



STATE OF TENNESSEE
DEPARTMENT OF CHILDREN'S SERVICES

**REQUEST FOR PROPOSALS # 35910-62026 ISSUE COPY
FOR TEMPORARY NURSING SERVICES @ NEW VISIONS YOUTH
DEVELOPMENT CENTER**

1. **INTRODUCTION**

The State of Tennessee, Department of Children's Services, hereinafter referred to as "the State," has issued this Request for Proposals (RFP) with the intent to award a contract for Temporary Nursing services for student residents of New Visions Youth Development Center (NVYDC) in Nashville, Davidson County, TN.

The State may enter into one (1) contract, but no more than three (3) contracts, to meet the staffing needs for nursing services at NVYDC. All proposals received will be scored and ranked. After meeting the qualifications evidence, the proposer with the lowest evaluation cost amount shall receive the designation of Primary. The proposers with the next two lowest evaluation cost amounts shall be designated as Secondary, and Alternate, and will be reimbursed at the rate submitted in their cost proposal.

This RFP defines minimum service requirements; solicits proposals; details proposal requirements; and, outlines the State's process for evaluating proposals and selecting a contractor to provide the required service. Through this RFP, the State seeks to buy the best services at the most favorable, competitive prices and to give ALL qualified businesses, including those owned by minorities, women, and persons with a handicap or disability as well as small business enterprises, opportunity to do business with the state as contractors and sub-contractors.

1.1. **Scope of Service, Contract Period, & Required Terms and Conditions.** The contract awarded pursuant to this RFP will be drafted in accordance with the attached *Pro Forma Contract* (Attachment 7.4.), which details the State's required:

- Scope of Services and Deliverables (section A);
- Contract Period (section B);
- Payment Terms (section C);
- Standard Terms and Conditions (section D); and,
- Special Terms and Conditions (section E).

1.2. **Nondiscrimination.** No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a Contract pursuant to this RFP or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion (subject to *Tennessee Code Annotated*, Section 4-21-405), sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.3. **RFP Communications.** Reference **RFP # 35910-62026**, in all communications relating to this RFP, and direct any such communications to the following person designated as the RFP Coordinator.

Dana Scott
Department of Children's Services

Contracts and Procurement
 Cordell Hull Building, 7th Floor
 436 6th Avenue North
 Nashville, TN 37243
 Phone: 615-741-1207
 Fax: 615-244-8969
 E-Mail: dana.scott@tn.gov

Unauthorized contact about this RFP with other employees or officials of the State of Tennessee may result in disqualification from consideration under this procurement process.

Notwithstanding the foregoing, potential proposers may also contact the following as appropriate:

- staff of the Governor’s Office of Diversity Business Enterprise for assistance available to minority-owned, women-owned, and small businesses as well as general, public information relating to this RFP; and
- the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Steve Hovies, Director
 Department of Children's Services
 Division for Diversity Initiatives
 1200 Foster Avenue, Menzler I
 Nashville, TN 37243
 Phone: 615-253-0040
 Fax: 615-532-4013
 E-Mail Address: Steve.Hovies@tn.gov

1.4. **Proposer Required Review & Waiver of Objections.** Each potential proposer must carefully review this RFP, including but not limited to, all attachments (including the *Pro Forma* Contract) and any amendments, to identify any issues, questions, comments, defects, objections, or other matter requiring clarification or correction (collectively called “issues”). A potential proposer with issues concerning this RFP must provide such in writing to the State no later than the Proposal Deadline detailed in the RFP Section 2, Schedule of Events. Protests based on any issues shall be considered waived and invalid if the issues have not been brought to the attention of the State, in writing, by the Proposal Deadline.

2. SCHEDULE OF EVENTS

The following RFP Schedule of Events represents the State’s best estimate for this RFP. The state reserves the right, at its sole discretion, to adjust the Schedule of Events or to otherwise amend this RFP at any time. The State reserves the right, at its sole discretion, to cancel or to cancel and reissue this RFP in accordance with applicable laws and regulations.

EVENT	TIME (central time zone)	DATE (all dates are state business days)
1. RFP Issued		December 22, 2011
2. Proposal Deadline	2:00 p.m.	January 6, 2012
3. Qualifications Evidence Evaluations Completed		January 11, 2012

4. Cost Proposals Opened and Lowest Cost Identified	2:00 p.m.	January 12, 2012
5. Award Notice and RFP Files Opened for Public Inspection	2:00 p.m.	January 13, 2012
6. Contract Signing		January 26, 2012
7. Contractor Signature Deadline	2:00 p.m.	February 2, 2012

3. PROPOSAL REQUIREMENTS

- 3.1. **Two Part Proposal.** A proposal in response to this RFP must respond only as required by this RFP document (including all attachments) as may be amended. It must consist of two parts: Qualifications Evidence (including any supporting documentation) and a Cost Proposal.

