

**STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
SERVICE AGREEMENT**

This Service Agreement (hereinafter referred to as "AGREEMENT") between the New Mexico Human Services Department (hereinafter referred to as "HSD") and April Miglaccio, d/b/a Metrolink (hereinafter referred to as the "CONTRACTOR") specifies the terms and conditions under which the CONTRACTOR will provide process services for the Child Support Enforcement Division (CSED).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The CONTRACTOR shall serve documents, including but not limited to writs of garnishment, summons, and subpoenas on individuals or organizations identified by HSD. The process service is specifically for the CSED regional offices in Albuquerque and any branch or sub-office. **Attachment 1 – Scope of Work** is attached hereto this AGREEMENT and incorporated herein by this reference.

2. Compensation.

- 2.1 The total amount payable by HSD to or on behalf of the CONTRACTOR under this AGREEMENT shall be on a cost-per-service basis including gross receipts tax.
- 2.2 The CONTRACTOR shall be compensated based on the **Terms and Conditions for Payment** attached hereto this AGREEMENT as **Attachment 2** and incorporated herein by this reference.
- 2.2.1 The CONTRACTOR may not charge additional fees or costs when HSD requests service of process to be completed on an expedited basis. If CONTRACTOR is unable to comply with the request for expedited service of process, CONTRACTOR should immediately notify HSD so that the HSD may make other arrangements for completion of the expedited service of process.
- 2.2.2 The **Terms and Conditions of Payment** in **Attachment 2** include all valid charges, fees, and mileage (as applicable) that CONTRACTOR may include when billing HSD. CONTRACTOR may not bill HSD for failed attempts of service of process on an individual to be served, unless there are three failed attempts at service, regardless of the number of different locations at which service is attempted. If CONTRACTOR attempts service more than one time at the same address, it must be on a different date. If CONTRACTOR successfully completes service of process within three attempts, CONTRACTOR may only bill HSD for one completed service in accordance with **Attachment 2**.
- 2.2.3 CONTRACTOR agrees that appearance in court or at an administrative hearing, by the actual person(s) who completed or attempted to complete service of

process, as deemed necessary by HSD to testify regarding completed service and failed attempts at service of process. CONTRACTOR agrees to appear in court or at an administrative hearing to testify when notified verbally or in writing by HSD. If HSD issues a subpoena for the appearance of the person(s) employed by or previously employed by CONTRACTOR or any sub-contractor, CONTRACTOR shall accept service and HSD shall pay CONTRACTOR a witness fee in compliance with Rule 1-045 New Mexico Statutes Annotated (NMSA). CONTRACTOR agrees that failure to appear as dictated by a subpoena may result in a bench warrant issued for the person(s) failing to appear. The CONTRACTOR may not submit any additional billing to HSD for appearance at a court or administrative hearing regardless of the number of appearances. If HSD requests CONTRACTOR to provide more documentation regarding the service of process (i.e. an affidavit), CONTRACTOR expressly agrees that there is no additional fee for providing such documentation.

- 2.2.4 CONTRACTOR agrees not to bill HSD for any fees or costs associated with a subpoena issued by any other party for the appearance of CONTRACTOR regarding the completion or attempted completion of service of process. CONTRACTOR must seek any allowable fees and costs from the party issuing the subpoena.
- 2.3 The CONTRACTOR shall submit a monthly invoice for validation to the CSED Regional Office upon completion of the scope of work described. The original invoice will be addressed and signed and include a calculation of the payment due. A backup sheet detailing dates, times, and service performed must be attached. The original invoices shall also include a separate itemization of all applicable gross receipts taxes paid by the CONTRACTOR. The total of the applicable gross receipts taxes shall be included in the calculation of the payment due.
- 2.4 Actual mileage outside of the city limits of Albuquerque may only be charged for one trip to a different location per each day. Actual mileage will be reimbursed at the rate listed on **Attachment 2**. If CONTRACTOR must make more than one trip outside of the city limits within a given day, CONTRACTOR must obtain the prior authorization of the county office staff. CONTRACTOR may charge for additional mileage between multiple locations outside of the city limits of Albuquerque, but under no circumstances may CONTRACTOR charge for mileage at a multiple rate. Any other mileage accrued by CONTRACTOR is CONTRACTOR's sole responsibility.
- 2.5 Within fifteen (15) days after the date HSD receives written notice from the CONTRACTOR that payment is requested for services or items of tangible personal property delivered on site and received, HSD shall issue a written certification of complete or partial acceptance or rejection of the services or items of tangible personal property. If HSD finds that the services or items of tangible personal property are not acceptable, it shall, within thirty days after the date of receipt of written notice from the CONTRACTOR that payment is requested, provide to the CONTRACTOR a letter of exception explaining the defect or

