

REQUEST FOR PROPOSALS

ISSUED BY

**The New Mexico Human Services Department
Behavioral Health Services Division**



FOR

**A FISCAL AGENT FOR BEHAVIORAL HEALTH
SERVICES INITIATIVES**

P. O. Box 2348
Santa Fe, New Mexico 87504-2348
Brent Earnest, Secretary

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SOLICITATION #:15-630-7903-3000

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I. PROJECT INFORMATION

A. PURPOSE OF RFP

The State of New Mexico's Human Services Department (HSD), Behavioral Health Services Division (BHSD) is requesting proposals from qualified entities for the services of a Fiscal Agent.

The purpose of this Request for Proposals (RFP) is to select an Offeror with experience and knowledge to perform the specific fiscal agent services described in the Contract Terms and Conditions, Scope of Work, attached as Appendix B.

Administering Agency

Behavioral Health Services Division (BHSD), part of the Human Services Department (HSD), is the state authority for managing and providing behavioral health services, including substance abuse treatment and prevention services and mental health treatment services. As such, the contract resulting from the issuance of this RFP will be executed and managed by HSD/BHSD.

B. PROJECT SUMMARY

The HSD is a member of the New Mexico Behavioral Health Purchasing Collaborative (Collaborative), which consists of sixteen state agencies. The HSD BHSD supports the vision of the Collaborative which is:

To develop a single, statewide behavioral health services system in which behavioral health consumers are assisted in participating fully in the life of their communities; the support of recovery and development of resiliency are expected; behavioral health is promoted; the adverse effects of substance abuse and mental illness are prevented or reduced; and available funds are managed effectively and efficiently.

The processes for planning and implementing this vision call for, but are not limited to, the statewide participation of and recommendations from consumer groups, service providers, advocates, community groups and others through attendance at various statewide meetings and functions.

In addition, the Fiscal Agent service is important to meeting the programmatic goals of BHSD and the federal mandates for which BHSD must comply. It supports compliance with Federal block grant requirements which require a BH Planning Council comprised of consumers, advocates and family members and a program of services for Peer Support Specialists.

The Department is seeking a fiscal agent who will partner with it in paying for the expenditures that are incurred as a result of such participation including, but not limited to, the programmatic areas defined below. These programs and their

associated budgets, comprised of state and federal funds, may change with the increase or decrease of appropriations from the state and/or federal government.

Office of Peer Recovery and Engagement

Regional Wellness & Recovery Centers
Certified Peer Specialists
Special Projects

Division Initiatives

Behavioral Health Planning Council
Training Activities and Special Projects

FUNDING AVAILABILITY

The total funding to be administered by the successful offeror under this RFP is approximately \$432,600 annually. This is a pass-through contract. The successful offeror may negotiate a fiscal agent fee that is up to 10% of the administered funds, contingent on experience.

The Department reserves the right to adjust this amount as needed to comply with state and federal funding and/or budget mandates, including possible reductions or increases in the budget. Contract awards are contingent upon funds appropriated by the State of New Mexico and/or the Federal Government.

C. SCOPE OF PROCUREMENT

This will be a single award contract. The scope of procurement shall encompass the defined Scope of Work, detailed in the Sample Professional Services Contract, Appendix B, of this RFP. The contract is scheduled to begin on July 1, 2015 or upon receiving all required state approvals, whichever is later, and end on June 30, 2019, pursuant to funding availability and satisfactory service provision each fiscal year, as determined by the Department. In no circumstance shall the contract exceed a total of four (4) years in duration.

D. OFFEROR QUALIFICATIONS / CONFLICT OF INTEREST

This RFP is open to any Offeror capable of performing the work described in the Contract Terms and Conditions (Appendix B) of this RFP, and meeting the following qualifications:

1. Offeror shall be a New Mexico-based, private for-profit or private non-profit entity with experience contracting with State Government;
2. Offeror shall have at least five years documented financial experience working with a state government agency in work the same as or similar to

that described in this RFP. The work required through this RFP shall be conducted by, or at a minimum, supervised by a certified public accountant (CPA).

3. Offeror must be sensitive to and knowledgeable in working and interacting with a broad spectrum of behavioral health providers, consumers and advocates involved in mental health and drug and alcohol services, specialty areas (culturally relevant populations – e.g. Native Americans) and consumers with co-occurring disorders.
4. Pursuant to the Governmental Conduct Act, Sections 10-16-1 et.seq (NMSA 1978), an Offeror shall have no direct interest which conflicts with the performance of services covered under this Agreement.