The State may determine a proposal to be non-responsive and ineligible for contract award if the Proposer fails to address all proposal items, organize and properly reference the Qualifications Evidence, or complete the Cost Proposal exactly as provided and required below. A Proposer is liable for any and all proposal errors or omissions.

- 3.1.1. Qualifications Evidence – The *Qualifications Evidence Guide* (Attachment 7.2. of this RFP) details specific mandatory requirements for making a proposal in response to this RFP. A Proposer must duplicate and use RFP Attachment 7.2., completed with proposal page numbers, to cover (as a table of contents), organize, reference, and complete the Qualifications Evidence portion of the proposal. All information and documentation included within a proposal must address a specific requirement of RFP Attachment 7.2. and must be clearly referenced. The State will deem any information not meeting these criteria to be extraneous and will not review it.

NOTICE: DO NOT include any pricing or cost information in any part of the Qualifications Evidence. If a Proposer includes any pricing or cost information amount of any type (even pricing relating to other projects) within the Qualifications Evidence, the state will deem the proposal non-responsive and reject it.

- 3.1.2. Cost Proposal – A Proposer must use an exact duplicate of RFP Attachment 7.3., the *Cost Proposal Guide*, to record ONLY the proposed cost EXACTLY as indicated. The Cost Proposal must incorporate ALL costs for ALL services under the contract for the total contract period. A Proposer must NOT record any other rates, amounts, or information except that which is specifically required.

A Proposer must sign and date the completed Cost Proposal.

NOTICE: The state will deem the proposal non-responsive and reject it if a Proposer fails to submit a Cost Proposal exactly as required.

- 3.2. **Proposal Delivery.** A Proposer must ensure that both proposal components offered in response to this RFP, the Qualifications Evidence and the Cost Proposal, meet all form and content requirements detailed within this RFP, including but not limited to, required signatures. Further, the Proposer must submit the two proposal components as specified below. A proposal failing to meet delivery requirements may be deemed non-responsive and ineligible for contract award.

3.2.1. Packaging

- 3.2.1.1. The Proposer must present one (1) original Qualifications Evidence document (covered by and addressing RFP Attachment 7.2.) labeled:

QUALIFICATIONS EVIDENCE – RFP # 35910-62026

and placed in a sealed package that is labeled:

DO NOT OPEN – QUALIFICATIONS EVIDENCE – RFP # 35910-62026
PROPOSER: [PROPOSER LEGAL ENTITY NAME]

- 3.2.1.2. The Proposer must present one (1) Cost Proposal document (using an exact duplicate of RFP Attachment 7.3.) labeled:

COST PROPOSAL – RFP # 35910-62026

and placed in a separate, sealed package that is labeled:

DO NOT OPEN – COST PROPOSAL – RFP # 35910-62026
PROPOSER: [PROPOSER LEGAL ENTITY NAME]

- 3.2.1.3. If the Proposer encloses the separate, sealed Qualifications Evidence and Cost Proposal components in a larger package for mailing or delivery, the Proposer must label the outermost package:

SEPARATELY SEALED QUALIFICATIONS EVIDENCE & COST PROPOSAL
RFP # 35910-62026
PROPOSER: [PROPOSER LEGAL ENTITY NAME]

- 3.2.1.4. The Proposer must submit a proposal, as required, to the following address:

Dana Scott
Department of Children’s Services
Contracts and Procurement
Cordell Hull Building, 7th Floor
436 6th Avenue North
Nashville, TN 37243

- 3.3. **Proposal Deadline.** A Proposer must ensure that the State receives a proposal no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events. The State will not accept late proposals, and a Proposer’s failure to submit a proposal before the deadline will result in disqualification of the proposal.

3.4. **Proposer and Proposal Prohibitions:**

- A Proposer may NOT alter or revise proposal documents after the Proposal Deadline unless such is formally requested, in writing, by the State.
- A proposal must NOT include the Proposer’s own contract terms and conditions.
- A proposal must NOT restrict the rights of the State or otherwise qualify either the offer to deliver services as required by this RFP or the Cost Proposal.
- A Cost Proposal must NOT result from any collusion between Proposers.

- A Proposer must NOT provide, for consideration in this RFP process or subsequent contract negotiations, incorrect information that the Proposer knew or should have known was materially incorrect.

