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STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF MEDICAID BUSINESS AND POLICY

Jeffrey A. Meyers
Acting Commissioner

Kathleen A. Dunn
Associate Commissioner

129 PLEASANT STREET, CONCORD, NH 03301-3857
603-271-9422 1-800-852-3345 Ext. 9422
Fax: 603-271-8431 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

January 13, 2016

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services, Office of Medicaid Business and Policy, to exercise a **sole source** contract renewal option with Stephen F. Caldwell, DDS, MS., Purchase Order #1038009, Vendor # 259769, 34 Ballard Road, Derry, NH 03038, by increasing the Price Limitation by \$137,280 from \$104,832 to an amount not to exceed \$242,112 to provide orthodontics consultant services, and extend the Completion Date from June 30, 2016 to June 30, 2018, effective July 1, 2016 or the date of Governor and Council approval, whichever is later. This agreement was originally approved by Governor and Council on June 18, 2014, Item #62. 50% Federal Funds, 50% General Funds.

Funds are available in the following account for SFY 2017, and are anticipated to be available in SFY 2018, upon the availability and continued appropriation of funds in the future operating budgets, with authority to adjust amounts within the price limitation and adjust encumbrances between State Fiscal Years through the Budget Office if needed and justified, without approval from Governor and Executive Council.

05-95-47-470010-7937 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: OFC OF MEDICAID & BUS PLCY, OFFICE OF MEDICAID & BUSINESS POLICY, MEDICAID ADMINISTRATION

Fiscal Year	Class / Account	Class Title	Job Number	Current Modified Budget	Increased (Decreased) Amount	Revised Modified Budget
SFY 2015	102-500731	Contracts for Prog Svc	47000102	52,416	0	52,416
SFY 2016	102-500731	Contracts for Prog Svc	47000102	52,416	0	52,416
SFY 2017	102-500731	Contracts for Prog Svc	47000102	0	62,400	62,400
SFY 2018	102-500731	Contracts for Prog Svc	47000102	0	74,880	74,880
			Total	\$104,832	\$137,280	\$242,112

EXPLANATION

This request is **sole source**. The original contract was approved as a sole source Agreement with Dr. Caldwell because the Office of Medicaid and Business Policy had competitively procured these services for the 18 years prior, with Dr. Caldwell's predecessor as the only respondent with each bidding cycle. Dr. Caldwell's predecessor retired June 30, 2014 and active recruitment ensued via direct outreach to New Hampshire orthodontists. This effort has resulted in only two inquiries of interest: one from an orthodontist who was not available a significant portion of the year and who has no recent Medicaid experience, and one from Dr. Caldwell. Dr. Caldwell presented with interest, academic credentials and New Hampshire licensure in orthodontics, and with current expertise in Medicaid orthodontic policies and prior authorization procedures.

Orthodontic treatment of severe handicapping malocclusion is mandatory under the Early Periodic Screening Diagnosis and Treatment and medical necessity requirements of Title XIX. The State Plan and administrative rules set out requirements and criteria based on severity of malocclusions for coverage by NH Medicaid for eligible children. Each request for coverage must be evaluated relative to the mandates, requirements and rules in order to determine approval or denial of orthodontic treatment; inappropriate evaluation and denial results in failure to provide access to a required treatment.

To assure access to care in compliance with requirements and mandates, and to assure quality of care to children insured by NH Medicaid, orthodontic cases submitted for approval of Medicaid coverage are evaluated by a fully credentialed and licensed orthodontist relative to the criteria set forth in the current administrative rules. Evaluation of each case by a fully credentialed orthodontist assures access to treatment for children suffering from severe handicapping malocclusions and assures fiscal responsibility by appropriately denying coverage of cases that do not meet or exceed the criteria outlined in the administrative rules defining medical necessity for orthodontic treatment.

Having an orthodontist-consultant within the Department has proven to provide the most cost efficient means of assuring access to mandatory orthodontic treatment while avoiding overpayment, as well as wrongful denial, of coverage of orthodontic treatment. In addition to completing prior authorization reviews, the orthodontist-consultant also represents the Department at administrative appeals and acts as subject matter expert to assist in developing policies, rules, protocols, and program processes related to administration of the orthodontic benefit in Medicaid.

The salary rate is \$75 per hour for these services for state fiscal year 2017 and \$90 for state fiscal year 2018. Dr. Caldwell will work 16 hours per week, 52 weeks each year. The Office of Medicaid Business & Policy approved increases to reimbursement rates for each state fiscal year, reflecting an overall increase of \$32,448. The increase is due to an increase in the hourly rate in order to better align compensation rates with that of prevailing rates for orthodontists in the marketplace and in the private sector.

Should Governor and Executive Council not authorize this Request, dental access for children in NH Medicaid will predictably be reduced significantly both in the near and long term.

This Agreement has the option to extend for two (2) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and approval of the Governor and Council. The Department is exercising this option.

The Contractor successfully fulfilled and achieved the performance measures in the original contract. The Contractor will ensure that the following performance measures are annually achieved and monitored monthly to measure the effectiveness of the amendment agreement:

- Completes all deliverables related to program research and development on or before dates assigned by Office of Medicaid Business and Policy Dental Director;
- Maintains greater than 95% rate of support of consultant's determination of benefits at fair hearings;
- Responds in kind within 7 days to requests for information from providers, Department staff and Medicaid members;
- Completes reviews and corrections of 85% of claims within 45 days;
- Completes 85% of prior authorization requests within 45 days.

Area served: statewide.

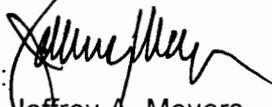
Source of Funds are 50% Federal Funds from Title XIX Medicaid Funds and 50% General Funds.

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



Kathleen A. Dunn, MPH
Associate Commissioner
Medicaid Director

Approved by: 
Jeffrey A. Meyers
Acting Commissioner



**State of New Hampshire
Department of Health and Human Services
Amendment #1 to the
Orthodontic Consultant Contract**

This 1st Amendment to the Orthodontic Consultant contract (hereinafter referred to as "Amendment One") dated this 28th day of December, 2015, is by and between the State of New Hampshire, Department of Health and Human Services (hereinafter referred to as the "State" or "Department") and Stephen F. Caldwell, DDS, MS, (hereinafter referred to as "the Contractor"), an individual with a place of business at 34 Ballard Road, Derry, NH 03038.

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on June 18, 2014, Item #62, the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract as amended and in consideration of certain sums specified; and

WHEREAS, the State and the Contractor have agreed to make changes to the scope of work, payment schedules and terms and conditions of the contract; and

WHEREAS, pursuant to the General Provisions, Paragraph 18, the State may modify the scope of work and the payment schedule of the contract by written agreement of the parties;

WHEREAS, the parties agree to extend the term of the agreement, and increase the price limitation, to support continued delivery of these services, and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Contract and set forth herein, the parties hereto agree as follows:

1. Amend Form P-37, Block 1.7, to read June 30, 2018.
2. Amend Form P-37, Block 1.8, to read \$242,112.
3. Amend Form P-37, Block 1.9, to read Eric Borrin, Director of Contracts and Procurement.
4. Amend Form P-37, Block 1.10 to read 603-271-9558.
5. Delete Exhibit B in its entirety and replace with Exhibit B Amendment #1.
6. Delete Exhibit C in its entirety and replace with Exhibit C Amendment #1.
7. Delete Exhibit G in its entirety and replace with Exhibit G Amendment #1.