The burden is on the Offeror to present sufficient assurance to HSD that the award of the Contract to the Offeror shall not create a conflict of interest.

E. PROCUREMENT MANAGER

The Department has designated a Procurement Manager who is responsible for the conduct of this procurement whose name and contact information is as follows:

Charmaine Espinosa, Procurement Manager
Department of Human Services
Behavioral Health Services Division
P.O. 2348
Santa Fe, New Mexico 87504
Telephone: (505) 476-9259
Fax Number: (505) 476-9277
Charmaine.Espinosa@state.nm.us

All deliveries via express carrier must be addressed as follows:

Charmaine Espinosa, Procurement Manager
Department of Human Services
Behavioral Health Services Division
37 Plaza la Prensa
Santa Fe, New Mexico 87507

Any inquiries or requests regarding this procurement shall be submitted in writing to the Procurement Manager. Questions shall be clearly labeled and shall site the RFP name and RFP section that forms the basis of the questions. Offeror may contact ONLY the Procurement Manager regarding the procurement. Other State employees do not have the authority to respond on behalf of HSD. HSD shall not assume responsibility for any answers or clarifications received from other HSD

staff or any other State staff. **Any contact with anyone other than the Procurement Manager may result in disqualification.**

F. DEFINITIONS OF TERMINOLOGY

This paragraph contains definitions that are meaningful to this RFP, including appropriate abbreviations.

“Contract”: An agreement for the procurement of items of tangible personal property or services.

“Contractor”: The successful Offeror.

“Contract Year”: The period beginning July 1 of each year and ending June 30 of the following year.

“Department”: For purposes of administering the RFP and associated proposals, “Department” means the New Mexico Department of Human Services. This term may be used interchangeably with “HSD”.

“Determination”: The written documentation of a decision of Procurement Manager including findings of facts required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Desirable”: The terms “may”, “can”, “preferably”, or “prefers” identify a desirable or discretionary item or factor.

“DFA”: The Department of Finance and Administration for the State of New Mexico.

“Evaluation Committee”: A body appointed by management of the HSD/BHSD to perform the evaluation of offeror proposals.

“Evaluation Committee Report”: A report prepared by the Procurement Manager and the Evaluation Committee for submission to the Secretary of HSD for contract award. The report contains the written decisions resulting from the conduct of the procurement including the results of the evaluation of competitive sealed proposals.

“Finalist”: Offeror that meets all the mandatory specifications of the RFP and whose score on evaluation factors is sufficiently high to qualify that offeror for further consideration by the Evaluation Committee.

“HSD”: The New Mexico Human Services Department.

“Human Services Department”: “Human Services Department” means the New

Mexico Human Services Department created under the Human Services Department Act (9-8-1 to 9-8-12 NMSA 1978) and, for purposes of administering this RFP and associated proposals, may also be referred to as "Department" or "HSD".

"Mandatory": The terms "must", "will", "shall", "is required", or "are required" identify a mandatory item or factor.

"Offeror": Any person, corporation, or partnership which chooses to submit a proposal.

"Procurement Manager": The person or designee authorized by the Department to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

"Request for Proposals (RFP)": All documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror": An offeror that submits a responsive proposal and that has furnished, when required, information and data to prove the financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

"Responsive Offer" or "Responsive Proposal": An offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. The term "material respects" includes, but it is not limited to the price, quality, quantity or delivery requirements of the relevant product or service.

"Secretary": The Secretary of the New Mexico Human Services Department.

G. NOTICE TO OFFEROR

This procurement is governed by the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978 and General Services Department Procurement Code Regulations, 1.4.1 NMAC. The Procurement Code imposes civil and criminal penalties for its violation. In addition, New Mexico criminal status imposes felony penalties for bribes, gratuities, and kickbacks.

II. CONDITIONS GOVERNING THE PROCUREMENT

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule of procurement events. The Department reserves the right to revise the dates on this schedule without the need to amend the RFP. Revised dates will be shared with the offerors with as much advance notice as possible.