4. **GENERAL INFORMATION & REQUIREMENTS**

4.1. **Conflict of Interest.** This RFP shall not result in a contract with:

- an individual who is, or within the past six months has been, an employee of the State of Tennessee or who is a volunteer member of a State board or commission that votes for, lets out, overlooks, or any manner superintends the services being procured in this RFP;
- a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee (this will not apply either to financial interests that have been placed into a “blind trust” arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity);
- a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,
- any individual, company, or other entity involved in assisting the State in the development, formulation, or drafting of this RFP or its scope of services (such person or entity being deemed by the State as having information that would afford an unfair advantage over other Proposers).

For the purposes of applying the requirements of this subsection, the State will deem an individual to be an employee of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid, but the term “employee of the State of Tennessee” shall not include individuals performing volunteer services for the State of Tennessee.

4.2. **State Right of Rejection.** Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all proposals.

The State may deem as non-responsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, a proposal’s minor variances from full compliance with this RFP. If the State waives variances in a proposal, such waiver shall not modify the RFP requirements or excuse the Proposer from full compliance with such, and the State may hold any resulting Contractor to strict compliance with this RFP.

4.3. **State Right to Refuse Personnel.** The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing service in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

4.4. **Disclosure of Proposal Contents**

4.4.1. Each proposal and all materials submitted to the State in response to this RFP become the property of the State of Tennessee. Selection or rejection of a proposal does not affect this right. By submitting a proposal, a Proposer acknowledges and accepts that the full proposal contents

and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.

- 4.4.2. The State will hold all proposal information in confidence during the evaluation process. Notwithstanding the foregoing, a list of actual Proposers submitting timely proposals may be available to the public, upon request, after the Proposal Deadline detailed in the RFP Section 2, Schedule of Events.
- 4.4.3. Proposals and associated materials will be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7), after the State completes proposal evaluations and issues an Evaluation Notice.

4.5. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Proposers will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

5. **PROPOSAL EVALUATION & CONTRACT AWARD**

The RFP Coordinator will review each proposal for compliance with all general RFP requirements. Then, a Proposal Evaluation Team of at least three contracting agency employees will review the Qualifications Evidence and any supporting documentation for each compliant proposal. For a proposal in response to this RFP to be acceptable and eligible for contract award, all evaluators must determine that the Qualifications Evidence documents that the Proposer meets the mandatory qualifications and experience requirements and is otherwise, at least, minimally acceptable as a contractor for the subject services. The State will document, in writing, any determination (and the specific reasons therefore) that a Proposer's Qualification Evidence failed to adequately address and document compliance with mandatory requirements and acceptability for contract award.

After the evaluation of Qualifications Evidence is completed, the RFP Coordinator will review the Cost Proposal submitted by each Proposer deemed acceptable for contract award. The RFP Coordinator will assess whether each Cost Proposal complies with RFP requirements without qualification. The RFP Coordinator will document, in writing, any determination (and the specific reasons therefore) that a Cost Proposal is non-compliant with requirements such that the Proposer is non-responsive to the RFP.

The RFP Coordinator will identify the three responsive, responsible **Cost Proposals** indicating the lowest cost to the state. The procuring agency will award the Primary contract to **the** Proposer offering the lowest cost. The State may enter into one (1) contract, but no more than three (3) contracts, to meet the staffing needs for nursing services at NVDYDC. The procuring agency will award the Secondary contract, if needed, to the Proposer offering the next lowest evaluation cost amount. The procuring agency will award the Alternate contract, if needed, to the Proposer offering the third lowest evaluation cost amount. In the event that two or more Proposers offer the same lowest cost, the RFP Coordinator will request a Best and Final Cost proposal from the tied Proposers. Should a second tie result, the State will award the contract to one of the tied Proposers by chance.

6. **CRIMINAL BACKGROUND CHECK**

Upon notification of the Contract Award, the winning proposer must immediately submit fingerprint samples to effect background checks for all contract personnel that are to work under this contract. Individuals failing to pass the Criminal Background Check shall not provide services under this contract.

The winning proposer assumes all responsibility for the payment of all fees for background checks. The current cost for processing electronic fingerprint samples is Fifty Dollars, (\$50.00). Please see E.18. of the Pro Forma contract located in Section 7.4 of this RFP for further details.

Should an individual proposer, proposing to be the sole person to provide services, fail the Criminal Background Check, the State will withdraw the Contract Award and offer it to the remaining Proposer with the lowest proposed cost.

PROPOSAL STATEMENT OF CERTIFICATIONS AND ASSURANCES

An individual legally empowered to contractually bind the Proposer must sign and complete the *Proposal Statement of Certifications and Assurances* below as required, and this signed statement must be included with the proposal as required by the RFP Attachment 7.2.

