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**AGENDA ITEM  
REQUEST/JUSTIFICATION FORM**  
(To be completed by requesting Department)  
Forward all requests to Sharon Bourke, LC2 Civic Center  
**DEADLINE SUBMITTAL IS 3:00 P.M. WEDNESDAY  
BEFORE THE TUESDAY MEETING**

Agenda item: Consent  
(i.e. Consent/Recognition-Proclamation/Presentation/Public Hearing/Committee, etc.)  
Date to be on agenda: 1/12/2016

Exact wording to be used for the agenda: Resolution approving ERS II Access Agreement between the Douglas County Attorney's Office and the Nebraska Dept. of Health and Human Services for 2016 - 2020.

Action requested: Approval

Amount requested: N/A Object Code: N/A

Is item in current year's budget? Yes  No

Does this item commit funds in future years? Yes  No

If yes, explain: \_\_\_\_\_

If an agreement or contract, has the County Attorney reviewed and approved? Yes  No

Previous action taken on this item, if any: \_\_\_\_\_

Recommendations and rationale or action: n/a

Will anyone speak on behalf of this item, if so who? County Attorney or Designee

If this is a rush agenda item, please explain why: n/a

Submitted by (Name & Dept.): Shakil A. Malik, DCAO Ext. 7622

Date submitted: 1/4/2016

List Attachments: Resolution, Contract (3 copies)  
(Attach resolution and all pertinent documentation; i.e. contract, agreement, memorandums, etc.)

Certified resolutions can be obtained at the County Clerk's website:  
<http://www.douglascountyclerk.org/county-board-records/search-for-resolutions>

Completed by receiving office	Date	<u>1/4/16</u>	Time
Received in Administrative Office:			

# **BOARD OF COMMISSIONERS**

Douglas County, Nebraska

## **Resolved**

**WHEREAS**, the Douglas County Attorney's Office serves ex-officio as the Douglas County Coroner's Office and is responsible for the completion and submission of death records to the State of Nebraska; and,

**WHEREAS**, the Nebraska Department of Health and Human Services (DHHS) maintains and operates the State of Nebraska's electronic Vital Statistics Records system (ERS II); and

**WHEREAS**, Douglas County, Nebraska on behalf of the Douglas County Attorney's Office and DHHS desire to enter into an agreement to continue the Douglas County Attorney's Office's access to and usage of ERS II until December 31, 2020.

**NOW, THEREFORE, BE IT RESOLVED BY THIS BOARD OF COUNTY COMMISSIONERS, DOUGLAS COUNTY, NEBRASKA** that the attached Agreement between Douglas County, Nebraska and the Nebraska Department of Health and Human Services is approved, and the Chair of this Board is authorized and directed to ratify said Agreement on behalf of Douglas County, Nebraska.

DATED this 12<sup>th</sup> day of January 2016.

**AGREEMENT**  
**Between the**  
**NEBRASKA DEPARTMENT OF HEALTH & HUMAN SERVICES**  
**and**  
**Douglas County, Nebraska on behalf of the Douglas County Attorney**

This Agreement is entered into by and between the Nebraska Department of Health and Human Services of the State of Nebraska (hereafter Department) and Douglas County, Nebraska on behalf of the Douglas County Attorney located at 100 Hall of Justice, 1701 Farnam Omaha, NE 68183 (hereafter the User).

**HIPAA Clarification/Compliance:** The Nebraska Department of Health and Human Services is a single covered entity under HIPAA and complies with the all aspects of HIPAA and the new HITECH Act that was enacted in 2009. On March 26, 2013, the omnibus Final Rule was enacted by the U.S. Department of Health Services ("HHS"). The rule implemented changes to the privacy security and breach of notification and enforcement regulations of the Health Information Portability and Accountability Act ("HIPAA") as required by the Health Information Technology of Economic and Clinical Health Act 9"HITECH") initially published in 2009. Changes in the rule include that business associates have new requirements to comply with HIPAA privacy protections and security safeguards and are subject to enforcement and penalties by HHS and subcontractors of business associates are also considered business associates under the new rule.

**1. SCOPE OF SERVICES.**

The Department agrees to provide the User with access to the Electronic Registration System – Nebraska Version ERS II (hereafter ERS II) program.

1.1 Department Duties: the Department agrees to provide the following services to the User:

1.1a Provide access to the ERS-II for completing electronic death data and transmitting such data to the Department as required by state law Neb. Rev. Stat. §§71-601 to 71-602.01 and Neb. Rev. Stat. §§ 71-605 to 71-609.

1.1b The Department shall arrange for or provide training to the User's employees on how to operate the ERS II.

1.1c The Department shall provide ERS II program modifications, updates, and enhancements as available. Department shall arrange for maintenance on ERS II supplier for the User of the ERS II program software. This maintenance will include access to telephone support and technical support from the Department's Help Desk. The User shall be responsible for any telephone charges while using this support.

1.1d The Department may provide seminars or training meetings on the use of ERS II from time to time, which may be made available to the User's employees.

**2. USER OBLIGATION**

The User agrees to provide all equipment necessary for accessing, transmitting, and printing information from the ERS II.

2.1 In consideration of the services provided by the Department, the User agrees to the following:

2.1a The User shall provide all necessary computer equipment and internet access as necessary to utilize and operate the ERS II. The User shall allow the Department to access its equipment in order to install the ERS II program/Citrix client and periodically inspect operation of the ERS II program.