	<u>Action</u>	<u>Responsibility</u>	<u>Date*</u>
1.	Issue of RFP	Department	04/20/2015
2.	Distribution List Response	Potential Offeror	04/27/2015
3.	Deadline to Submit Written Questions	Potential Offerors	04/27/2015
4.	Response to Written Questions	Department	05/1/2015
5.	Submission of Proposal	Offeror	05/20/2015
6.	Proposal Evaluation	Evaluation Committee	05/21-27/2015
7.	Selection of Finalists	Evaluation Committee	05/28/2015
8.	Best and Final Offers from Finalists (if necessary)	Finalist Offerors	TBA
9.	Notification of Outcome	Department	05/29/2015
10.	Contract Negotiations	Department, Potential Contractor	06/1-5/2015
11.	Contract Effective Date	Department	07/01/2015
12.	Protest Deadline	Offerors	15 days after contract award

*Dates subject to change based on number of proposals submitted and, if applicable, final approval from federal partners.

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II - A.

1. Issue of RFP

This RFP is being issued by the New Mexico Human Services Department as stated in Section II, A. SEQUENCE OF EVENTS

2. Distribution List Response Due

Potential offerors must return the "Acknowledgement of Receipt" that accompanies this document (See Appendix A) to have their organization placed on the procurement distribution list. It may be emailed, faxed, hand-delivered or returned by certified or registered mail. The form must be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by close of business as stated in Section II, A. SEQUENCE OF EVENTS.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments. Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential offeror's organization name shall not appear on the distribution list.

3. Deadline to Submit Written Questions

Potential offerors may submit written questions as to the intent or clarity of this RFP until close of business as stated in Section II, A. SEQUENCE OF EVENTS. All written questions must be addressed to the Procurement Manager (See Section I, Paragraph E of this RFP).

4. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on approximately as stated in Section II, A. SEQUENCE OF EVENTS to all potential offerors whose organization name appears on the procurement distribution list.

An Acknowledgement of Receipt Form will accompany the distribution package. To indicate receipt of the package, the form shall be signed by the offeror's representative, dated, and hand-delivered or returned by facsimile or by registered or certified mail by the date indicated thereon. Failure to return this form shall constitute a presumption of receipt and withdrawal from the procurement process. Therefore, the offeror's organization name shall be deleted from the procurement distribution list.

5. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN DAYLIGHT TIME ON as stated in Section II, A. SEQUENCE OF EVENTS. Proposals received after this deadline will not be accepted. The date and time will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph E of this RFP. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the FISCAL AGENT FOR BEHAVIORAL HEALTH SERVICES INITIATIVES Request for Proposals. Proposals submitted by facsimile or-email or other electronic means will not be accepted.

A public log will be kept of the names of all offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing offerors prior to contract award. In this context "awarded" means the final required state agency signature on the contract (s) resulting from the procurement has been obtained.

6. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee appointed by Department management. This process will take as stated in Section II, A. SEQUENCE OF EVENTS, depending on the number of proposals received. During this time, the Procurement Manager may initiate discussions with offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions **SHALL NOT** be initiated by offerors.

7. Selection of Finalists

The Evaluation Committee will select and Procurement Manager will notify the finalist offerors on approximately as stated in Section II, A. SEQUENCE OF EVENTS Only finalists will be invited to participate in the subsequent steps of the procurement.

8. Best and Final Offers From Finalists

If necessary, finalist offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers.

9. Notification of Outcome

The Department will notify each offeror of the outcome of the award process by

mail on approximately as stated in Section II, A. SEQUENCE OF EVENTS. This date is subject to change at the discretion of the relevant Agency Procurement Officer. The contract will be awarded to the offeror(s) whose proposal is most advantageous to the Department, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points or have the lowest cost.

10. Contract Negotiations

Contract negotiations will be conducted with the selected offeror(s) on as stated in Section II, A. SEQUENCE OF EVENTS. In the event that mutually agreeable terms cannot be reached within the time specified, the Department reserves the right to finalize a contract with the next most advantageous offeror without undertaking a new procurement process.

11. Contract Effective Date

The anticipated contract start date is July 1, 2015. The contract is subject to appropriate state approvals. No work may be performed by the offeror until the contract is fully executed. The Department assumes no liability for any work performed by the selected offeror in anticipation of a binding contract prior to the approval date from the Department of Finance and Administration.

12. Protest Deadline

Any protest by an offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The fifteen (15) calendar day protest period for responsive offerors shall begin on the day following the notification of outcome and will end at 5:00 pm Mountain Daylight Time on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting Attachments, and it must specify the ruling requested from the Department. Protests received after the deadline will not be accepted. The protest must be delivered to:

Office of General Counsel
Pollon Plaza
2009 South Pacheco
Santa Fe, New Mexico 87505
OR
Mailing Address:
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

C. GENERAL REQUIREMENTS

This procurement shall be conducted in accordance with the New Mexico Procurement Code, 13-1-28 NMSA 1978, GSD Procurement Regulation 1.4.1 NMAC.