The Proposer does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Proposer will comply with all of the provisions and requirements of the RFP.
2. The Proposer will provide, for the total contract period, all services defined in the Scope of Services specified by the *Pro Forma Contract* attached to the RFP.
3. The Proposer accepts and agrees, without qualification, to all terms and conditions set out by the *Pro Forma Contract* attached to the RFP.
4. The Proposer acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the contract.
5. The Proposer will comply, as applicable, with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
6. To the knowledge of the undersigned, the information detailed within the proposal submitted in response to the RFP is accurate.
7. The proposal submitted in response to the RFP was independently prepared, without collusion, under penalty of perjury.
8. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the RFP or any resulting contract.

By signature below, the signatory certifies legal authority to bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to legally bind the proposing entity.

PROPOSER SIGNATURE & DATE:

PRINTED NAME & TITLE:

PROPOSER LEGAL ENTITY NAME:

PROPOSER FEIN or SSN:

QUALIFICATIONS EVIDENCE GUIDE

The Proposer must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Proposer must also detail the proposal page number for each item in the appropriate space below, and use this guide to cover the Qualifications Evidence section of the proposal (as its table of contents).

Prior to State evaluation of Qualifications Evidence, the RFP Coordinator will review each proposal for compliance with all RFP requirements, including but not limited to:

- The proposal must be delivered to the State no later than the Proposal Deadline.
- The Qualifications Evidence and the Cost Proposal must be packaged separately as required.
- The Qualifications Evidence must NOT contain cost or pricing information of any type.
- The proposal must NOT contain any qualification, limitation, or other restrictions.

The Proposal Evaluation Team will, then, review the Qualifications Evidence to determine if the mandatory requirement items are addressed as required and that it documents that the Proposer meets each mandatory qualification and experience requirement and is otherwise, at least, minimally acceptable as a contractor for the subject services.

PROPOSER LEGAL ENTITY NAME:		
Proposal Page # (Proposer completes)	Item Ref.	QUALIFICATIONS EVIDENCE
	7.2.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the proposal.
	7.2.2.	Provide the RFP Attachment 7.1., <i>Proposal Statement of Certifications and Assurances</i> completed and signed by an individual empowered to bind the Proposer to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.
	7.2.3.	Provide a statement, based upon reasonable inquiry, of whether the Proposer or any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict. <i>Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.</i>
	7.2.4.	Provide a statement of whether the Proposer or, to the Proposer's knowledge, any of the Proposer's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details. <i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.</i>

	7.2.5.	<p>Provide a statement of whether there is any material, pending litigation against the Proposer that the Proposer should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Proposer's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Proposer's performance in a contract pursuant to this RFP.</p> <p><i>Any issues relating to such a matter shall be solely within the discretion of the State, and the State reserves the right to reject any proposal or cancel any award.</i></p> <p><i>All persons, agencies, firms, or other entities that provide legal opinions regarding the Proposer must be properly licensed to render such opinions. The State may require the Proposer to submit proof of such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.</i></p>
	7.2.6.	<p>Provide a valid, Certificate of Professional Malpractice Liability Insurance that is verified and dated within the last six (6) months and which details <u>all</u> of the following:</p> <ul style="list-style-type: none"> (a) Insurance Company (b) Proposer's Name and Address as the Insured (c) Policy Number (d) The following minimum insurance coverage: <p>A limit of not less than One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) aggregate.</p>
	7.2.7.	<p>Provide a copy of a (at a minimum one) current license, which qualifies the individual(s) to perform the duties of this contract issued by the State of Tennessee Health Related Board of their specified discipline.</p>

COST PROPOSAL GUIDE

NOTICE: THE COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE – The Cost Proposal, detailed below, shall indicate the proposed price for all services, during the entire contract period, as set forth in the *Pro Forma Contract* attached to the RFP. The Cost Proposal shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Proposer.

<i>This Cost Proposal must be signed by an individual empowered to legally bind the proposing entity to the provisions of this RFP and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to contractually bind the proposing entity.</i>			
PROPOSER SIGNATURE & DATE:			
PRINTED NAME & TITLE:			
PROPOSER LEGAL ENTITY NAME:			
Cost Item Description (A.5.f. of the Scope of Services)	Proposed Cost	State Use Only	
	May 1, 2012- June 30, 2016	Evaluation Factor	Evaluation Cost (cost x factor)
LPN Nurse Service — Regular Shifts	\$ _____ per Hour	4823	
LPN Nurse Service — Weekend Shifts*	\$ _____ per Hour	4518	
LPN Nurse Service — Holiday Shifts	\$ _____ per Hour	313	
EVALUATION COST AMOUNT (sum of evaluation costs above):			
<i>The state will use this sum to determine the Cost Proposal reflecting the lowest cost to the state. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i>			\$ _____ per Hour

* Weekend rates start on 6:30a.m Saturday morning until 7:30p.m Sunday night as indicated in the pro forma contract; Section A. Scope of Services: Subsection A.6. Process:, d.