This amendment shall be effective upon the date of Governor and Executive Council approval.



IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

State of New Hampshire
Department of Health and Human Services

1-14-16
Date

Kathleen A. Dunn
Kathleen A. Dunn, MPH
Associate Commissioner

Stephen F. Caldwell, DDS, MS

1-13-16
Date

Stephen F. Caldwell, DDS
Name: Stephen F. Caldwell, DDS, MS
Title: Orthodontic Consultant

Acknowledgement:

State of NH, County of Merrimack on 1/13/16, before the undersigned officer, personally appeared the person identified above, or satisfactorily proven to be the person whose name is signed above, and acknowledged that s/he executed this document in the capacity indicated above.

Melody Crockett
Signature of Notary Public or Justice of the Peace

Melody Crockett, Notary
Name and Title of Notary or Justice of the Peace

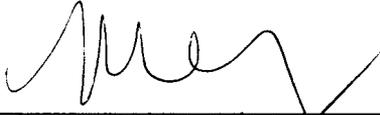
My Commission Expires: 8/14/18



The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

2/12/16
Date


Name: Kevin A. Foley
Title: Attorney

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: _____ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:
Title:



Exhibit B Amendment #1

Method and Conditions Precedent to Payment

1) Funding Sources:

a. \$137,280 = 50% federal funds from title XIX Medicaid, CFDA #93.778, and 50% general funds.

2) The State shall pay the Contractor an amount not to exceed the Price Limitation, block 1.8, for the services provided by the Contractor pursuant to Exhibit A, Scope of Services.

a. Payment for said services shall be made as follows:

The Contractor will submit an invoice in a form satisfactory to the State by the twentieth working day of each month, which identifies and requests reimbursement for authorized expenses incurred in the prior month. The State shall make payment to the Contractor within thirty (30) days of receipt of each invoice for Contractor services provided pursuant to this Agreement. The final invoice shall be due to the State no later than forty (40) days after the contract Completion Date.

b. The invoice must be submitted to:

Dr. Sarah Finne, Medicaid Dental Director
Department of Health and Human Services
Office of Medicaid Business and Policy
129 Pleasant Street
Concord, NH 03301-3852
Email address: Sarah.Finne@dhhs.state.nh.us

3) The Contractor agrees to use and apply all payments made by the State for direct and indirect costs and expenses including, but not limited to, personnel costs and operating expenses related to the Services provided. The Contractor shall be paid only for the total number of hours actually worked as detailed below.

4) Budget:

SFY 2017	\$75/hour x 16 hours x 52 weeks =	\$ 62,400
SFY 2018	\$90/hour x 16 hours x 52 weeks =	<u>\$ 74,880</u>
	TOTAL:	\$137,280

5) Payment will be made by the State agency subsequent to approval of the submitted invoice and if sufficient funds are available to cover the costs and expenses incurred upon compliance with reporting requirements and performance and utilization review. Contractors will keep detailed records of their activities related to DHHS-funded programs and services.

6) Contractors are accountable to meet the scope of services. Failure to meet the scope of services may jeopardize the funded contractor's current and/or future funding. Corrective action may include actions such as a contract amendment or termination of the contract. The contracted organization shall prepare progress reports, as required.

7) Notwithstanding paragraph 18 of the General Provisions P-37, an amendment limited to adjustments to amounts between and among account numbers, within the price limitation, and to adjust encumbrances between State Fiscal Years through the Budget Office if needed and justified, may be made by written agreement of both parties and may be made without obtaining approval of the Governor and Executive Council.

Exhibit B – Methods and Conditions Precedent to Payment_Contractor Initials SFC



SPECIAL PROVISIONS

Contractors Obligations: The Contractor covenants and agrees that all funds received by the Contractor under the Contract shall be used only as payment to the Contractor for services provided to eligible individuals and, in the furtherance of the aforesaid covenants, the Contractor hereby covenants and agrees as follows:

1. **Compliance with Federal and State Laws:** If the Contractor is permitted to determine the eligibility of individuals such eligibility determination shall be made in accordance with applicable federal and state laws, regulations, orders, guidelines, policies and procedures.
2. **Time and Manner of Determination:** Eligibility determinations shall be made on forms provided by the Department for that purpose and shall be made and remade at such times as are prescribed by the Department.
3. **Documentation:** In addition to the determination forms required by the Department, the Contractor shall maintain a data file on each recipient of services hereunder, which file shall include all information necessary to support an eligibility determination and such other information as the Department requests. The Contractor shall furnish the Department with all forms and documentation regarding eligibility determinations that the Department may request or require.
4. **Fair Hearings:** The Contractor understands that all applicants for services hereunder, as well as individuals declared ineligible have a right to a fair hearing regarding that determination. The Contractor hereby covenants and agrees that all applicants for services shall be permitted to fill out an application form and that each applicant or re-applicant shall be informed of his/her right to a fair hearing in accordance with Department regulations.
5. **Gratuities or Kickbacks:** The Contractor agrees that it is a breach of this Contract to accept or make a payment, gratuity or offer of employment on behalf of the Contractor, any Sub-Contractor or the State in order to influence the performance of the Scope of Work detailed in Exhibit A of this Contract. The State may terminate this Contract and any sub-contract or sub-agreement if it is determined that payments, gratuities or offers of employment of any kind were offered or received by any officials, officers, employees or agents of the Contractor or Sub-Contractor.
6. **Retroactive Payments:** Notwithstanding anything to the contrary contained in the Contract or in any other document, contract or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for costs incurred for any purpose or for any services provided to any individual prior to the Effective Date of the Contract and no payments shall be made for expenses incurred by the Contractor for any services provided prior to the date on which the individual applies for services or (except as otherwise provided by the federal regulations) prior to a determination that the individual is eligible for such services.
7. **Conditions of Purchase:** Notwithstanding anything to the contrary contained in the Contract, nothing herein contained shall be deemed to obligate or require the Department to purchase services hereunder at a rate which reimburses the Contractor in excess of the Contractors costs, at a rate which exceeds the amounts reasonable and necessary to assure the quality of such service, or at a rate which exceeds the rate charged by the Contractor to ineligible individuals or other third party funders for such service. If at any time during the term of this Contract or after receipt of the Final Expenditure Report hereunder, the Department shall determine that the Contractor has used payments hereunder to reimburse items of expense other than such costs, or has received payment in excess of such costs or in excess of such rates charged by the Contractor to ineligible individuals or other third party funders, the Department may elect to:
 - 7.1. Renegotiate the rates for payment hereunder, in which event new rates shall be established;
 - 7.2. Deduct from any future payment to the Contractor the amount of any prior reimbursement in excess of costs;

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- 7.3. Demand repayment of the excess payment by the Contractor in which event failure to make such repayment shall constitute an Event of Default hereunder. When the Contractor is permitted to determine the eligibility of individuals for services, the Contractor agrees to reimburse the Department for all funds paid by the Department to the Contractor for services provided to any individual who is found by the Department to be ineligible for such services at any time during the period of retention of records established herein.