1. Acceptance of Conditions Governing the Procurement

Offerors shall indicate, in the proposal's Letter of Transmittal, their acceptance of the Conditions Governing the Procurement (Section 2C – General Requirements) section of this RFP. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section IV of this RFP.

2. Incurring Cost

Any cost incurred by the Offeror in preparation, transmittal and presentation of any proposal or material submitted in response to this RFP shall be born solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the Prime Contractor is solely responsible for fulfillment of the contract with the Department. The Department shall make contract payments to only the prime contractor and shall consider the selected Offeror to be the sole point of contact with regard to any final contract.

4. Subcontractors

Use of subcontracts shall be clearly explained in the proposal. If subcontractors are used, however, the Offeror, as prime contract, will be held fully responsible for fulfillment of the contract. Additionally, the prime contractor must receive written approval from the agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposal shall be a complete replacement for a previously submitted proposal and shall be clearly identified as such in the transmittal letter. Department personnel shall not merge, collate, or assemble proposal materials.

6. Offeror's Rights to Withdraw Proposal

Offerors shall be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror shall submit a written withdrawal

request signed by the Offeror's duly authorized representative and addressed to the Procurement Manager.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Response to this RFP shall be signed by an individual authorized to be the Offeror. The cover letter shall state that the offer, including proposal prices, remains valid for ninety (90) days after the due date for receipt of proposals or sixty (60) days after receipt of the final best and final offer, if one is submitted.

8. Disclosure of Proposal Contents

The proposals shall be kept confidential until contracts are awarded by the Department. At that time, all proposals and documents pertaining to the proposals shall be open to the public, except for the material on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:

- a. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
- b. Confidential data is restricted to:
 - 1) confidential financial information concerning the Offeror's organization;
 - 2) and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978.
 - 3) PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

If a request is received for disclosure of material for which an Offeror has made a written request for confidentiality, the Procurement Manager shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal shall be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

This procurement in no manner obligates the State of New Mexico or any of its agencies to the eventual purchase of services offered until valid written contracts are fully executed and approved by appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Department determines such action to be in the best interest of the State of New Mexico.

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated or modified if sufficient appropriations or authorizations do not exist. Such termination shall be effected by sending written notice to the Contractor. The Department's decision as to whether sufficient appropriations and authorizations are available shall be accepted by the Contractor as final.

12. Legal Review

The Department requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns shall be promptly brought to the attention of the Procurement Manager.

13. Governing Law

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied by the Department in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between the Department and a Contractor shall follow the format specified by the Department and contain the terms and conditions set forth in Appendix B, "Contract Terms and Conditions". The Department reserves the right to initiate negotiations with a successful Offeror of provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal shall be incorporated into the contract.

HSD discourages exceptions requested by Offerors to contract terms and conditions in the RFP (Appendix B – Contract Terms and Conditions). If, in the sole assessment of HSD (and its evaluation team), a proposal appears to be contingent on an exception, or on correction of what is deemed by an Offeror to be a deficiency, or if an exception would require a substantial proposal rewrite, a proposal may be rejected as nonresponsive.

The sample contract in Appendix B is HSD's generic contract. It does not contain the terms for confidential medical or personal information, which, depending on the nature of the procurement, may be added.

All contracts for professional services are subject to the review and approval of the Department of Finance and Administration pursuant to Section 13-1-118 NMSA 1978 and DFA Rule 2NMAC40.2.

16. Offeror's Terms and Conditions

Should an Offeror object to any of the Agency's terms and conditions, as contained in this Section or in Appendix B, the Offeror must propose specific, alternative language in writing and submit it with its proposal. Contract variations received after the award will not be considered. The Agency may or may not accept the alternative language. Offerors agree that requested language must be agreed to in writing by the Agency to be included in the contract. If any requested alternative language submitted is not so accepted by the Agency, the attached sample contract with appropriately accepted amendments shall become the contract between the parties. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. Offerors must submit with the proposal a complete set of any additional terms and conditions which they expect to have included in a contract negotiated with the Agency.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. Offerors must submit with the proposal a complete set of any additional terms and conditions which they expect to have included in a contract negotiated with the Agency.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, shall be discussed only between the Department and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of

any potential Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements in instances where all responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representative

The Department reserves the right to require a change in contractor representative if the assigned representative is not, in the opinion of the Department, adequately meeting the needs of the Agency.