PRO FORMA CONTRACT

The *pro forma* contract detailed in following pages of this exhibit contains some “blanks” (signified by field descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF CHILDREN'S SERVICES
NEW VISIONS YOUTH DEVELOPMENT CENTER
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of Children's Services (DCS) New Visions Youth Development Center (NVYDC), hereinafter referred to as the "State" and **Contractor Legal Entity Name**, hereinafter referred to as the "Contractor," is for the provision of Temporary Nursing services for student residents of New Visions Youth Development Center (NVYDC) in Nashville, Davidson County, TN., as further defined in the "SCOPE OF SERVICES."

The Contractor is **a/an Individual, For-Profit Corporation, Non-Profit Corporation, Special Purpose Corporation Or Association, Partnership, Joint Venture, Or Limited Liability Company.**

Contractor Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.

A.2. Service Definition:

a. The State needs adequate nursing services for student residents of New Visions Youth Development Center when State positions are unable to provide the level of nursing services required. The nurses required are Licensed Practical Nurses (LPNs). The level of nursing services required depends upon the shortage of NVYDC nursing services due to vacancies, illnesses, and personal emergencies; health condition; increase in the number of incoming student residents; unpredictable emergencies that may arise; and general unpredictability of needs that the student residents may require.

b. The Contractor(s) shall provide nursing services as required and described in this Scope of Services, for the times and duration as described in this Scope of Services, and in accordance with all terms and conditions specified in this Contract. The State shall not be obligated to use any particular minimum number of personnel. Quality patient care, in accordance with standards specified in this Contract is to be provided by the Contractor.

A.3. Services shall be provided at New Visions Youth Development Center which houses approximately thirty six (36) student residents.

A.4. Staffing Needs:

a. The State shall not be obligated to use a particular minimum number, or any number, of LPNs to meet the needs of NVYDC.

b. NVYDC's Health Administrator shall base the need for LPN's on a review of the student residents and available staff. Requests for services shall be coordinated between the Contractor(s) and his/her representative and NVYDC's Health Administrator.

c. The following numbers shall not create any rights, interests, or claims of entitlement in the Contractor(s), and shall not be construed as any type of volume guarantee or minimum quantity. Additional information about coverage, work shifts, holidays, weekends, and general time and attendance is in Section A.6. Estimated numbers of LPNs are as follows:

(1) PRN (*Pro Re Nata*; as needed) LPNs, up to twenty-five (25) shifts per week; maximum of one thousand three hundred (1,300) shifts per year.

A.5. Structure:

- a. The Contractor agrees to provide appropriately licensed individuals to perform nursing services at NVYDC as described in this Scope of Services. Such individuals who are in the United States under the EB3 Visa program are acceptable at the State's discretion.
- b. The Contractor agrees that it shall not provide any services pursuant to this Contract until the following conditions are met:
 - (1) The Contractor shall screen all individuals expected to be assigned to perform nursing services at NVYDC under this Contract, and certify that such individuals are appropriately licensed to practice in the State of Tennessee. Copies of certifications, transcripts, licensure, and curriculum vitae; and professional references must be provided to NVYDC by the Contractor.
 - (2) The Contractor shall verify that all individuals expected to be assigned to perform nursing services at NVYDC are able to perform the duties as specified in this Contract and are able to communicate effectively in the English language.
 - (3) The Contractor acknowledges and understands that it is the responsibility of the Contractor and the Contractor must obtain the approval of both the U.S. Department of Labor (DOL) and the U.S. Citizenship and Immigration Services prior to providing individuals expected to be assigned to perform nursing services at NVYDC under the EB3 Visa program. The Contractor is responsible for complying with all Federal requirements of the EB3 Visa program and ensuring continued compliance with all Federal regulations related to the EB3 Visa program during the course of this Contract.
 - (4) The Contractor shall ensure that each individual expected to be assigned to perform nursing services at NVYDC has the appropriate current active license to practice in the State of Tennessee as well as the following:
 - i. At least one (1) year of nursing experience is required. Proof of experience in nursing must be validated in writing. Psychiatric, Medical Surgical or Correctional nursing experience of one (1) year or more is preferred.
 - ii. Be qualified in cardio-pulmonary resuscitation (CPR) procedures. The Contractor must provide written verification that the individual expected to be assigned to perform nursing services at NVYDC is currently certified in CPR procedures, and the Contractor shall submit written verification of annual training. The initial and all subsequent verifications should include the effective date of certification. No nurse will be allowed to work under this Contract without a current CPR certification.
 - iii. Contractor must provide annual in-service trainings on Infection Control and Fire and Safety for all staff members and provide proof to NVYDC.
 - iv. For all orientation, in-service, education, and other training provided by the Contractor to its staff, NVYDC requires the Contractor to provide an outline of educational content to NVYDC for NVYDC staff development files; and
 - v. The Contractor shall provide a documented performance evaluation of each of its nurses at least annually.
 - (5) The Contractor shall ensure that the immunization status of each individual expected to be assigned to perform nursing services at NVYDC includes the results of a current tuberculosis skin test, and documentation that immunization

