

**STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
GOVERNMENTAL SERVICES
COOPERATIVE AGREEMENT
(FOR USE WITH GOVERNMENTAL UNITS ONLY)**

This agreement between the New Mexico Human Services Department (HSD) operating through its Child Support Enforcement Division (CSED) and the 11th Judicial District Court (District) specifies the terms and conditions under which the parties will transfer funds and the District will provide services for CSED.

WHEREAS, HSD is the single state agency designated to administer the child support enforcement program in New Mexico pursuant to Sec. 27-2-27 NMSA 1978 (1999 Repl.); and

WHEREAS, HSD is the state agency responsible for administering a statewide plan for the establishment of paternity, child and medical support, and enforcement of support obligations in compliance with Title IV-D of the federal Social Security Act and the regulations promulgated thereunder; and

WHEREAS, HSD requires the performance of the services set forth herein from the District as a means of meeting certain requirements of federal law pertaining to the administration of the Title IV-D state plan and in implementing NMSA 1978 Sec. 40-4B-1 et seq.; and

WHEREAS, the District is responsible for implementing measures for the use of child support hearing officers in the adjudication of legal actions for child and medical support pursuant to NMSA 1978 Sec. 40-4B-1 et seq.; and

WHEREAS, the parties are empowered to enter this agreement under the provisions of NMSA 1978, Sec. 40-4B-1.

NOW, THEREFORE, the parties do hereby covenant and agree as follows:

ARTICLE 1 - TERM

The initial term of this agreement shall commence July 1st, 2009 and shall continue until June 30, 2010 unless amended or terminated pursuant to the terms of this agreement. This agreement may be indefinitely extended by HSD, if funds are available, by giving written notice of its intent to do so not less than thirty (30) days prior to the expiration. Extensions will be for one year or such other period as may be mutually agreed. Notwithstanding the foregoing, if the District fails to perform as provided herein or if HSD fails to transfer or pay the sums called for herein or under any extension then this agreement may be terminated by the parties.

ARTICLE 2 - RECITALS

The purposes of this agreement include but are not limited to:

Providing a cooperative structure for the Judicial District and HSD to implement the Child Support Hearing Officer Act [40-4B-1 to 40-4B-10 NMSA 1978];

Providing the additional personnel, support and procedures necessary to insure prompt and full payment by obligated parties of child and medical support obligations and, where applicable, attendant spousal support obligations;

Insuring that support payments are made in compliance with federal regulations governing the state's federally mandated program pursuant to Title IV D of the federal Social Security Act;

Complying with the state plan and program to establish and enforce support obligations;

Improve compliance and speeding up the processing of cases and completion of paternity, child and medical support actions, and maintaining compliance with federal performance measures;

Providing additional court monitoring for the increased caseload;

Providing raises to court staff as provided by law;

Ensuring the transmittal of child support payments to CSED in accordance with the provisions in 40-4A-4.1 NMSA and ensure prompt and full payment by obligated parties of support obligations for their dependent children and, where applicable, attendant spousal support obligations.

ARTICLE 3 - RESPONSIBILITY OF THE PARTIES

The District shall:

- 3.1 Submit to HSD, on or before May 1st of each year, a proposed annual operating budget for approval or change. The proposed budget shall allocate payments to be received pursuant to this agreement. The budget shall not be implemented until such approval is given by HSD in writing and a purchase order is issued for the necessary funds.
- 3.2 Obtain advance written approval from HSD for proposed expenditures for the following:
 - a) the cost of leases or rental agreements for either real or personal property.
 - b) the cost of any non-expendable equipment, furnishings or fixtures exceeding \$1,000.00 in value and having a life expectancy of more than one year. All such property shall remain the property of HSD, and be returned to HSD upon expiration or termination of this agreement.
- 3.3 Submit quarterly fiscal reports to HSD/CSED showing expenditures of payments under the agreement and submit any reports necessary to show that expenditures are being made solely for federally authorized purposes under the IV-D program
- 3.4 Submit no later than the 10th day of each month, monthly time verification sheets for the provision of services provided under this agreement. A copy of the approved form for the monthly submittal is attached to this agreement as Exhibit A. The monthly submittal shall be sent to the HSD program manager at the address listed in Article 16. The District shall retain all documentation that substantiates time spent providing services on child support

IV-D cases under this agreement. The District shall submit such other necessary reports as may be required by HSD to meet federal or state reporting requirements.