21. Notice of Penalties

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

22. Agency Rights

The Agency, in agreement with the Evaluation Committee, reserves the right to accept all or a portion of a potential Offeror's proposal.

23. Rights to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the State of New Mexico.

25. Confidentiality

Any confidential information provided to, or developed by, the contractor in the

performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the Agency.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

26. Electronic Mail Address Required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. See also Section II.B.4, Response to Written Questions.

27. Use of Electronic Versions of This RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to:

[http://www.generalservices.state.nm.us/statepurchasing/ITBs_RFPs and Bid Ta_bulation.aspx](http://www.generalservices.state.nm.us/statepurchasing/ITBs_RFPs_and_Bid_Ta_bulation.aspx).

28. New Mexico Employees Health Coverage

- a. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least twenty (20) hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed two hundred fifty thousand dollars (\$250,000).
- b. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- c. Offeror must agree 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://www.insurenewmexico.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); these requirements shall apply the first day of

the second month after the Offeror reports combined revenue (from state and, if applicable, from local public bodies if from a state price agreement) of two hundred fifty thousand dollars (\$250,000).

29. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX D, as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor or other identified official. Failure to complete and return the signed unaltered form will result in disqualification.

30. Pay Equity Reporting Requirements

- a. If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249) if they are awarded a contract. Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local Contractor.
- b. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than one hundred eighty (180) days has elapsed since submittal of the last report, at the completion of the contract.
- c. Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Offeror must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.
- d. Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

31. Disclosure Regarding Responsibility

- a. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any

principal of the Contractor's company:

- 1) is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
- 2) has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a) the 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;
 - b) violation of Federal or state antitrust statutes related to the submission of offers; or
 - c) the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
- 3) is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
- 4) has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds three thousand dollars (\$3,000) of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- 5) Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- 6) The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of

changed circumstances.

- 7) A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.
- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- 9) The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal.

B. NUMBER OF COPIES

Offerors shall provide an original and three (3) identical copies of their proposal, to the location specified in Section 1, Paragraph E, on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT and ORGANIZATION

All proposals shall be typewritten on standard 8 ½ x 11 paper and placed in a binder with tabs delineating each section. Larger paper is permissible for charts, spreadsheets and other graphics. The proposal is limited to fifteen (15) pages of narrative excluding the summary, attachments and forms.

Proposal Organization

In each section of its proposal, Offeror's shall address the items in the order in which they appear in this RFP under Mandatory Specifications. All forms provided in the RFP must be complete and included in the appropriate section of the proposal.

Any proposal that does not adhere to these requirements will be deemed non-responsive and may result in rejection of the proposal on that basis.

The proposal shall be organized and indexed in the following format and shall contain, at a minimum, all listed items in the sequence indicated.

1. Letter of Transmittal

Each proposal shall be accompanied by a Letter of Transmittal Form (which may be found in Appendix C of this RFP). The letter of transmittal shall:

- a. Identify the name and mailing address of the submitting organization;
- b. Identify the name, title, email address and telephone number of the person(s) authorized by the organization to:
 - 1) Be contacted for clarification;
 - 2) Negotiate the contract on behalf of the organization, and
 - 3) Contractually obligate the organization.

- c. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award;
- d. Explicitly indicate acceptance of the Conditions Governing the Procurement (Section II, C of this RFP)
- e. Explicitly indicate acceptance of the Contract Terms and Conditions attached as Appendix B.

If the Offeror is unwilling to comply with any terms, conditions, or other requirements of this RFP, it shall, in Section 4F of its proposal, clearly describe any deviations and include a complete explanation of why such deviations are proposed.

- f. Explicitly indicate acceptance of Section IV (Evaluation) of this RFP;
- g. Be signed by the person authorized to contractually obligate the organization; and,
- h. Acknowledge receipt of any and all amendments to this RFP, if applicable.

2. Table of Contents

The table of contents shall contain a list of material in the proposal and the page number where the information can be found.

3. Proposal Summary

A proposal summary is optional and may be included by the offeror to provide the Evaluation Committee with an overview of the qualifications and other features of the proposal. This material will not be used in the evaluation process unless specifically referenced in other portions of the offeror's proposal.