against hepatitis B, hepatitis A, and tetanus was offered and either accepted or rejected. The Contractor must provide written documentation of such at the time each such individual is assigned to NVYDC and must provide updated information for each such individual annually. The cost of tuberculosis testing and immunizations are to be paid by the Contractor. The rejection of immunizations does not exclude an individual(s) from providing service under this contract.

- (6) Contractor has verified personal and professional references and conducted a criminal background check to insure that no individual expected to be assigned to perform nursing services at NVYDC has been convicted of a felony or has current charges outstanding which would constitute a felony in the State of Tennessee. In addition no such individual appears on the Tennessee Bureau of Investigation's (TBI's) Tennessee Sexual Offender Registry or the Elderly and Vulnerable Abuse Registry maintained by the Tennessee Department of Health. Further, the Contractor shall ensure that each such individual's file includes the results of a full background investigation that relates to such individual's employment history, and criminal history, including any confirmed history of sexual, physical, or mental abuse towards others. This investigation shall be conducted by the Contractor at its own expense for each such individual and the resulting information shall be provided to NVYDC's Human Resources Office, as allowed by law, two (2) weeks before such individual shall be permitted to work at NVYDC. The State must be immediately notified of any changes in the status of the above information when the Contractor becomes aware of such changes. Required Background Checks are to consist of the following:

- i. Fingerprints;
- ii. Identity and Employment Eligibility verification as required by Form I-9 of the US Department of Justice;
- iii. Check of the TBI's Tennessee Sexual Offender Registry; and
- iv. Check of the Elderly and Vulnerable Abuse Registry maintained by the Tennessee Department of Health.

- (7) Contractor shall warrant that all individuals expected to be assigned to perform nursing services at NVYDC are drug-free at the point of initial assignment and Contractor shall ensure that such individuals are included in a random drug testing program conducted by the Contractor. The first set of test results shall be submitted to NVYDC's Human Resources Office two (2) weeks before such individual shall be permitted to work at NVYDC; subsequent test results shall be submitted annually thereafter. Contractor shall further warrant that no such individual is in the Nursing Peer Assistance Program. NVYDC will not accept any such individual who is in the Nursing Peer Assistance Program; and

- (8) The Contractor warrants that no individual expected to be assigned to perform nursing services at NVYDC who is a former employee of the State of Tennessee shall be referred within six (6) months of such individual's final separation from employment with the State of Tennessee. Further, no former employee shall be accepted who was dismissed for cause, or with or without cause during a probationary period, or resigned not in good standing from employment with the State of Tennessee.

- c. The Contractor's staff and the individuals expected to be assigned to perform nursing services at NVYDC shall not be deemed for any purpose to be employees of the State. With respect to the Contractor's staff and such individuals, the Contractor shall be responsible for payroll, benefits, workers compensation, withholding of all state and federal taxes, and depositing same at the appropriate times and places.