objection to the services or delivered tangible personal property along with details of how the CONTRACTOR may proceed to provide remedial action. Upon certification by HSD that the services or items of tangible personal property have been received and accepted, payment shall be tendered to the CONTRACTOR within thirty (30) days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the CONTRACTOR at the rate of one and one-half percent (1.5%) per month. For purchases funded by state or Federal grants to total public bodies, if the local public body has not received the funds from the federal or state funding agency, but has already certified that the services or items of tangible personal property have been received and accepted, payments shall be tendered to the CONTRACTOR within five working days of receipt of funds from the funding agency.

- 2.6 The carryover of any unspent funds between fiscal years is not permitted. Monthly invoices submitted by the CONTRACTOR to HSD must be received by HSD no later than fifteen (15) days after the end of each month, with the exception of the month ending June 30th for which invoices must be received no later than ten (10) days after the end of that month. Failure to adhere to this requirement may result in a reduction of available funds and non-payment of invoices.

3. Term.

This AGREEMENT shall be effective upon signature by the parties and shall terminate on **June 30, 2010**, unless amended, extended, or terminated pursuant to the terms of this AGREEMENT.

4. Termination.

A. **Termination.** This AGREEMENT 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 AGREEMENT, 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 AGREEMENT. CONTRACTOR shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this AGREEMENT 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 AGREEMENT, 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 AGREEMENT.

B. **Termination Management.** Immediately upon receipt by either HSD or the CONTRACTOR of notice of termination of this AGREEMENT, CONTRACTOR shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this AGREEMENT 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 AGREEMENT; 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 AGREEMENT. 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 AGREEMENT are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this AGREEMENT. If sufficient appropriations and authorization are not made by the Legislature, this AGREEMENT 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 AGREEMENT to unilaterally reduce funding, the CONTRACTOR shall have the option to terminate the AGREEMENT 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 process 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 AGREEMENT. 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 AGREEMENT or assign any claims for money due or to become due under this AGREEMENT without the prior written approval of HSD.

8. **Subcontracting.**

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

9. Release.

Final payment of the amounts due under this AGREEMENT 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 AGREEMENT.

10. Confidentiality.

Any confidential information provided to or developed by the CONTRACTOR in the performance of this AGREEMENT 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 AGREEMENT shall become the property of the State of New Mexico and shall be delivered to HSD no later than the termination date of this AGREEMENT. Nothing developed or produced, in whole or in part, by the CONTRACTOR under this AGREEMENT 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 AGREEMENT. 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 AGREEMENT shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

14. Merger.

This AGREEMENT 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 AGREEMENT. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this AGREEMENT.

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 AGREEMENT. If CONTRACTOR is found not to be in compliance with these requirements during the life of this AGREEMENT, CONTRACTOR agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this AGREEMENT 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 AGREEMENT, 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 AGREEMENT.

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 AGREEMENT 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 AGREEMENT 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 AGREEMENT, 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 AGREEMENT. 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 AGREEMENT 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 AGREEMENT, 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://insurenwnewmexico.state.nm.us/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price Agreements 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 Agreements (from state and, if applicable, from local public bodies if from a state price Agreement) 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 AGREEMENT shall be held invalid or unenforceable, the remainder of this AGREEMENT shall not be affected and shall be valid and enforceable.