- 3.5 Employ as “term employees” one (1) hearing officer, as set forth in the approved budget, and such other support personnel as may be required and approved under the yearly budget.
- 3.6 The District shall be the employer of all personnel necessary to carry out the purpose of this agreement.
- 3.7 Provide services necessary to assure the timely disposition for cases involving child and medical support obligations, the establishment and enforcement of which is being conducted pursuant to title IV-D of the federal Social Security Act. CSED cases shall be given priority by hearing officers funded hereunder. 75% of cases filed shall be disposed of in 6 months and 90% within 12 months from the date of service of process, or within such other time frames as may be imposed by federal or state law or regulation. “Disposed of” means a support order is officially established and recorded, or the action is dismissed.
- 3.8 Ensure all child support payments are made directly to the IV-D agency.
- 3.9 Provide office space, hearing space, supplies, equipment and personnel as may be necessary for the hearing officer(s) and staff to perform official duties.
- 3.10 Utilize any funds paid to the District hereunder solely for child and medical support establishment and enforcement purposes permitted under the federal IV-D program.
- 3.11 Upon the request of HSD/CSED, assign the hearing officer to another district to temporarily act as hearing officer for such district.
- 3.12 Pay for all postage for mailing hearing officer reports, notices, orders, and other court documents.

ARTICLE 4 - LIMITATION OF COST

- 4.1 The maximum amount payable by HSD and transferred to the District under this agreement for the first contract period shall not exceed three hundred thirty seven thousand nine hundred and twenty one dollars (\$337,921.00). This amount may be amended if legislative action requires, if appropriations for such purpose are authorized, or if services are increased or decreased. Any increase must be supported by a valid purchase document.
- 4.2 The maximum amount payable under this agreement for subsequent years shall be the amount approved in the operating budget and for which a purchase document has been executed. HSD is not responsible for the payment of any sum whatsoever unless and until such sum is authorized by a valid purchase document.

- 4.3 HSD and the District may mutually increase the amount of this contract and enlarge the scope of services to be provided hereunder, if funds become available, and if deemed necessary and appropriate by HSD.

ARTICLE 5 - DEPARTMENT RESPONSIBILITY

5.1 ADMINISTERING AGENCY

HSD is the single state agency designated by NMSA 1978, Section 27-2-27 to administer Title IV-D funds and retains all authority and responsibility associated therewith. Other administrative duties and responsibilities are as set forth herein.

5.2 EXPENDITURES AND PAYMENTS

HSD shall:

- 5.2.1 Pay to Judicial District the annual sum set forth in Article IV herein, to be reimbursed in equal monthly payments on the first working day of each month for so long as this agreement is in effect. The Judicial District must submit an invoice prior to the 10th of each month for the previous month's services. All sums reimbursed are to be expended only for the purpose of implementing the Child Support Hearing Officer Act, NMSA 1978, Section 40-4B-1 to 40-4B-10, and to ensure compliance with the federal requirements of "Expedited Process" under Title IV-D, of the Social Security Act.
- 5.2.2 Not be required to pay, or approve for payment, costs incurred prior to approval of this agreement, nor for any costs incurred after termination or expiration;
- 5.2.3 Not be required to pay for costs incurred for purposes other than services for the Title IV-D program, nor for purposes not useful or appropriate to the purposes of this agreement.

HSD shall either through its own personnel or such other agencies or Districts as HSD may select:

- 5.3 Work with the district in planning and providing access to information necessary for the District to perform the duties and responsibilities under this agreement.
- 5.4 Provide the district, as soon as possible, with changes or amendments to federal or state laws, regulations, policies and procedures which affect the expedited process or hearing officer program.
- 5.5 Provide the normal cooperation that may be expected in such an agreement.

- 5.6 Provide consultation and/or technical assistance for continuous improvement of the hearing officer program.
- 5.7 Pay the sums specified in the approved operating budget and purchase order.