2.1b The User agrees that such data shall not be used by anyone other than User and/or its staff as set out by State law. The User shall electronically transmit the death data to the Department, as required by state law.

2.1c The User agrees that the data generated, or provided, or obtained from the ERS II shall not be release or published in any manner contrary to federal or state law or regulation. The User acknowledges that it may not release or publish in any manner information obtained from the ERS II that is designated by the Department for health and data research.

2.1d The User shall not utilize the ERS II program for any commercial purpose, nor shall the User lease, sell, distribute, or reveal the contents of the ERS II program to anyone contrary to federal or state law or regulation.

2.1e The User shall not alter, modify, or change in any way the ERS II program or materials without the written consent of the Department.

- 2.1f The User shall submit electronic data through the ERS II system. The User shall check electronic data for any irregularities or mistakes prior to transmitting data.
- 2.1g The User must register its employees with the Department and receive an assigned unique User ID and default password. The User shall follow the Departments strong PASSWORD requirements and security protocols as outlined in the training provided by the Department.
- 2.1h The User shall ensure employees, who terminate from employment or transferred to other responsibilities, will no longer have access to the ERS II program. The User is required to promptly notify the Department's Vital Records Unit when it needs an employee's User ID Terminated. The User shall ensure that no employee utilizes the User ID for a terminated or transferred employee. Sharing User IDs is a policy violation and may result in the termination of access to the Vital Records ERS II system.

### 3. ADDITIONAL TERMS

- 3.1 Term. The term of this Agreement shall be for a period commencing on January 1, 2016 and ending on December 31, 2020.
- 3.2 Termination. This Agreement may be terminated at any time upon the mutual written consent of the parties or by either party, with or without cause, upon ten (10) days written notice to the other party. In the event of termination, the Department shall be under no further obligation to the User. If termination occurs, the User agrees to delete the ERS-II program from its computer(s) and are subject to have their computer system inspected to ensure all ERS II program elements are removed.
- 3.3 Notices. All notices given under the terms of this Agreement shall be sent by United States certified mail, postage prepaid, to the respective party at the address set forth on the signature page hereof, or to such other addresses as the parties shall designate in writing from time to time.
- 3.4 Amendments to the Agreement. In the event that any changes to the ERS-II System or Nebraska certificates, the changes must follow statutory changes and/or rules and regulations of the Nebraska Health and Human Services Finance and Support.
- 3.5 Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of such Agreement shall continue in full force and effect.
- 3.6 Integration. This Agreement represents the entire agreement of the parties and it shall not be modified except in writing and signed by both parties.
- 3.7 Assignment. This Agreement is exclusive to the parties and shall not be assigned by the User without the express written consent of the Department. Any assignment made by the User without such consent shall be void. Assignment or attempted assignment by the User without consent shall constitute a material breach of this Agreement.
- 3.8 Confidentiality. All information designated by the Department on vital event records as being for health data and statistical research shall be considered confidential under NEB. Rev. STAT. §71-602.01 (2005). The User shall provide for the protection and security of the content of the information, the destruction of the information when applicable, and the appropriate use of the information. The release of such information pursuant to this section shall not make otherwise confidential information a public record.
- 3.9 Incorporated. All references in this Agreement to laws, rules, regulations, guidelines, directives, and attachments which set forth standards and procedures to be followed by the User in discharging its obligations under this Agreement shall be deemed incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text, herein.
- 3.10 Integration. This Agreement represents the entire agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this Agreement.
- 3.11 Governing Law. This Agreement shall be subject to, governed by, and construed according to the laws of the State of Nebraska, without regard to principles of conflict of laws.

- 3.12 **Breach.** Should the User breach this Agreement, the Department may, at its discretion, terminate this Agreement immediately upon written notice to the User. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law. The waiver by the Department of a breach of any provision of this Agreement by the User shall not operate or be construed as a waiver of any subsequent breach by the User. No waiver shall be valid unless in writing and signed by the Director of the Department.
- 3.13 It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the Department shall not be deemed to be employees of the User and employees of the User shall not be deemed to be employees of the Department. The Department and the User shall be responsible to their respective employees for all salaries and benefits. Neither the Department's employees nor the User's employees shall be entitled to any salary or wages from the other party or to any benefits made to their employees, including but not limited to, overtime, vacation, retirement benefits, workers compensation, sick leave or injury leave. The Department and the User shall be responsible for maintaining Worker's Compensation Insurance and Unemployment Insurance for their respective employees, and for payment of all Federal, State, local and any other payroll taxes with respect to their employees' compensation.
- 3.14 Each party agrees to indemnify and hold harmless to the fullest extent allowed by law, the other party and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of their principals, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom.

Executed by the parties or their duly authorized representatives on the dates indicated herein below.

FOR THE Douglas County Attorney:

  
\_\_\_\_\_  
Douglas County Attorney

11/30/2015  
\_\_\_\_\_  
Date

For Douglas County

\_\_\_\_\_  
Board Chair  
Douglas County Board of Commissioners

\_\_\_\_\_  
Date

FOR THE DEPARTMENT:

\_\_\_\_\_  
Stanley S. Cooper, Service Administrator  
Vital Records Management  
Nebraska Health and Human Services Finance and Support  
PO Box 95065  
Lincoln, NE 68509-5065  
(402) 471-2873

\_\_\_\_\_  
Date