RECORDS: MAINTENANCE, RETENTION, AUDIT, DISCLOSURE AND CONFIDENTIALITY:

- 8. **Maintenance of Records:** In addition to the eligibility records specified above, the Contractor covenants and agrees to maintain the following records during the Contract Period:
 - 8.1. Fiscal Records: books, records, documents and other data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of the Contract, and all income received or collected by the Contractor during the Contract Period, said records to be maintained in accordance with accounting procedures and practices which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the Department, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the Department.
 - 8.2. Statistical Records: Statistical, enrollment, attendance or visit records for each recipient of services during the Contract Period, which records shall include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the Department to obtain payment for such services.
 - 8.3. Medical Records: Where appropriate and as prescribed by the Department regulations, the Contractor shall retain medical records on each patient/recipient of services.
- 9. **Audit:** Contractor shall submit an annual audit to the Department within 60 days after the close of the agency fiscal year. It is recommended that the report be prepared in accordance with the provision of Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations" and the provisions of Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the US General Accounting Office (GAO standards) as they pertain to financial compliance audits.
 - 9.1. Audit and Review: During the term of this Contract and the period for retention hereunder, the Department, the United States Department of Health and Human Services, and any of their designated representatives shall have access to all reports and records maintained pursuant to the Contract for purposes of audit, examination, excerpts and transcripts.
 - 9.2. Audit Liabilities: In addition to and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department, all payments made under the Contract to which exception has been taken or which have been disallowed because of such an exception.
- 10. **Confidentiality of Records:** All information, reports, and records maintained hereunder or collected in connection with the performance of the services and the Contract shall be confidential and shall not be disclosed by the Contractor, provided however, that pursuant to state laws and the regulations of the Department regarding the use and disclosure of such information, disclosure may be made to public officials requiring such information in connection with their official duties and for purposes directly connected to the administration of the services and the Contract; and provided further, that the use or disclosure by any party of any information concerning a recipient for any purpose not directly connected with the administration of the Department or the Contractor's responsibilities with respect to purchased services hereunder is prohibited except on written consent of the recipient, his attorney or guardian.



Notwithstanding anything to the contrary contained herein the covenants and conditions contained in the Paragraph shall survive the termination of the Contract for any reason whatsoever.

11. **Reports: Fiscal and Statistical:** The Contractor agrees to submit the following reports at the following times if requested by the Department.
 - 11.1. Interim Financial Reports: Written interim financial reports containing a detailed description of all costs and non-allowable expenses incurred by the Contractor to the date of the report and containing such other information as shall be deemed satisfactory by the Department to justify the rate of payment hereunder. Such Financial Reports shall be submitted on the form designated by the Department or deemed satisfactory by the Department.
 - 11.2. Final Report: A final report shall be submitted within thirty (30) days after the end of the term of this Contract. The Final Report shall be in a form satisfactory to the Department and shall contain a summary statement of progress toward goals and objectives stated in the Proposal and other information required by the Department.
12. **Completion of Services: Disallowance of Costs:** Upon the purchase by the Department of the maximum number of units provided for in the Contract and upon payment of the price limitation hereunder, the Contract and all the obligations of the parties hereunder (except such obligations as, by the terms of the Contract are to be performed after the end of the term of this Contract and/or survive the termination of the Contract) shall terminate, provided however, that if, upon review of the Final Expenditure Report the Department shall disallow any expenses claimed by the Contractor as costs hereunder the Department shall retain the right, at its discretion, to deduct the amount of such expenses as are disallowed or to recover such sums from the Contractor.
13. **Credits:** All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the Contract shall include the following statement:
 - 13.1. The preparation of this (report, document etc.) was financed under a Contract with the State of New Hampshire, Department of Health and Human Services, with funds provided in part by the State of New Hampshire and/or such other funding sources as were available or required, e.g., the United States Department of Health and Human Services.
14. **Prior Approval and Copyright Ownership:** All materials (written, video, audio) produced or purchased under the contract shall have prior approval from DHHS before printing, production, distribution or use. The DHHS will retain copyright ownership for any and all original materials produced, including, but not limited to, brochures, resource directories, protocols or guidelines, posters, or reports. Contractor shall not reproduce any materials produced under the contract without prior written approval from DHHS.
15. **Operation of Facilities: Compliance with Laws and Regulations:** In the operation of any facilities for providing services, the Contractor shall comply with all laws, orders and regulations of federal, state, county and municipal authorities and with any direction of any Public Officer or officers pursuant to laws which shall impose an order or duty upon the contractor with respect to the operation of the facility or the provision of the services at such facility. If any governmental license or permit shall be required for the operation of the said facility or the performance of the said services, the Contractor will procure said license or permit, and will at all times comply with the terms and conditions of each such license or permit. In connection with the foregoing requirements, the Contractor hereby covenants and agrees that, during the term of this Contract the facilities shall comply with all rules, orders, regulations, and requirements of the State Office of the Fire Marshal and the local fire protection agency, and shall be in conformance with local building and zoning codes, by-laws and regulations.
16. **Equal Employment Opportunity Plan (EEO):** The Contractor will provide an Equal Employment Opportunity Plan (EEO) to the Office for Civil Rights, Office of Justice Programs (OCR), if it has received a single award of \$500,000 or more. If the recipient receives \$25,000 or more and has 50 or



more employees, it will maintain a current EEOP on file and submit an EEOP Certification Form to the OCR, certifying that its EEOP is on file. For recipients receiving less than \$25,000, or public grantees with fewer than 50 employees, regardless of the amount of the award, the recipient will provide an EEOP Certification Form to the OCR certifying it is not required to submit or maintain an EEOP. Non-profit organizations, Indian Tribes, and medical and educational institutions are exempt from the EEOP requirement, but are required to submit a certification form to the OCR to claim the exemption. EEOP Certification Forms are available at: <http://www.ojp.usdoj/about/ocr/pdfs/cert.pdf>.

17. **Limited English Proficiency (LEP):** As clarified by Executive Order 13166, Improving Access to Services for persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, Contractors must take reasonable steps to ensure that LEP persons have meaningful access to its programs.
18. **Pilot Program for Enhancement of Contractor Employee Whistleblower Protections:** The following shall apply to all contracts that exceed the Simplified Acquisition Threshold as defined in 48 CFR 2.101 (currently, \$150,000)

CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)

- (a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
- (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

19. **Subcontractors:** DHHS recognizes that the Contractor may choose to use subcontractors with greater expertise to perform certain health care services or functions for efficiency or convenience, but the Contractor shall retain the responsibility and accountability for the function(s). Prior to subcontracting, the Contractor shall evaluate the subcontractor's ability to perform the delegated function(s). This is accomplished through a written agreement that specifies activities and reporting responsibilities of the subcontractor and provides for revoking the delegation or imposing sanctions if the subcontractor's performance is not adequate. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions.

When the Contractor delegates a function to a subcontractor, the Contractor shall do the following:

- 19.1. Evaluate the prospective subcontractor's ability to perform the activities, before delegating the function
- 19.2. Have a written agreement with the subcontractor that specifies activities and reporting responsibilities and how sanctions/revocation will be managed if the subcontractor's performance is not adequate
- 19.3. Monitor the subcontractor's performance on an ongoing basis



- 19.4. Provide to DHHS an annual schedule identifying all subcontractors, delegated functions and responsibilities, and when the subcontractor's performance will be reviewed
- 19.5. DHHS shall, at its discretion, review and approve all subcontracts.