4. Mandatory Specifications

A total of one thousand (1,000) points may be scored in the evaluation of the offeror's proposal pursuant to the following criteria.

a. Organization (50 Points)

- 1) Describe your organization, including your vision, mission, core values, and history. Please include an ethics statement that reflects your business practice.
- 2) Describe why your agency is the most advantageous for HSD to work

with as a Fiscal Agent. Include information that will not be addressed when answering the questions below.

b. Organization and Staff Experience/Qualifications (200 Points)

- 1) Describe your organization's qualifications to serve as a Fiscal Agent by addressing the following:
 - a) Organizational Experience - Your Organization's experience in conducting work equal or related to work required under this RFP; your experience in working with New Mexico state government; your experience in working with behavioral health consumers and their family members, behavioral health advocates and/or professionals;
 - b) Staff Experience - Identification of the names and titles of individual(s) that will be involved in staffing this endeavor and include resumes for each. Also include a resume for the Chief Financial Officer (CFO), President and/or Chief Executive Officer (CEO), or comparable positions, as applicable. Label resumes as **Attachment 1**.

c. Financial Capability (350 Points)

- 1) Describe the financial controls you have in place to ensure protection of funds and accurate financial recording, reporting and disbursement of funds.
- 2) Describe the proposed authorization process for writing and issuing checks. Include a timeline or description of how long the process will take from request to check dissemination. Please address whether requests for quick-turnaround disbursements will be acceptable.
- 3) Include the following documents as **Attachment 2** to your proposal:

If you are required to obtain an audit, please attach the most current audits for the past three years; OR

If you are not required to submit an audit, please explain why you are not required to have one and attach your organization's financial statements for the past three years, i.e. a profit/loss statement, balance sheet, income statement, a statement of financial position and/or other forms that demonstrate your financial position.
- 4) Describe your cash flow capabilities beginning July 1, 2015 through June 30, 2019 and specify the amount you can access and commit beginning July 1, 2015. Include the nature and amount of any lines of

credit available to your organization, minimally one hundred thousand dollars (\$100,000). If not attached as part of Audit (Question #C3), attach, as **Attachment 3**, a Statement of Cash Flow or comparable financial statement. .

- 5) The successful Offeror must secure a Performance Surety Bond in favor of the Agency to insure the Contractor's performance on any subsequent contract award. Please describe current bonding that is in place, if applicable, and the company which holds the bond. If not currently bonded describe your capability and willingness to be bonded.

d. Accounting System/Procedures (300 points)

It is anticipated that the successful offeror will be Fiscal Agent for the following initiatives:

Behavioral Health Planning Council – Pays mileage, per diem, stipends, conference costs and meeting room costs for Council and sub-committee meetings.

Office of Peer Recover and Engagement – Pays costs incurred by Certified Peer Specialists, Wellness Centers and training/special projects.

BHSD Training/Special Projects – Pays costs associated with mental health and substance abuse prevention/treatment projects and training events attended by or on behalf of consumers and advocates.

An average of fifty (50) checks are written monthly from four (4) different funding sources, including, state general funds (separated by Substance Abuse and Mental Health services), the Substance Abuse Prevention and Treatment Services Block Grant and the Community Mental Health Services Block Grant. While payments will be required to be made throughout each month, most activity occurs in the last half of each month. Although some expenses may require confirmation of reservations via credit card in advance of a function such as travel, room reservations and conference activities, disbursements are generally made by check. Activities associated with conferences may require sizeable deposits by the Fiscal Agent prior to an event.

In the role of Fiscal Agent, the successful offeror is expected to be a working partner and participant with consumers, family members, state agency representatives, provider agencies and staff of Behavioral Health Services Division involved in the implementation of behavioral health projects.

- 1) Describe the accounting system and related financial software that you

will use if selected as Fiscal Agent. Describe its capability to track expenditures and prepare monthly summary and detail reports for the three identified initiatives by funding source, project initiative, sub-initiative, and date. Additional initiatives may be added during the contract period, contingent on funding availability and program needs.

- 2) Address your ability to submit invoices/reports on or before the 10th of each month given that you will first need to receive invoices from the individuals/programs.
- 3) Describe the security features of your accounting system.
- 4) Specify the requested Fiscal Agent fee as a percentage of disbursements paid out. A maximum of ten percent (10%) will be allowed, contingent on experience. The rate will include the cost of doing business (i.e., project administration, audit costs, envelopes, postage, copy work, mass mailings, overnight express, telephone, computer generated forms, etc.).

e. Business References (100 Points)

If business references are not provided, the proposal will be viewed as non-responsive to the Request-For-Proposal. The following four (4) letters will be included as **Attachment 4**.