- d. The State shall be the sole judge of the performance of the individuals expected to be assigned, and those assigned, to perform nursing services at NXYDC. The Contractor agrees to remove and replace, at Contractor expense, any such individual judged by the State to be providing unsatisfactory services. The Contractor further agrees not to charge the State for any services performed which the State designates as being unacceptable.
- e. The Contractor agrees, and shall ensure that the individuals assigned to perform nursing services at NXYDC agree, to abide by all applicable federal, state, and local laws, statutes, rules, ordinances, policies, and procedures while providing services to service recipients at NXYDC and to fulfill any applicable requirements regarding treatment, service recipient confidentiality, and accreditation set forth by The American Correctional Association. Further, all nursing services provided to service recipients at NXYDC shall be provided in a manner that meets or exceeds the following standards and laws:
- (1) All applicable Medicare and Tennessee's Medicaid program, TennCare, standards and regulations;
 - (2) All standards required by the American Correctional Association;
 - (3) Facility Policies and Procedures;
 - (4) Medical Staff Bylaws of Facility;
 - (5) Tennessee Nurse Practice Act;
 - (6) Title 33, Tennessee Code Annotated; and
 - (7) All Tennessee Department of Children's Services (DCS) Rules as published in the official compilation of Tennessee Administrative Rules.
- f. The Contractor shall ensure that each individual assigned to perform nursing services in the role of a Licensed Practical Nurse (LPN) at NXYDC is responsible for the delivery of continuous and comprehensive nursing services which are consistent with current standards of nursing practice and in accordance with current NXYDC policies and procedures as well as other policies and procedures specified in this Contract. The Contractor shall also ensure that each such individual is responsible for, and has the necessary skills to carry out, the following:
- (1) Implement the nursing process:
 - i. Assess service recipients and identify their physical and psychiatric problems/needs;
 - ii. Plan and implement nursing interventions appropriate to the service recipient(s) problem/needs; and
 - iii. Evaluate the effectiveness of nursing interventions;
 - (2) Administer medication:
 - i. Know the therapeutic dosage usage and effects of medication;
 - ii. Monitor and recognize the side effects of medications;
 - iii. Recognize and report adverse responses to medication;
 - iv. Recognize off-label use of prescribed medication;
 - v. Accurately documents medication administration, therapeutic responses,

- side effects and adverse reactions;
- vi. Make appropriate notification to the physician, nurse practitioner, or physician assistant of any untoward service recipient response to medication; and
 - vii. Follow all NVYDC policies and procedures related to medications.
- (3) Transcribe and implement Physician Orders:
- i. Transcribe and implement Physicians' Orders according to NVYDC policies and procedures and accepted nursing practice standards; and
 - ii. Follow NVYDC policies and procedures related to Physicians' Order transcription and implementation, i.e., signatures, co-signatures, time frames and other documentation;
- (4) Therapeutically interact with and communicate with service recipients:
- i. Utilize therapeutic interventions and communication with service recipients;
 - ii. Treat service recipients with respect and dignity, and honor their rights and confidentiality according to federal and state law as well as NVYDC policies and procedures; and
 - iii. Participate in and document nursing interventions in both psychiatric and medical crises;
- (5) Communicate and document pertinent clinical and administrative information:
- i. Notify the nursing supervisor and the physician, nurse practitioner, or physician assistant appropriately of clinical and administrative crises and documents these efforts;
 - ii. Document the pertinent nursing interventions and service recipient responses in the service recipient record.
- g. NVYDC shall provide a half day orientation to each individual assigned to perform nursing services at the NVYDC under this contract. There will be no payment to Contractor for this half day of training.
- h. All individuals assigned by the Contractor to perform nursing services at NVYDC must successfully complete an initial orientation conducted by NVYDC before performing work at NVYDC.

A.6. Process:

- a. Individuals assigned to perform nursing services at NVYDC may be scheduled to work on any of the shifts based on the staff needs as determined by NVYDC. Such individuals must be available within four (4) hours of call to Contractor. The Contractor must respond either affirming or passing its ability to provide the requested services in the required, four (4) hour, time frame. Failure to respond or a late response shall be deemed a denial. Detailed records of each contact shall be kept.
- b. Individuals assigned to perform nursing services at NVYDC who are scheduled in advance may be cancelled with a four (4) hour notice prior to the start of the shift without any charge to NVYDC. Notice to the Contractor of less than four (4) hours shall result in a maximum of four (4) hours being billed to the State.

- c. It shall be the Contractor's responsibility to provide the replacement coverage if an individual assigned to perform nursing services at NVYDC calls in or fails to report for duty.
- d. Payment is authorized as shown below, with the expectation that the individual assigned to perform nursing services at NVYDC will take a full meal break. The State does not pay for meal breaks. If such individual is late or leaves work early, the time cannot be made up by shortening or eliminating a meal break. In the event NVYDC needs such individual to work through a meal break, only NVYDC's Health Administrator shall authorize such work and initial the particular time sheet signifying such authorization. Any partial shift work shall be at the sole discretion of the State. Only NVYDC's Shift Supervisor is authorized to sign the charge slip(s) of an individual assigned to perform nursing services at NVYDC. Final approval is provided by NVYDC's Health Administrator or designee.