If the Contractor identifies deficiencies or areas for improvement are identified, the Contractor shall take corrective action.

DEFINITIONS

As used in the Contract, the following terms shall have the following meanings:

COSTS: Shall mean those direct and indirect items of expense determined by the Department to be allowable and reimbursable in accordance with cost and accounting principles established in accordance with state and federal laws, regulations, rules and orders.

DEPARTMENT: NH Department of Health and Human Services.

FINANCIAL MANAGEMENT GUIDELINES: Shall mean that section of the Contractor Manual which is entitled "Financial Management Guidelines" and which contains the regulations governing the financial activities of contractor agencies which have contracted with the State of NH to receive funds.

PROPOSAL: If applicable, shall mean the document submitted by the Contractor on a form or forms required by the Department and containing a description of the Services to be provided to eligible individuals by the Contractor in accordance with the terms and conditions of the Contract and setting forth the total cost and sources of revenue for each service to be provided under the Contract.

UNIT: For each service that the Contractor is to provide to eligible individuals hereunder, shall mean that period of time or that specified activity determined by the Department and specified in Exhibit B of the Contract.

FEDERAL/STATE LAW: Wherever federal or state laws, regulations, rules, orders, and policies, etc. are referred to in the Contract, the said reference shall be deemed to mean all such laws, regulations, etc. as they may be amended or revised from the time to time.

CONTRACTOR MANUAL: Shall mean that document prepared by the NH Department of Administrative Services containing a compilation of all regulations promulgated pursuant to the New Hampshire Administrative Procedures Act. NH RSA Ch 541-A, for the purpose of implementing State of NH and federal regulations promulgated thereunder.

SUPPLANTING OTHER FEDERAL FUNDS: The Contractor guarantees that funds provided under this Contract will not supplant any existing federal funds available for these services.



**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO
FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS AND
WHISTLEBLOWER PROTECTIONS**

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

Contractor will comply, and will require any subgrantees or subcontractors to comply, with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;
- the Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;
- the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);
- the Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;
- the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;
- the Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;
- the Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;
- 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;
- 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) the Pilot Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Exhibit G- Amendment #1

Contractor Initials

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Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations and Whistleblower protections

New Hampshire Department of Health and Human Services
Exhibit G – Amendment #1



In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to comply with the provisions indicated above.

Contractor Name: Stephen F. Caldwell, DDS, MS

1-13-16
Date

Stephen F. Caldwell, DDS
Name: Stephen F. Caldwell, DDS, MS
Title: Orthodontic Consultant



Interinsurance Exchange of the Automobile Club

Automobile Insurance Policy Coverages and Limits

Modified Renewal Declarations



We are pleased to offer you a renewal for your automobile insurance policy. To renew your policy, send at least the minimum payment on or before the due date. Insurance is in effect only for the vehicles, coverages, and limits of liability shown on this declarations page and as set forth in the insurance policy and endorsements. These declarations, together with the contract and the endorsements in effect, complete your policy.

NAMED INSURED

CALDWELL, [REDACTED] AND STEPHEN
 34 BALLARD RD
 DERRY NH 03038-4827

AUTO POLICY NUMBER:
 NHA 083497624

POLICY PERIOD (EASTERN STANDARD TIME)

EFFECTIVE DATE:
 12-18-2015 (12:01 A.M.)

EXPIRATION DATE:
 06-18-2016 (12:01 A.M.)

VEHICLES

VEHICLE NUMBER	YEAR	MAKE	MODEL	IDENTIFICATION NUMBER	GARAGE ZIP CODE	ANNUAL MILES	VERIFIED MILEAGE	LEASED	FINANCED
1	2004	TYTA	4RUNNER SR5 BASE/SP	JTEBU14R840044714	03038	15,001 - 20,000	VERIFIED	NO	NO
3	2016	HOND	ACCORD SPORT	1HGCR2F56GA041515	03038	7,501 - 10,000	VERIFIED	NO	YES

COVERAGES AND LIMITS

Coverage is not in effect unless a premium or the word "included" is shown.

6 MONTH PREMIUMS

COVERAGES	LIMITS OF LIABILITY		Vehicle 1		Vehicle 3	
Liability						
Bodily Injury	\$1,000,000 each person / \$1,000,000 each occurrence		\$ 70	\$ 59		
Property Damage	\$250,000 each occurrence		\$ 70	\$ 55		
Medical						
Medical Payments	\$5,000		\$ 12	\$ 12		
Physical Damage (Actual Cash Value unless otherwise stated, less deductible)						
	Vehicle 1	Vehicle 3				
Comprehensive (Less Deductible)	ACV \$ 250	ACV \$ 200	\$ 16	\$ 25		
Collision (Less Deductible)	ACV \$ 500	ACV \$ 500	\$ 60	\$ 111		
Car Rental Expense (Per Day)	\$30	\$30	\$ 9	\$ 8		
Uninsured Motorist						
Bodily Injury Uninsured & Underinsured Vehicles	\$1,000,000 each person / \$1,000,000 each occurrence		\$ 38	\$ 33		
Total Premium			\$ 275	\$ 303		

"NA" indicates coverage not purchased.

THIS IS NOT A BILL

PREMIUM DISCOUNTS

Please refer to the enclosed document entitled "Premium Discounts Applied to Your Automobile Policy."

Grand Total *	\$ 578
Plus Premium Endorsements	
Total 6 Month Premium	\$ 578

*Includes all applicable discounts.

Interinsurance Exchange of the Automobile Club

Automobile Insurance Policy Coverages and Limits

Modified Renewal Declarations (Continued)

AUTO POLICY NUMBER: NHA 083497624

POLICY EFFECTIVE DATE: 12-18-2015

DRIVERS (UNLESS LISTED AS EXCLUDED)

DRIVER NUMBER	NAME	GENDER	MARITAL STATUS	YEAR FIRST LICENSED
1	[REDACTED]	FEMALE	MARRIED	1968
2	CALDWELL, STEPHEN	MALE	MARRIED	1965

[REDACTED]

DRIVER NUMBER	DRIVING RECORD			DRIVER STATUS	
	NUMBER OF PRINCIPALLY AT-FAULT ACCIDENTS	NUMBER OF TRAFFIC CONVICTIONS			
		MINOR	MAJOR		SERIOUS
1				PRIMARY	
2				PRIMARY	

ENDORSEMENTS AND CERTIFICATES	
NUMBER	TITLE
2052R	AUTO LOSS PAYABLE
2442	UNINSURED MOTORIST COVERAGE AMENDATORY ENDORSEMENT

SPECIAL EQUIPMENT*		
VEH NO.	CAMPER/VAN CONV.	OTHER
1		
3		

* Coverage is indicated by a "Yes" in the appropriate equipment column. Coverage limitations apply unless coverage was purchased specifically for certain equipment.

ANY PHYSICAL DAMAGE LOSS MAY BE MADE PAYABLE TO YOU AND ANY INTEREST LISTED BELOW:

Vehicle No. 3

TRIANGLE CREDIT UNION
33 FRANKLIN ST
NASHUA NH 03064

For Questions or Changes Call
1-800-924-6141

Stephen F. Caldwell, D.D.S, M.S.