- 1) Submit a letter of reference from your current financial institution describing your ability to successfully perform this contract. It shall include information on your cash-flow capabilities, credit lines and any other relevant information.
- 2) Submit three support letters from a business organization and/or non-profit community organization that is knowledgeable of your fiscal agent and financial accountability capabilities and can attest to your qualifications.

f. Offeror's Additional Terms and Conditions (pass/fail)

This section is optional. If the Offeror is unwilling to accept any of the conditions, terms, conditions, or other requirements of this RFP, the Offeror shall clearly describe any deviations and include a complete explanation of why such deviations are proposed.

g. Response to Offeror Qualifications/Conflict of Interest (pass/fail)

The Offeror shall respond to its ability to meet the qualifications and conflict of interest conditions described in Section I, Paragraph D.

h. Response to Pay Equity Reporting Requirements (pass/fail)

The Offeror shall respond to its ability and willingness to meet the requirements of the Pay Equity Initiative as described in Section II C- General Requirements, Paragraph 30 - Pay Equity Initiative of this RFP.

- i. Attach, as Attachment 5, a Signed Campaign Contribution Disclosure Form, which may be found in this RFP as Appendix D.**
- j. Attach, as Attachment 6, a Signed Employee Health Coverage Form, which may be found in this RFP as Appendix E.**

IV. EVALUATION

The Department shall conduct a comprehensive, fair, and impartial evaluation of the proposal received in response to this RFP. The Department shall be the sole judge in the selection of the Offerors. Department shall establish an Evaluation Committee, which shall evaluate proposals. The Committee shall consist of members who are familiar with particular aspects of this procurement and standards of criteria for the specific areas of the RFP. The Department may, at its discretion, designate members to the Committee who are not employees of the Department and who have experience in specific areas of the RFP. The Committee shall evaluate each qualifying proposal on the basis of technical merit. Cost proposals shall be reviewed only for Offerors achieving an adequate score on technical merit.

A. EVALUATION POINT TABLE SUMMARY FACTORS

The following is a summary of evaluation factors and the point value assigned to each. These weighted factors will be used in the evaluation of the individual Offeror proposals. Only finalist Offerors will receive points for the oral presentation, if one is conducted.

<u>Factor</u>	<u>Points</u>
1. Mandatory Specifications:	
A. Organization	50
B. Organization and Staff Experience/Qualifications	200
C. Financial Capability	350
D. Accounting System/Procedures	300
E. Business References	100
F. Offeror's Additional Terms/Conditions (Optional) - Pass/Fail	
G. Response to Offeror Qualifications/Conflict of Interest - Pass/Fail	
H. Response to Pay Equity Initiative – Pass/Fail	
I. Completed and signed Campaign Contribution Disclosure Form - Pass/Fail	
J. Completed and Signed Employee Health Coverage Form – Pass/Fail	
Total Points	1000

B. EVALUATION PROCESS

1. All offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the offeror for clarification of the response.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified, including contacting references in addition to those given by the Offeror.

Responsive proposals will be evaluated based on the evaluation factors set out in Section IV that have been assigned a point value. Points will be awarded based on the thoroughness and clarity of the response, the offerors demonstrated qualifications/experience, its understanding of and approach for implementing the project, the breadth and depth of the engagements cited and the perceived validity of the response.

The responsible offerors with the highest scores will be selected as finalist offerors based upon the proposals submitted. If Best and Final offers are required, finalist offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. The responsible offeror, whose proposal is most advantageous to the Agency, will be recommended for contract award as specified. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

The contract award is subject to the successful negotiation of the contract.

APPENDIX A
ACKNOWLEDGEMENT OF RECEIPT FORM

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix B.

The Acknowledgement of Receipt Form must be signed and returned to the Procurement Manager no later than close of business as stated in Section II, A. SEQUENCE OF EVENTS. Only potential offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all offeror written questions and the Department's written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (circle one) intend to respond to this Request for Proposals.