Shift	Time	Meal Break	Total Paid
1 st Shift	6:30a.m to 7:30p.m.	.5 hr lunch	12.5 hrs paid

* Weekend rates start on 6:30a.m Saturday morning until 7:30p.m Sunday night as indicated in the chart above

- e. If the State has entered into more than one (1) Contract to meet the staffing needs for nursing services at NVYDC, the following is to be understood by the Contractor(s):
 - (1) All proposals received were scored and ranked. After meeting the qualifications evidence, the proposer with the lowest evaluation cost amount was designated as Primary. The proposers with the next two lowest evaluation cost amounts were designated as Secondary and Alternate. This Contract shall be (Primary, Secondary, Alternate).
 - (2) When one or more individuals appropriately licensed to perform nursing services are needed at NVYDC, the Primary Contractor shall be contacted. Should the Primary Contractor be unable to supply the full-required coverage, the Secondary Contractor shall be contacted to supply any additional such individuals still required. Should the Secondary Contractor be unable to provide the total coverage necessary, then the Alternate Contractor shall be contacted to supply any additional such individuals still required. For example, should the State require ten (10) such individuals and the Primary Contractor is only able to provide eight (8) such individuals, the Secondary Contractor shall be contacted for the two (2) additional such individuals required. If the Secondary Contractor can provide only one (1) such individual, the Alternate Contractor shall be contacted for the remaining coverage.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning May 1, 2012, and ending on June 30, 2016. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)**. The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the

Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
 - a. The Contractor’s compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description (A.5.f. of the Scope of Services)	Amount (per compensable increment) May 1, 2012- June 30, 2016
LPN Nurse Service — Regular Shifts	\$ Per Hour
LPN Nurse Service — Weekend Shifts*	\$ Per Hour
LPN Nurse Service — Holiday Shifts	\$ Per Hour

* Weekend rates start on 6:30a.m Saturday morning until 7:30p.m Sunday night as indicated in the pro forma contract; Section A. Scope of Services: Subsection A.6. Process:, d.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice ,Attachment A, the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Kim Crabtree, Fiscal Director
 New Visions Youth Development Center
 3965 Stewarts Lane
 Nashville, TN 37218

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
 - (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Department of Children's Services/NVYDC
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)

- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period

b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not

limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment B, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or

provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Kim Crabtree
Administrative Manager
New Visions Youth Development Center
3965 Stewarts Lane
Nashville, TN 37218
E-mail: Kimberly.Crabtree@tn.gov
Phone: 615-532-5341
Fax: 615-532-8402

The Contractor:

Contractor Contact Name & Title
Contractor Name
Address
Email Address
Telephone # Number
FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:

Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000.00) per claim and two million dollars (\$2,000,000.00) aggregate.
 - b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

- E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
 - b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;

- d. any technical specifications provided to proposers during the procurement process to award this Contract;
 - e. the Contractor's proposal seeking this Contract.
- E.9. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.10. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.11. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

- E.13. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.14. Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorneys fees, caused by attempts to enforce such provisions.
- E.15. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.
- E.16. Not a DCS Employee. The Contractor must inform the client in writing that the Contractor is a private provider and not an employee of the Department of Children's Services.
- E.17. Violation of Security and Facility Policies. Violation of security and facility policies or practices, or possession of contraband items will result in the Contractor being immediately escorted from campus and arrested/criminally prosecuted as warranted.
- E.18. Criminal Background Check Pursuant to Tennessee Code Annotated 37-5-105 and 37-1-414, background investigations are required for all persons who have direct contact with children. Prior to the provision of any services for this contract, all Contractor personnel and Service Providers performing work under this contract must provide fingerprint samples to effect a full criminal background check in accordance with DCS policies 4.1, 14.24, 16.4 and 16.21 to be conducted by the Tennessee Bureau of Investigation (TBI) and the Federal Bureau of Investigation (FBI). These policies may be found at <http://www.state.tn.us/youth/dcsguide/policies.htm>. Fingerprints may only be submitted at DCS approved sites where they can be processed electronically. Contractor personnel must contact the DCS Internal Affairs Division at 615-741-4487 to obtain specific procedural information for the submission of fingerprints. Statewide locations for electronic submissions may be found at the following website address: https://www.cogentid.com/tn/index_tn.htm. The Contractor shall be responsible for the payment of all fee(s) for Contractor personnel providing their fingerprint samples and submitting to a criminal history review.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF CHILDREN'S SERVICES:

KATHRYN R. O'DAY, COMMISSIONER

DATE

ATTACHMENT B

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY**DATE OF ATTESTATION**