Derry Orthodontics, P.L.L.C.

4 Peabody Road Annex
Derry Meadows Professional Park
Derry, NH 03038
603-434-6433 (office)
FAX: 603-434-6133
603-437-0630 (home)
derryorthodontics@gmail.com

- Professional Experience: **1982-present**
Private practice of orthodontics, Derry, N.H.
- 1979-1982**
Associate in general dental practice
- 1978-1979**
General Practice Residency
Alameda County Highland General Hospital,
Oakland, CA
- Education: University of Detroit High School
Boston College, A.B., magna cum laude, Phi Beta Kappa
University of Virginia, M.A (English)
University of Massachusetts/Boston, and Boston College
(Pre dental Sciences)
University of Michigan School of Dentistry, D.D.S.
University of Michigan, M.S. (Orthodontics)
- Professional Affiliations: American Association of Orthodontists
American Dental Association
New Hampshire Dental Society
Northeast Society of Orthodontists
Greater Salem Dental Society
GreaterDerry Oral Health Collaborative Corporation/Children's Dental
Network (Volunteer school dental screenings).
- Publications: "Maxillary Traction Splint," American Journal of
Orthodontics, May, 1984



State of New Hampshire

Board of Dental Examiners

STEPHEN F CALDWELL, DDS

Active Lic #: 01780

Issued: 05/25/1982

Expires: 04/30/2016

Stacy A. Parde
President



4v 62

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF MEDICAID BUSINESS AND POLICY

Nicholas A. Toumpas
 Commissioner

Kathleen A. Dunn
 Associate
 Commissioner

129 PLEASANT STREET, CONCORD, NH 03301-3857
 603-271-9422 1-800-852-3345 Ext. 9422
 Fax: 603-271-8431 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

*G+C Approved &
 date 6/18/14
 Item # 62*

May 23, 2014

Her Excellency, Governor Margaret Wood Hassan
 and the Honorable Council
 State House
 Concord, New Hampshire 03301

Sole Source

REQUESTED ACTION

Authorize the Department of Health and Human Services, Office of Medicaid Business and Policy, to enter into a **sole source** agreement with Stephen F. Caldwell, DDS, MS, vendor code #259769-B001, Derry, NH 03038, in an amount not to exceed \$104,832 to provide orthodontics consultant services, to be effective July 1, 2014 or date of Governor and Council approval, whichever is later, through June 30, 2016. *50% Federal Funds / 50% General Funds*

Funds are available in the following account for SFY 2015, and are anticipated to be available in SFY 2016 upon the availability and continued appropriation of funds in the future operating budgets, with authority to adjust amounts within the price limitation and amend the related terms of the contract without further approval from Governor and Executive Council.

05-95-47-470010-7937 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: OFC OF MEDICAID & BUS PLCY, OFFICE OF MEDICAID & BUSINESS POLICY, MEDICAID ADMINISTRATION

Fiscal Year	Class/Account	Class Title	Job Number	Total Amount
SFY 2015	102-500731	Contracts for Prog Svc	47000102	52,416
SFY 2016	102-500731	Contracts for Prog Svc	47000102	52,416
			Total	\$104,832

EXPLANATION

Sole source is requested for this contract. The Office of Medicaid and Business Policy has competitively procured these services for the past 18 years. During that time, the position of Orthodontic Consultant has been formally advertised at the renewal of each contracting period without producing any responses except that of the incumbent. In the year proceeding the incumbent's retirement June 30, 2014, the Office of Medicaid Business and Policy Dental Director and Staff have actively recruited interest in the position of Orthodontist Consultant through direct outreach to New

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
May 23, 2014
Page 2

Hampshire orthodontists. This effort has resulted in only two inquiries of interest: one from an orthodontist who is not available a significant portion of the year and who has no recent Medicaid experience, and one from Dr. Caldwell who is available. Dr. Caldwell presents with interest, academic credentials and New Hampshire licensure in orthodontics, and with current expertise in Medicaid orthodontic policies and prior authorization procedures.

Orthodontic treatment of severe handicapping malocclusion is mandatory under the Early Periodic Screening Diagnosis and Treatment and medical necessity requirements of Title XIX. The State Plan and administrative rules set out requirements and criteria based on severity of malocclusions for coverage by NH Medicaid for eligible children. Each request for coverage must be evaluated relative to the mandates, requirements and rules in order to determine approval or denial of orthodontic treatment; inappropriate evaluation and denial results in failure to provide access to a required treatment.

To assure access to care in compliance with requirements and mandates, and to assure quality of care to children insured by NH Medicaid, orthodontic cases submitted for approval of Medicaid coverage are evaluated by a fully credentialed and licensed orthodontist relative to the criteria set forth in the current administrative rules. Evaluation of each case by a fully credentialed orthodontist assures access to treatment for children suffering from severe handicapping malocclusions and assures fiscal responsibility by appropriately denying coverage of cases that do not meet or exceed the criteria outlined in the administrative rules defining medical necessity for orthodontic treatment.

Having an orthodontist-consultant within the Department has proven to provide the most cost efficient means of assuring access to mandatory orthodontic treatment while avoiding overpayment, as well as wrongful denial, of coverage of orthodontic treatment. In addition to completing prior authorization reviews, the orthodontist-consultant also represents the Department at administrative appeals and acts as subject matter expert to assist in developing policies, rules, protocols, and program processes related to administration of the orthodontic benefit in Medicaid.

The salary rate is \$63 per hour for these services for state fiscal year 2015 and 2016. Dr. Caldwell will work 16 hours per week, 52 weeks each year for a yearly amount of \$52,416. The total agreement price is \$104,832 for the two year period. This rate is based on historical schedules pursuant to the Division of Personnel guidelines and below prevailing rates for orthodontists in the marketplace. These rates are lower than rates of equivalent positions in the private sector, and do not exceed public sector salaries and fringe benefits. The \$63 per hour rate is less than the current rate for Medicaid medical consultants who provide a narrower scope of services than those required of the orthodontist consultant.

Should Governor and Executive Council not authorize this Request, dental access for children in NH Medicaid will predictably be reduced significantly both in the near and long term.

This Agreement has the option to extend for two (2) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and approval of the Governor and Council.

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
May 23, 2014
Page 3

The following performance measures will be used to measure the effectiveness of the agreement:

- Complete all deliverables related to program research and development on or before dates assigned by OMBP Dental Director;
- Maintain greater than 95% rate of support of consultant's determination of benefits at fair hearings;
- Respond in kind within 7 days to requests for information from providers, DHHS staff and Medicaid members;
- Complete reviews and corrections of 85% of claims within 45 days;
- Complete 85% of prior authorization requests within 45 days of receipt of cases with complete documentation, as required.

Area served: statewide.

Source of Funds are 50% Federal Funds from Title XIX Medicaid Funds and 50% General Funds.

In the event that the Federal Funds become no longer available, General Funds will not be requested to support this program.