23. Enforcement of AGREEMENT.

A party's failure to require strict performance of any provision of this AGREEMENT 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 AGREEMENT 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 AGREEMENT 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 HSD: David C. Cisneros
CSED Program Manager
2009 S. Pacheco Street – Pollon Plaza
P. O. Box 25110
Santa Fe, NM 87504

To CONTRACTOR: April Miglaccio
Metrolink
P.O. Box 93325
Albuquerque, NM 87199

25. Authority.

If CONTRACTOR is other than a natural person, the individual(s) signing this AGREEMENT 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.

A. Pursuant to 45 C.F.R. Part 76, CONTRACTOR certifies by signing this AGREEMENT, 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

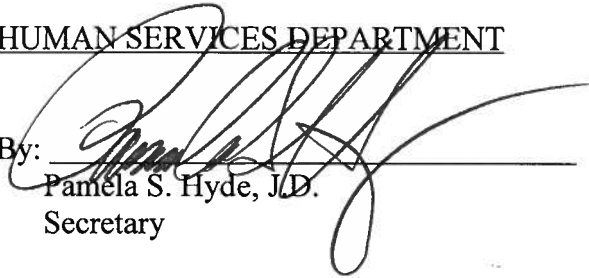
contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this AGREEMENT, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or 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 AGREEMENT, 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 AGREEMENT 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 AGREEMENT, CONTRACTOR learns that its certification in Paragraph A was erroneous on the effective date of this AGREEMENT 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 AGREEMENT or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to HSD, HSD may terminate the AGREEMENT.

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.

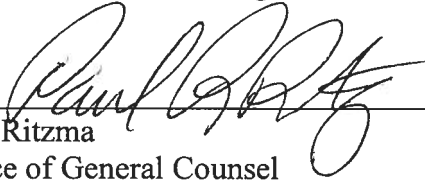
IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the date of execution by the State Human Services Department, Child Support Enforcement Division, below:

HUMAN SERVICES DEPARTMENT

By: 
Pamela S. Hyde, J.D.
Secretary

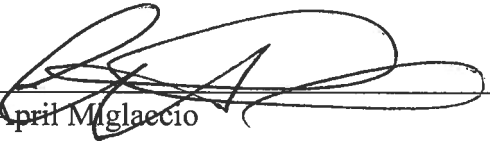
Date: 7/14/09

Approved as to Form and Legal sufficiency:

By: 
Paul Ritzma
Office of General Counsel

Date: 7/2/09

CONTRACTOR

By: 
April M. Glaecio

Date: 7/8/09

TAXATION AND REVENUE DEPARTMENT

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: 02-341425-001

By: 
Julie Arco

Date: 7/15/09

Attachment 1

Scope of Work

The CONTRACTOR shall serve documents, including, but not limited to, writs of garnishment, summons, and subpoenas on individuals or organizations identified by the DEPARTMENT. The process service is specifically for the **Albuquerque Regional Offices** and any branch or sub-office. This is not an exclusive Contract. Other process service contracts may be issued in this Region. No assignments or specific number of services under this Agreement are guaranteed.

HSD STRATEGIC PLAN:

- Goal:** To process and serve as many non-custodial parents as possible. Process Service is a legal procedure required in order to obtain court orders to pursue child support collections on behalf of CSED customers and the state TANF cases.
- Objectives:** The Department's objective is to assist and collect support that is owed for not only to custodial parents but also to reimburse the State money that is owed for TANF and other financial assistance programs within the Human Services Department.
- Performance Measures:** To assure that non-custodial parents are being served with legal documents so that they have legal notice of the Department's intent to collect support.

Attachment 2

Terms and Conditions for Payment

| | |
|--|-----------------|
| Personal Service | \$35.00 |
| Service on Other Person in Household including mailing | \$35.00 |
| Service on Employer, including mailing | \$35.00 |
| Failed Service or Unable to Locate (There must have been a diligent effort of at least three (3) separate attempts which are sufficiently documented.) | \$25.00 |
| Actual mileage outside the city limits of Albuquerque, NM | \$0.40 per mile |

Signature: 

Title: owner / VP

Date: 7/8/09