a fiscal year is less than 40% but exceeds by at least 10 percentage points the arrearage payment performance level of the IV-D office for the immediately preceding fiscal year, then the applicable percentage with respect to the IV-D office's arrearage payment performance level is 50%.

EXHIBIT B
Incentive Worksheet

IV-D Office: _____

<u>Performance Area</u>	<u>IV-D Office Performance Level</u>	<u>Applicable %</u>	<u>Total Incentive Collections</u>	<u>Collection Base</u>
a. Paternity		X		=
b. Cases with Orders		X		=
c. Collection on Current Support		X		=
d. Collection on Arrears		X		=
Total Collection Base				=

A. DETERMINING TOTAL INCENTIVE COLLECTIONS

Nevada TANF/Former TANF collection	X 3	=
Other collections		=
Total Incentive Collections		=

This total is shown in the total incentive collection column.

Total statewide collection base

B. IV-D OFFICE PERCENTAGE OF INCENTIVE POOL

IV-D office collection base divided by statewide collection base = %

C. IV-D OFFICE INCENTIVES

Incentive paid by feds	\$	
Office % of incentive pool	x _____	%
Minus 15% Statewide Enhancements		
Total Incentives Award	\$ _____	

EXHIBIT C

Example

IV-D Office: _____

<u>Performance Area</u>	<u>IV-D Office Performance Level</u>	<u>Applicable %</u>		<u>Total Incentive Collections</u>	=	<u>Collection Base</u>
a. Paternity	72%	84%	X	\$15m	=	12.6
b. Case with Orders	59%	69%	X	\$15m	=	10.3
c. Collection on Current Support	44%	54%	X	\$15m	=	8.1
d. Collection on Arrears	42%	51%	X	\$15m	=	<u>7.6</u>
						38.6
						Total collection base

A. DETERMINING TOTAL INCENTIVE COLLECTIONS

Nevada TANF/Former TANF collections	\$1m x 3 = \$3m
Other collections	= \$12m
Total incentive collections	= \$15m

This total is shown in the total incentive collection column.

B. DETERMINING THE IV-D OFFICE PERCENTAGE OF THE INCENTIVE POOL

In this example the total IV-D office collection base is 100. Dividing the IV-D office collection base by the total statewide collection base [assume 100] ($38.6 \div 100 = .39$) is equal to 39%.

C. DETERMINING IV-D OFFICE INCENTIVES

Incentive paid by feds	= \$2m
Office % of incentive pool	x .39 = \$780,000
Minus 15% Statewide Enhancements	= \$117,000
Total Incentives Award	\$663,000

Under this example the IV-D office would receive \$ 663,000 in incentives.

ATTACHMENT F
CASE RESPONSIBILITIES

I. GENERAL RESPONSIBILITIES

The County agrees to serve all:

- A. Applicants who make application in a county for which they have assigned responsibilities.
- B. Cases which have been transferred to their county due to jurisdiction or conflict reasons.
- C. Cases which are assigned to their county by NOMADS for interstate case services.

II. SPECIFIC RESPONSIBILITIES

The County agrees to assume responsibility for and perform:

- A. Locate services for all Washoe County non-public assistance cases, excluding current and former Medicaid only cases.
- B. Establishment services for all Washoe County non-public assistance cases, excluding current and former Medicaid only cases.
- C. Enforcement services for all Washoe County non-public assistance cases.
- D. Enforcement services for all Washoe County current and former Medicaid only cases.

ATTACHMENT G

INDIRECT COST RATE

The parties acknowledge that a standard 10% indirect cost rate provides a safe harbor under the applicable Federal rules governing the use of such rates and that the use of an actual indirect cost rate higher than 10% may be subject to federal audit and action. Accordingly, in regard to the calculation of County's indirect cost rate for the fiscal years covered by this Contract, the Division agrees that a rate of more than 10% may be approved, based upon the supporting materials and calculations submitted with County's indirect cost rate proposal and subject to and contingent upon approval of the indirect cost rate by the Chief, which approval will not be unreasonably withheld, and the provisions of this section.

- I. Indemnification. County agrees to indemnify the Divisions for any costs related to and arising from federal audit findings, disallowances, sanctions or penalties that are attributable to County's use of an indirect cost rate in excess of the 10% standard rate.
- II. Independent Auditor. County agrees to assume the costs associated with an independent auditor performing the necessary work to provide annual specific assurances that an indirect cost rate in excess of the 10% standard rate is appropriate.
- III. Participation in Audit. County agrees to participate in any audit of its indirect rate and to provide all supporting information upon which an indirect cost rate in excess of the 10% standard rate is based.

ATTACHMENT H

IRS SAFEGUARDING CONTRACT LANGUAGE CONTRACT LANGUAGE FOR GENERAL SERVICES

I. PERFORMANCE

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

(1) All work will be performed under the supervision of the contractor or the contractor's responsible employees.

(2) The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

(3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.

(4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

(5) No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.

(6) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

(7) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Exhibit 7, IRS Publication 1075 (September 2016)

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, *Sanctions for Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

CONTRACT LANGUAGE FOR TECHNOLOGY SERVICES

I. PERFORMANCE

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the contractor or the contractor's employees.
- (2) The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

Exhibit 7, IRS Publication 1075 (September 2016)

(7) All computer systems receiving, processing, storing or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.

(8) No work involving Federal Tax Information furnished under this contract will be subcontracted without prior written approval of the IRS.

(9) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

(10) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

II. CRIMINAL/CIVIL SANCTIONS

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

Exhibit 7, IRS Publication 1075 (September 2016)

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see *Exhibit 4, Sanctions for Unauthorized Disclosure*, and *Exhibit 5, Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.