Respectfully submitted,



Kathleen A. Dunn, RN, MPH
Associate Commissioner and Medicaid
Director

Approved by:



Nicholas A. Toumpas
Commissioner

Subject: Orthodontic Consultant

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Health and Human Services		1.2 State Agency Address 129 Pleasant Street Concord, NH 03301-3857	
1.3 Contractor Name Stephen F. Caldwell, DDS, MS		1.4 Contractor Address 34 Ballard Road Derry, NH 03038	
1.5 Contractor Phone Number 603-437-0630	1.6 Account Number 05-95-47-470010-7937-102-500731	1.7 Completion Date 06/30/2016	1.8 Price Limitation \$104,832
1.9 Contracting Officer for State Agency Kathleen A. Dunn, RN, MPH		1.10 State Agency Telephone Number 603-271-9422	
1.11 Contractor Signature <i>Stephen F. Caldwell, DDS</i>		1.12 Name and Title of Contractor Signatory Stephen F. Caldwell, DDS, MS, Orthodontic Consultant	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Rockingham</u> On <u>5/22/14</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace <i>Fanycell Green</i> FANYCELL GREEN, Notary Public My Commission Expires February 28, 2019 [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace <i>Fanycell Green Financial Services Rep</i>			
1.14 State Agency Signature <i>Kathleen A. Dunn</i>		1.15 Name and Title of State Agency Signatory Kathleen A. Dunn, RN, MPH Associate Commissioner and Medicaid Director	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <i>Sara Guilleyhan</i> Director, On: <u>5/28/14</u>			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: <i>Mike Brun</i> On: <u>5/28/14</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			



Exhibit A

SCOPE OF SERVICES

1. Project Description

Funds in this Agreement will be used to provide for essential orthodontic consulting services to the Department of Health and Human Services (DHHS), Office of Medicaid Business and Policy (OMB), which will assist the Medicaid Program in operations of the New Hampshire Medicaid Dental program. These services will provide access to dental care for Medicaid eligible recipients assuring compliance with Titles XIX, V, Early Periodic Screening, Diagnosis, and Treatment (EPSDT), and other requirements for providing dental care by supporting operations of the Dental Prior Authorization Unit by assessing medical necessity of requests for prior authorization, pricing, correction, and review of orthodontic claims, supporting Medicaid Client Services in assuring access to dental care, consulting with Xerox to assure continuity of services, and responding to provider calls regarding Medicaid's orthodontic policies, practices, enrollment, and protocols.

2. Required Activities

Required activities of the Contractor shall include, but not be limited to, the following:

- 2.1. Reviews for completeness the materials submitted by New Hampshire Medicaid providers requesting prior authorization for orthodontic services on behalf of eligible Medicaid recipients.
- 2.2. Analyzes materials and determines if the recipient meets the criteria for approval in accordance with He-W 566 and He-W546.
- 2.3. Completes orthodontic prior authorization worksheets as documentation of decision-making process undertaken.
- 2.4. Provides sufficient information for the preparation of denial letters in accordance with requirements outlined by the Office of Medicaid Business and Policy's Legal and Policy Unit.
- 2.5. Represents the Office of Medicaid Business and Policy at fair hearings as the Department's expert on orthodontia.
- 2.6. Participates in administrative meetings as requested by the Medicaid Dental Director for the purpose of providing subject matter expertise for the development of a comprehensive oral health program for Medicaid recipients.

3. Compliance Requirements

The Contractor shall:

- Be a dentist licensed as an orthodontic specialist by the State of New Hampshire Board of Dental Examiners.
- Be a graduate of an American Dental Association accredited dental school and a dentist licensed by the State of New Hampshire Board of Dental Examiners.
- The Contractor shall work under the administrative leadership and take direction from the Office of Medicaid Business and Policy's Dental Director.
- Have strong interpersonal skills and be able to communicate with community orthodontists, dentists, families, OMBP departments and other State agencies concerning the Medicaid dental program and its operation, policy, practice and protocol.



Exhibit A

- Be available in state fiscal year 2014 on June 18, 2014 and June 25, 2014 for 8 hours each day, and two days a week (8 hours per day) 52 weeks per year, during state fiscal years 2015 and 2016.
- Participate in all meetings and program design sessions as assigned by OMBP Dental Director.

4. Performance Measures

The Contractor shall:

- Complete all deliverables related to program research and development on or before dates assigned by OMBP Dental Director.
- Maintain greater than 95% rate of support of consultant's determination of benefits at fair hearings.
- Respond in kind within 7 days to requests for information from providers, DHHS staff and Medicaid members.
- Complete reviews and corrections of 85% of claims within 45 days.
- Complete 85% of prior authorization requests within 45 days of receipt of cases with complete documentation, as required.



Exhibit B

Method and Conditions Precedent to Payment

- 1) Funding Sources:
 - a. \$104,832 = 50% federal funds from Title XIX Medicaid Funds, CFDA #93.778, and 50% general Funds;
- 2) The State shall pay the Contractor an amount not to exceed the Price Limitation, block 1.8 of the P-37 for the services provided by the Contractor pursuant to Exhibit A, Scope of Services.

a. Payment for said services shall be made as follows:
 Reimbursements for services provided shall be made by the State on a monthly basis after receipt and review of monthly expenditure reports submitted by the Contractor to the State. These reports, which are based on a budget approved by the State, shall be in a form satisfactory to the State and shall be submitted no later than 20 working days after the close of the month. In addition to the monthly expenditure reports required, not later than sixty (60) days after the end of the budget period, the Contractor shall submit a final expenditure report in a form satisfactory to the State.

b. The invoice must be submitted to:
 Dr Snow, Medicaid Dental Director
 Department of Health and Human Services
 Office of Medicaid Business and Policy
 129 Pleasant Street
 Concord, NH 03301-3857
 Email address: msnow@dhhs.state.nh.us

- 3) The Contractor agrees to use and apply all payments made by the State for direct and indirect costs and expenses including, but not limited to, personnel costs and operating expenses related to the Services. Allowable costs and expenses shall be determined by the State in accordance with applicable State and Federal laws and regulations. The Contractor shall be paid only for the total number of hours actually worked at the identified hourly rate of \$63 as detailed below. The total of all payments made to the Contractor for costs and expenses incurred in the performance of the Services during the period of the contract shall not exceed one hundred four thousand, eight hundred thirty-two dollars (\$104,832).

4) Budget

SFY 2015	\$63/hour x 8 hours/day x 104 days	=	\$ 52,416
SFY 2016	\$63/hour x 8 hours/day x 104 days	=	<u>\$ 52,416</u>
	TOTAL:		\$104,832

- 5) Payment will be made by the State agency subsequent to approval of the submitted invoice and if sufficient funds are available in the Service category budget line items submitted by the Contractor to cover the costs and expenses incurred upon compliance with reporting requirements and performance and utilization review. Contractors will keep detailed records of their activities related to DHHS-funded programs and services.
- 6) Contractors are accountable to meet the scope of services. Failure to do so may jeopardize the funded contractor's current and/or future funding. Corrective action may include actions such as a contract amendment or termination of the contract. The contracted organization shall prepare progress reports, as required.