ARTICLE 6 - PROJECT MANAGER DUTIES

The Project Manager for HSD shall be the HSD General Counsel. The Project Manager is empowered and authorized as the agent of HSD to represent it in all matters related to this agreement, except those reserved to other personnel by this agreement. The project manager may extend the term of the agreement for additional periods, may approve yearly operating budgets and may increase the amount of the contract and enlarge the scope of work as specified herein. Any extension or enlargement shall not become effective until a purchase document is issued and approved on the Department of Finance and Administration (DFA) system. Any and all events, problems, concerns or requests affecting this agreement must be reported to the Project Manager. Notwithstanding the above, the Project Manager does not have the authority to amend any other terms and conditions of this agreement.

ARTICLE 7 - TERMINATION

This agreement may be terminated as follows:

- 7.1 By mutual written agreement of HSD and District upon such terms and conditions as may be agreed upon.
- 7.2 By either party for convenience, upon not less than forty-five (45) days written notice.
- 7.3 By HSD immediately, for cause, upon failure of the District to materially comply with the terms and conditions of this agreement or upon federal funds being jeopardized by the District's performance or lack thereof. HSD shall give the District written notice specifying the District's failure to comply. The District shall correct the failure immediately or, in good faith, begin steps necessary to correct the failure and thereafter proceed diligently to complete or cure the failure. The plan of corrective action must be approved by HSD.
- 7.4 By the District immediately if HSD fails to timely pay the District. If the agreement is terminated pursuant to this Article, neither party may nullify obligations already incurred for performance of services prior to the date of notice or, unless specifically stated in the notice, required to be performed through the effective date of termination. Any agreement or notice of termination shall incorporate necessary transition arrangements.

ARTICLE 8 - APPROPRIATIONS

The terms of this agreement are contingent upon sufficient appropriations or authorizations being made by either the New Mexico Legislature, the federal agency, or the U.S. Congress for the performance of this agreement. If sufficient appropriations and/or authorizations are not made by the Legislature, the federal agency, or the Congress, this agreement shall be subject to termination or amendment. Such election will be effected by HSD sending written notice. HSD'S decision as to whether sufficient appropriations or authorizations exist shall be accepted by the other party and shall be final and binding. To the extent legislation or Congressional action impact the amount of appropriation available for performance under this Contract, the parties shall have the right to amend this agreement.

ARTICLE 9 - ASSIGNMENT

The District shall not assign, transfer or delegate any rights, obligations, duties or other interest in this agreement or assign any claim for money due or to become due under this agreement.

ARTICLE 10 - FUNDS ACCOUNTABILITY

The parties shall for a period of three years after expiration or termination of this agreement maintain fiscal records necessary for full accounting, follow generally accepted accounting principles, and account for all receipts and disbursements of funds transferred or expended pursuant to this agreement. Each party shall be solely liable for its own acts or failure to act in accordance with this agreement. HSD, the State Auditor or representatives of the United States Department of Health and Human Services or Comptroller General may monitor and conduct fiscal and/or program audits at reasonable times and upon reasonable notice to the Judicial District.

ARTICLE 11 -LIABILITY & TORTS

- 11.1 The parties are governmental entities subject to the provisions of the Tort Claims Act. Each party is solely responsible for the actions of its own officers, agents or employees within the strict limits of the Tort Claims Act.
- 11.2 Nothing contained herein shall be deemed a waiver of any immunity or privilege granted by law.
- 11.3 Each party is solely liable for recoupment of Federal Financial Participation (FFP) due to disallowance of payments received by it, and for fiscal or other sanctions, penalties or fines resulting from noncompliance, violation or alleged violation of its responsibilities

under this agreement. Each party shall be solely liable for its own acts or failure to act in accordance with this agreement.

ARTICLE 12 - EQUAL OPPORTUNITY COMPLIANCE

The District agrees to abide by all federal and state laws, rules, regulations and executive orders of the Governor of the State of New Mexico, and the President of the United States pertaining to equal opportunity. In accordance with all such laws, rules, and regulations, and executive orders, the District agrees to ensure that no person in the United States shall be excluded, on the grounds of race, color, national origin, sex, sexual preference, age, handicap or religion, from employment with, participation in, be denied the benefit of, or otherwise be subjected to discrimination under any program or activity performed under this agreement. If HSD finds that the District is not in compliance with this requirement at any time during the term of this agreement, HSD reserves the right to terminate this agreement or take such other steps deemed appropriate to correct said deficiency.

