

STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT

This Professional Services Contract (PSC) is made and entered into by and between the State of New Mexico, **Human Services Department** hereinafter referred to as HSD and **El Caldito**, hereinafter referred to as (the "Contractor"), and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration (DFA).

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

The Contractor shall work to increase access to services that reduce hunger and provide nutritious meals to homeless in the Las Cruces area. The Contractor shall perform all services detailed in Exhibit A, Scope of Work, attached to this PSC, and incorporated in this PSC by reference.

2. **Compensation.**

A. The total amount payable to the Contractor under this PSC, including gross receipts taxes and expenses, shall not exceed \$50,000. This amount is a maximum and not a guarantee that the work assigned to Contractor under this PSC to be performed shall equal the amount stated herein.

B. HSD shall pay to the Contractor in full payment for services satisfactorily performed such compensation not to exceed fifty thousand dollars and zero cents, \$50,000 as set forth in Paragraph A. Being that the contractor is a non-profit organization, Contractor is not subject to the liability of gross receipts tax. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by HSD. All invoices **MUST BE** received by HSD no later than ten (10) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID**.

HSD shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of \$25,000 dollars in FY2010.

HSD shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of \$25,000 dollars in FY2011.

Payment in FY2010 and FY2011 is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by HSD. All invoices **MUST BE** received by HSD no later than ten (10) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID**.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If HSD finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by HSD that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, HSD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS PSC SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY DFA. This PSC shall terminate on **June 30, 2011** unless terminated pursuant to paragraph 4, infra, or paragraph 5. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination. This PSC may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this PSC, HSD's sole liability upon such termination shall be to pay for acceptable work performed prior to Contractor's receipt of the notice of termination, if HSD is the terminating party, or Contractor's sending of the notice of termination, if Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this PSC. Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this PSC may be terminated immediately upon written notice to Contractor if Contractor becomes unable to perform the services contracted for, as determined by HSD or if, during the term of this PSC, Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY CONTRACTOR'S DEFAULT/BREACH OF THIS PSC."

B. Termination Management. Immediately upon receipt by either HSD or the Contractor's of notice of termination of this PSC, Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this PSC without written approval of HSD; 2) comply with all directives issued by HSD in the notice of termination as to the performance of work under this PSC; and 3) take such action as HSD shall direct for the protection, preservation, retention or transfer of all property titled to HSD and records generated under this PSC. Any non-expendable personal property or equipment provided to or purchased by HSD with contract funds shall become property of HSD upon termination and shall be submitted to HSD as soon as practicable.

5. Appropriations.

The terms of this PSC are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this PSC. If sufficient appropriations and authorization are not made by the Legislature, this PSC shall terminate immediately upon written notice being given by HSD to the Contractor. HSD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If HSD proposes an amendment to the PSC to unilaterally reduce funding, the Contractor shall have the option to terminate the PSC or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for HSD and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this PSC. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

7. Assignment.

The Contractor shall not assign or transfer any interest in this PSC or assign any claims for money due or to become due under this PSC without the prior written approval of HSD.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this PSC without the prior written approval of HSD.

9. Release.

Final payment of the amounts due under this PSC shall operate as a release of HSD, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this PSC.

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this PSC shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of HSD.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this PSC shall become the property of the State of New Mexico and shall be delivered to HSD no later than the termination date of this PSC. Nothing developed or produced, in whole or in part, by the Contractor under this PSC shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. Conflict of Interest; Governmental Conduct Act.

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the PSC. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

13. Amendment.

This PSC shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

14. Merger.

This PSC incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written PSC. No prior PSC or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this PSC.

15. Penalties for violation of law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this PSC. If Contractor is found not to be in compliance with these requirements during the life of this PSC, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this PSC, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this PSC, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this PSC.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this PSC may be terminated by HSD.

19. Records and Audit.

The Contractor shall maintain, for five (5) years, detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by HSD and the State Auditor. HSD shall have a right to audit billings both before and after payment; payment under this PSC shall not foreclose the right of HSD to recover excessive and/or illegal payments.

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless HSD and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this PSC, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this PSC. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this PSC is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of HSD and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this PSC, to:

(1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1,

2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;

(3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price PSCs without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price PSC) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

22. Invalid Term or Condition.

If any term or condition of this PSC shall be held invalid or unenforceable, the remainder of this PSC shall not be affected and shall be valid and enforceable.