Exhibit B – Methods and Conditions Precedent to Payment_Contractor Initials ATC



SPECIAL PROVISIONS

Contractors Obligations: The Contractor covenants and agrees that all funds received by the Contractor under the Contract shall be used only as payment to the Contractor for services provided to eligible individuals and, in the furtherance of the aforesaid covenants, the Contractor hereby covenants and agrees as follows:

1. **Compliance with Federal and State Laws:** If the Contractor is permitted to determine the eligibility of individuals such eligibility determination shall be made in accordance with applicable federal and state laws, regulations, orders, guidelines, policies and procedures.
2. **Time and Manner of Determination:** Eligibility determinations shall be made on forms provided by the Department for that purpose and shall be made and remade at such times as are prescribed by the Department.
3. **Documentation:** In addition to the determination forms required by the Department, the Contractor shall maintain a data file on each recipient of services hereunder, which file shall include all information necessary to support an eligibility determination and such other information as the Department requests. The Contractor shall furnish the Department with all forms and documentation regarding eligibility determinations that the Department may request or require.
4. **Fair Hearings:** The Contractor understands that all applicants for services hereunder, as well as individuals declared ineligible have a right to a fair hearing regarding that determination. The Contractor hereby covenants and agrees that all applicants for services shall be permitted to fill out an application form and that each applicant or re-applicant shall be informed of his/her right to a fair hearing in accordance with Department regulations.
5. **Gratuities or Kickbacks:** The Contractor agrees that it is a breach of this Contract to accept or make a payment, gratuity or offer of employment on behalf of the Contractor, any Sub-Contractor or the State in order to influence the performance of the Scope of Work detailed in Exhibit A of this Contract. The State may terminate this Contract and any sub-contract or sub-agreement if it is determined that payments, gratuities or offers of employment of any kind were offered or received by any officials, officers, employees or agents of the Contractor or Sub-Contractor.
6. **Retroactive Payments:** Notwithstanding anything to the contrary contained in the Contract or in any other document, contract or understanding, it is expressly understood and agreed by the parties hereto, that no payments will be made hereunder to reimburse the Contractor for costs incurred for any purpose or for any services provided to any individual prior to the Effective Date of the Contract and no payments shall be made for expenses incurred by the Contractor for any services provided prior to the date on which the individual applies for services or (except as otherwise provided by the federal regulations) prior to a determination that the individual is eligible for such services.
7. **Conditions of Purchase:** Notwithstanding anything to the contrary contained in the Contract, nothing herein contained shall be deemed to obligate or require the Department to purchase services hereunder at a rate which reimburses the Contractor in excess of the Contractors costs, at a rate which exceeds the amounts reasonable and necessary to assure the quality of such service, or at a rate which exceeds the rate charged by the Contractor to ineligible individuals or other third party fundors for such service. If at any time during the term of this Contract or after receipt of the Final Expenditure Report hereunder, the Department shall determine that the Contractor has used payments hereunder to reimburse items of expense other than such costs, or has received payment in excess of such costs or in excess of such rates charged by the Contractor to ineligible individuals or other third party fundors, the Department may elect to:
 - 7.1. Renegotiate the rates for payment hereunder, in which event new rates shall be established;
 - 7.2. Deduct from any future payment to the Contractor the amount of any prior reimbursement in excess of costs;



- 7.3. Demand repayment of the excess payment by the Contractor in which event failure to make such repayment shall constitute an Event of Default hereunder. When the Contractor is permitted to determine the eligibility of individuals for services, the Contractor agrees to reimburse the Department for all funds paid by the Department to the Contractor for services provided to any individual who is found by the Department to be ineligible for such services at any time during the period of retention of records established herein.

RECORDS: MAINTENANCE, RETENTION, AUDIT, DISCLOSURE AND CONFIDENTIALITY:

8. **Maintenance of Records:** In addition to the eligibility records specified above, the Contractor covenants and agrees to maintain the following records during the Contract Period:
- 8.1. **Fiscal Records:** books, records, documents and other data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of the Contract, and all income received or collected by the Contractor during the Contract Period, said records to be maintained in accordance with accounting procedures and practices which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the Department, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the Department.
- 8.2. **Statistical Records:** Statistical, enrollment, attendance or visit records for each recipient of services during the Contract Period, which records shall include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the Department to obtain payment for such services.
- 8.3. **Medical Records:** Where appropriate and as prescribed by the Department regulations, the Contractor shall retain medical records on each patient/recipient of services.
9. **Audit:** Contractor shall submit an annual audit to the Department within 60 days after the close of the agency fiscal year. It is recommended that the report be prepared in accordance with the provision of Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations" and the provisions of Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the US General Accounting Office (GAO standards) as they pertain to financial compliance audits.
- 9.1. **Audit and Review:** During the term of this Contract and the period for retention hereunder, the Department, the United States Department of Health and Human Services, and any of their designated representatives shall have access to all reports and records maintained pursuant to the Contract for purposes of audit, examination, excerpts and transcripts.
- 9.2. **Audit Liabilities:** In addition to and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department, all payments made under the Contract to which exception has been taken or which have been disallowed because of such an exception.
10. **Confidentiality of Records:** All information, reports, and records maintained hereunder or collected in connection with the performance of the services and the Contract shall be confidential and shall not be disclosed by the Contractor, provided however, that pursuant to state laws and the regulations of the Department regarding the use and disclosure of such information, disclosure may be made to public officials requiring such information in connection with their official duties and for purposes directly connected to the administration of the services and the Contract; and provided further, that the use or disclosure by any party of any information concerning a recipient for any purpose not directly connected with the administration of the Department or the Contractor's responsibilities with respect to purchased services hereunder is prohibited except on written consent of the recipient, his attorney or guardian.



Notwithstanding anything to the contrary contained herein the covenants and conditions contained in the Paragraph shall survive the termination of the Contract for any reason whatsoever.

11. **Reports:** Fiscal and Statistical: The Contractor agrees to submit the following reports at the following times if requested by the Department.
 - 11.1. **Interim Financial Reports:** Written interim financial reports containing a detailed description of all costs and non-allowable expenses incurred by the Contractor to the date of the report and containing such other information as shall be deemed satisfactory by the Department to justify the rate of payment hereunder. Such Financial Reports shall be submitted on the form designated by the Department or deemed satisfactory by the Department.
 - 11.2. **Final Report:** A final report shall be submitted within thirty (30) days after the end of the term of this Contract. The Final Report shall be in a form satisfactory to the Department and shall contain a summary statement of progress toward goals and objectives stated in the Proposal and other information required by the Department.
12. **Completion of Services: Disallowance of Costs:** Upon the purchase by the Department of the maximum number of units provided for in the Contract and upon payment of the price limitation hereunder, the Contract and all the obligations of the parties hereunder (except such obligations as, by the terms of the Contract are to be performed after the end of the term of this Contract and/or survive the termination of the Contract) shall terminate, provided however, that if, upon review of the Final Expenditure Report the Department shall disallow any expenses claimed by the Contractor as costs hereunder the Department shall retain the right, at its discretion, to deduct the amount of such expenses as are disallowed or to recover such sums from the Contractor.
13. **Credits:** All documents, notices, press releases, research reports and other materials prepared during or resulting from the performance of the services of the Contract shall include the following statement:
 - 13.1. The preparation of this (report, document etc.) was financed under a Contract with the State of New Hampshire, Department of Health and Human Services, with funds provided in part by the State of New Hampshire and/or such other funding sources as were available or required, e.g., the United States Department of Health and Human Services.
14. **Prior Approval and Copyright Ownership:** All materials (written, video, audio) produced or purchased under the contract shall have prior approval from DHHS before printing, production, distribution or use. The DHHS will retain copyright ownership for any and all original materials produced, including, but not limited to, brochures, resource directories, protocols or guidelines, posters, or reports. Contractor shall not reproduce any materials produced under the contract without prior written approval from DHHS.
15. **Operation of Facilities: Compliance with Laws and Regulations:** In the operation of any facilities for providing services, the Contractor shall comply with all laws, orders and regulations of federal, state, county and municipal authorities and with any direction of any Public Officer or officers pursuant to laws which shall impose an order or duty upon the contractor with respect to the operation of the facility or the provision of the services at such facility. If any governmental license or permit shall be required for the operation of the said facility or the performance of the said services, the Contractor will procure said license or permit, and will at all times comply with the terms and conditions of each such license or permit. In connection with the foregoing requirements, the Contractor hereby covenants and agrees that, during the term of this Contract the facilities shall comply with all rules, orders, regulations, and requirements of the State Office of the Fire Marshal and the local fire protection agency, and shall be in conformance with local building and zoning codes, by-laws and regulations.
16. **Subcontractors:** DHHS recognizes that the Contractor may choose to use subcontractors with greater expertise to perform certain health care services or functions for efficiency or convenience, but the Contractor shall retain the responsibility and accountability for the function(s). Prior to