ARTICLE 13 - RIGHTS TO PROPERTY

All property acquired hereunder shall be the property of HSD and shall be transferred to HSD on expiration or termination of this agreement.

ARTICLE 14 - CONFIDENTIALITY

Any confidential information, as defined in state or federal law, code, rules or regulations regarding HSD's recipients or providers provided to or developed by the District shall not be made available to any individual or organization by the District without the prior written approval of HSD. It is recognized by both parties that court documents, not sealed under court order, are public records available for public inspection and are not covered under this provision.

ARTICLE 15 - WAIVERS

- 15.1 No term or provision of this agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing by the party claimed to have waived or consented.
- 15.2 A waiver by either of the parties hereto of a breach of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

ARTICLE 16 - NOTICE

- 16.1** All notices given to HSD under this agreement shall be sent to the HSD Project Manager or his/her designee, at:

Paul R. Ritzma, General Counsel
Office of General Counsel
HUMAN SERVICES DEPARTMENT
P. O. Box 2348
Santa Fe, New Mexico 87504-2348
(505) 827-7701
Paul.Ritzma@state.nm.us

- 16.2** All notices required to be given to the District under this agreement shall be sent to:

Court Administrator
11th Judicial District Court
103 S. Oliver Drive
Aztec, NM 87410

- 16.3** A notice shall be deemed duly given upon delivery, if delivered by hand, or three days after posting if sent by first-class mail, with proper postage affixed. Notice may also be tendered by facsimile transmission, with original to follow by first-class mail.

ARTICLE 17 - AMENDMENTS

- 17.1** Changes, interpretations and clarifications of State and Federal law, changing program demands and needs and other program requirements made by the United States Department of Health and Human Services are expected to impact the provisions of this agreement and require amendment of its provisions. The parties agree to work promptly to effect any necessary or desirable amendments.
- 17.2** This agreement shall not be altered, changed or amended other than by an instrument in writing executed by the parties hereto, no verbal or other commitment shall be valid. Amendments shall become effective and binding when signed by both parties.

ARTICLE 18 - HEADINGS NOT CONTROLLING

Headings used in this agreement are for reference purposes only and shall not be deemed a part of the agreement.

ARTICLE 19 - ENTIRE AGREEMENT

- 19.1 This agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof. All such covenants, agreements and understandings have been merged into this written agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.
- 19.2 Nothing contained herein shall be enforceable by any third party, and third parties shall not be deemed the beneficiaries hereof.

IN WITNESS WHEREOF, the parties execute this agreement as set forth below

District :

By:

Title: Chief Judge

Signature: 

Date:

7/15/09

STATE OF NEW MEXICO
Human Services Department
Child Support Enforcement Division

By:



Pamela S. Hyde, J.D., Secretary
Human Services Department

Date:

7/17/09

Approved as to form and legal sufficiency:

By:


Paul Ritzma, General Counsel
Human Services Department

Date:

6/2/09



New Mexico Human Services Department

Child Support Enforcement Division

PO Box 25110

Santa Fe, NM 87502

Phone: (505) 476-7207; Fax: (505) 476-7045

Bill Richardson, Governor
Pamela S. Hyde, J.D., Secretary

MONTHLY TIME REPORTING FOR CHILD SUPPORT HEARING OFFICERS CONTRACT EMPLOYEE

_____ Judicial District Court

_____ Counties Served

_____ Physical Address

_____ City

Court Administrator: _____
Print Name

I, _____, Court Administrator, certify that in the
_____ Judicial District Court, _____ total hours have been spent working on child
support IV-D cases for the month of _____, 20__.

Signature

District Court Contact Person: _____
Telephone Number: _____

(This form is to be completed each month by Court Administrators taking into account court employees who have devoted time to child support IV-D cases for the month. Administrators are responsible for submitting the forms to CSED by the 10th day of each month following the reporting period.)