23. Enforcement of PSC.

A party's failure to require strict performance of any provision of this PSC shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this PSC shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

24. Notices.

Any notice required to be given to either party by this PSC shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency: Human Services Department
Pauline Raia, Program Manager
P.O. Box 26507
Albuquerque, New Mexico 87125

To the Contractor: El Caldito
Gabe Chavez
P.O. Box 2833
Las Cruces, New Mexico 88005

25. Authority.

If Contractor is other than a natural person, the individual(s) signing this PSC on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

26. Debarment And Suspension And Other Responsibility Matters.

A. Pursuant to 45 C.F.R. Part 76, Contractor certifies by signing this PSC, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this PSC, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, state or local) with commission of any of the offenses enumerated above in this Paragraph; (4) have not, within a three-year period preceding the effective date of this PSC, had one or more public Agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

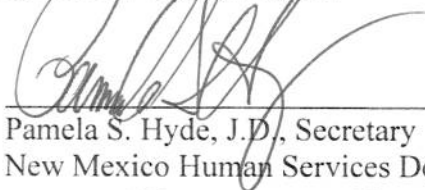
B. Contractor's certification in Paragraph A is a material representation of fact upon which the HSD relied when this PSC was entered into by the parties. Contractor shall provide immediate written notice to HSD's Program Manager if, at any time during the term of this PSC, Contractor learns that its certification in Paragraph A was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances. If it is later determined that

Contractor's certification in Paragraph A was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to HSD, HSD may terminate the PSC.

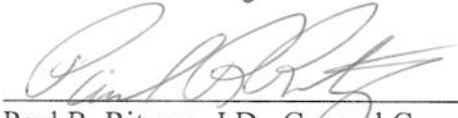
C. As required by 45 C.F.R. Part 76, Contractor shall require each proposed first-tier sub-Contractor whose subcontract will equal or exceed \$25,000, to disclose to HSD, in writing, whether as of the time of award of the subcontract, the sub-Contractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. Contractor shall make such disclosures available to HSD when it requests sub-Contractor approval from HSD. If the sub-Contractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal department or agency, HSD may refuse to approve the use of the sub-Contractor.

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IN WITNESS WHEREOF, parties have executed this PSC as of the date of signature by the DFA Contracts Review Bureau, below.

By: 
Pamela S. Hyde, J.D., Secretary
New Mexico Human Services Department

Date: 7/9/09

By: 
Paul R. Ritzma, J.D., General Counsel
New Mexico Human Services Department

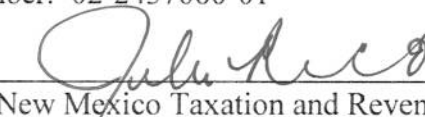
Date: 6/15/09

By: 
Contractor

Date: 6-27-09


The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 02-2437060-01

By: 
New Mexico Taxation and Revenue Department

Date: 7/13/09

This PSC is approved by the DFA Contracts Review Bureau:

By: 
Contracts Review Bureau
New Mexico Department of Finance and Administration

Date: 8-6-09

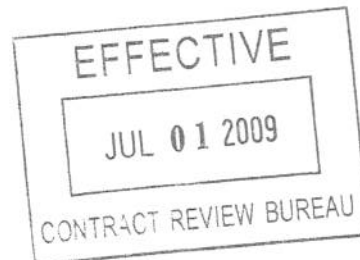


Exhibit A

Detailed Scope of Work: El Caldito

The CONTRACTOR shall:

1. Provide the following services designed to assist Homeless Persons:
 - (A) Provide a specified number of meals to homeless clients on specified days and at specified times. The meals will be served at the contractor site (s), at no cost to the clients.
 - (B) Attend any meetings regarding the implementation of the program.
 - (C) Submit a monthly narrative report for the purpose of reporting monthly activities of the Homeless Meals Program. The standardized reporting form will be provided by the DEPARTMENT.
 - (D) Provide dollar for dollar match to the funds awarded under this agreement. The matching funds shall not be derived from any other state funds, but they may be derived from in-kind service.
 - (E) Submit a reimbursement request to the DEPARTMENT on a monthly basis.

PERFORMANCE MEASURE:

Contractor must meet 75% of meal goal listed in the scope of work.

GOALS:

Increase access to services that reduce hunger.

Provide nutritious meals to homeless clients throughout the state and eliminating food insecurity in the state of New Mexico.

OBJECTIVES:

Coordination with public and private agencies to implement a State Plan to Reduce Hunger that will ultimately result in New Mexico improving its national standing as first in the nation in food insecurity and third in hunger.

Increase access to services that reduce hunger.

Provide services in areas of greatest need.

Location of the facility that serves meals is accessible to those in need.

Coordination of effort within the community served.

Provide nutritionally balanced meals.

Provide a dollar-for-dollar match to funds awarded.

ACTIVITIES:

Work in partnership with public and private agencies, groups or individuals to implement the State Plan through ongoing strategies and activities.

Provide prepared meals to homeless clients at no cost.

Provide a schedule of when meals will be served on a weekly basis.

Advertise to inform public of the availability of homeless meals.