subcontracting, the Contractor shall evaluate the subcontractor's ability to perform the delegated function(s). This is accomplished through a written agreement that specifies activities and reporting responsibilities of the subcontractor and provides for revoking the delegation or imposing sanctions if the subcontractor's performance is not adequate. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions.

When the Contractor delegates a function to a subcontractor, the Contractor shall do the following:

- 16.1. Evaluate the prospective subcontractor's ability to perform the activities, before delegating the function
- 16.2. Have a written agreement with the subcontractor that specifies activities and reporting responsibilities and how sanctions/revocation will be managed if the subcontractor's performance is not adequate
- 16.3. Monitor the subcontractor's performance on an ongoing basis
- 16.4. Provide to DHHS an annual schedule identifying all subcontractors, delegated functions and responsibilities, and when the subcontractor's performance will be reviewed
- 16.5. DHHS shall, at its discretion, review and approve all subcontracts.

If the Contractor identifies deficiencies or areas for improvement are identified, the Contractor shall take corrective action.

DEFINITIONS

As used in the Contract, the following terms shall have the following meanings:

COSTS: Shall mean those direct and indirect items of expense determined by the Department to be allowable and reimbursable in accordance with cost and accounting principles established in accordance with state and federal laws, regulations, rules and orders.

DEPARTMENT: NH Department of Health and Human Services.

FINANCIAL MANAGEMENT GUIDELINES: Shall mean that section of the Contractor Manual which is entitled "Financial Management Guidelines" and which contains the regulations governing the financial activities of contractor agencies which have contracted with the State of NH to receive funds.

PROPOSAL: If applicable, shall mean the document submitted by the Contractor on a form or forms required by the Department and containing a description of the Services to be provided to eligible individuals by the Contractor in accordance with the terms and conditions of the Contract and setting forth the total cost and sources of revenue for each service to be provided under the Contract.

UNIT: For each service that the Contractor is to provide to eligible individuals hereunder, shall mean that period of time or that specified activity determined by the Department and specified in Exhibit B of the Contract.

FEDERAL/STATE LAW: Wherever federal or state laws, regulations, rules, orders, and policies, etc. are referred to in the Contract, the said reference shall be deemed to mean all such laws, regulations, etc. as they may be amended or revised from the time to time.

CONTRACTOR MANUAL: Shall mean that document prepared by the NH Department of Administrative Services containing a compilation of all regulations promulgated pursuant to the New Hampshire Administrative Procedures Act, NH RSA Ch 541-A, for the purpose of implementing State of NH and federal regulations promulgated thereunder.

SUPPLANTING OTHER FEDERAL FUNDS: The Contractor guarantees that funds provided under this Contract will not supplant any existing federal funds available for these services.



Exhibit C-1

REVISIONS TO GENERAL PROVISIONS

1. Subparagraph 4 of the General Provisions of this contract, Conditional Nature of Agreement, is replaced as follows:
 4. **CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including without limitation, the continuance of payments, in whole or in part, under this Agreement are contingent upon continued appropriation or availability of funds, including any subsequent changes to the appropriation or availability of funds affected by any state or federal legislative or executive action that reduces, eliminates, or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope of Services provided in Exhibit A, Scope of Services, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of appropriated or available funds. In the event of a reduction, termination or modification of appropriated or available funds, the State shall have the right to withhold payment until such funds become available, if ever. The State shall have the right to reduce, terminate or modify services under this Agreement immediately upon giving the Contractor notice of such reduction, termination or modification. The State shall not be required to transfer funds from any other source or account into the Account(s) identified in block 1.6 of the General Provisions, Account Number, or any other account, in the event funds are reduced or unavailable.

2. Subparagraph 10 of the General Provisions of this contract, Termination, is amended by adding the following language:
 - 10.1 The State may terminate the Agreement at any time for any reason, at the sole discretion of the State, 30 days after giving the Contractor written notice that the State is exercising its option to terminate the Agreement.
 - 10.2 In the event of early termination, the Contractor shall, within 15 days of notice of early termination, develop and submit to the State a Transition Plan for services under the Agreement, including but not limited to, identifying the present and future needs of clients receiving services under the Agreement and establishes a process to meet those needs.
 - 10.3 The Contractor shall fully cooperate with the State and shall promptly provide detailed information to support the Transition Plan including, but not limited to, any information or data requested by the State related to the termination of the Agreement and Transition Plan and shall provide ongoing communication and revisions of the Transition Plan to the State as requested.
 - 10.4 In the event that services under the Agreement, including but not limited to clients receiving services under the Agreement are transitioned to having services delivered by another entity including contracted providers or the State, the Contractor shall provide a process for uninterrupted delivery of services in the Transition Plan.
 - 10.5 The Contractor shall establish a method of notifying clients and other affected individuals about the transition. The Contractor shall include the proposed communications in its Transition Plan submitted to the State as described above.

3. Extension:

This agreement has the option for a potential extension of up to two (2) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and approval of the Governor and Council.



Exhibit C-1

4. Insurance

Subparagraph 14.1.1 of the General Provisions of this contract is deleted and the following subparagraph is added:

14.1.1 Automobile general insurance against claims of bodily injury in amounts of not less than \$1,000,000 per person and \$1,000,000 per accident, and property damage in amounts of \$250,000 each accident, and



CERTIFICATION REGARDING
THE AMERICANS WITH DISABILITIES ACT COMPLIANCE

The Contractor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this proposal (contract) the Contractor agrees to make reasonable efforts to comply with all applicable provisions of the Americans with Disabilities Act of 1990.

Contractor Name: Stephen F. Caldwell, DDS, MS

22 May 2014
Date

Stephen F. Caldwell DDS
Name: Stephen F. Caldwell, DDS, MS
Title: Orthodontic Consultant