Charmaine Espinosa
Procurement Manager – Department of Human Services
P.O. 2348
Santa Fe, New Mexico 87504
Telephone: (505) 476-9259
Fax Number: (505) 476-9277
Charmaine.Espinosa@state.nm.us

All deliveries via express carrier should be addressed as follows:

Charmaine Espinosa
Procurement Manager – Department of Human Services
Behavioral Health Services Division
37 Plaza la Prensa
Santa Fe, New Mexico 87507

APPENDIX B
SAMPLE PROFESSIONAL SERVICES CONTRACT
TERMS AND CONDITIONS

**STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Human Services Department**, hereinafter referred to as the "HSD" or the "Department", and **NAME OF CONTRACTOR**, 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 AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform all services detailed in Exhibit A, Scope of Work, attached hereto.

2. Compensation.

A. The HSD shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of _____ dollars (\$_____) in FY 16. The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FY16 totaling (AMOUNT) shall be paid by the HSD to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FY16.**

(REPEAT LANGUAGE FOR EACH FISCAL YEAR COVERED BY THE AGREEMENT).

B. Payment in FY 16, FY 17, FY18, and FY19 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 the DFA. All invoices **MUST BE** received by the HSD no later than fifteen (15) 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 the 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 the 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, the HSD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

4. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **June 30, 2019** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

5. Termination.

A. Grounds. The HSD may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the HSD's uncured, material breach of this Agreement.

B. Notice; HSD Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the HSD shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give HSD written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the HSD's material breaches of this Agreement upon which the termination is based and (ii) state what the HSD must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the HSD does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the HSD does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the HSD; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the HSD's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; 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. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE HSD'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

D. **Termination Management.** Immediately upon receipt by either the HSD or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the HSD; 2) comply with all directives issued by the HSD in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the HSD shall direct for the protection, preservation, retention or transfer of all property titled to the HSD and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the HSD upon termination and shall be submitted to the 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 the HSD to the Contractor. The HSD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the 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 professional services for the 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 reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

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 the 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 the HSD. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring HSD.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the 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 the 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 the 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.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, 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.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any HSD employee while such employee was or is employed by the HSD and participating directly or indirectly in the HSD's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly

resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the HSD's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the HSD.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the HSD relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the HSD if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD and notwithstanding anything in the Agreement to the contrary, the HSD may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the HSD proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

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, NMSA 1978 §§ 13-1-28 through 13-1-199, 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 NMSA 1978, § 38-3-1 (G). 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 the HSD.

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of five (5) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall

have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the 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 the 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 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 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/>.

22. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has two hundred fifty (250) or more employees, contractor must complete and submit the PE250

form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

23. 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.

24. 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.

25. 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 the HSD:

[insert name, address and email].

To the Contractor:

[insert name, address and email].

26. 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.

The remainder of this page intentionally left blank.

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

By: _____ Date: _____
HSD Cabinet Secretary

By: _____ Date: _____
HSD's Legal Counsel – Certifying legal sufficiency

By: _____ Date: _____
HSD's Chief Financial Officer

By: _____ Date: _____
Contractor

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: 00-000000-00-0

By: _____ Date: _____
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date: _____
DFA Contracts Review Bureau

Exhibit A
Scope of Work (SOW)

A. Administrative Responsibilities

The Contractor shall:

- 1) Be a certified public accountant (CPA) or an experienced bookkeeper supervised by a CPA.
- 2) Maintain an accounting system that complies with generally accepted accounting principles for documenting, tracking and reporting costs incurred and payments made;
- 3) Retain all financial records under this contract for a minimum of years;
- 4) Have sufficient operating funds to make payments prior to reimbursement from the HSD, in an amount that is estimated to be an average of forty two thousand dollars (\$42,000) per month, however, could be up to one hundred thousand dollars (\$100,000) in a single month if a big consumer-related event is planned for that month. Please note that at the beginning of each state fiscal year, it is possible that two months of payments will need to be made prior to reimbursement from the HSD to allow for the open and close of state fiscal years;
- 5) Secure a fidelity bond sufficient to cover the contract;
- 6) Efficiently and expeditiously issue allowable, approved payments to designated vendors/payees, based on BHSD approved requisitions/written directives, for expenses such as, but not limited to: travel and/or per diem expenses, stipends, conference fees, meeting rooms, membership dues, training and other consumer development projects; and other approved expenses allowable and appropriate to the mission of the project.

The projects for which the Contractor will pay invoices/expenses, track expenditures and maintain books of record are described in Section B of this Attachment;

- 7) Ensure timely payment and accurate reporting and tracking of payments by vendor, payee, state and federal fiscals year and funding source;
- 8) Issue sub-contracts between its organization and selected vendors for special services and projects identified by the Department in order that payment can be made by the fiscal agent. These contracts will vary in amount and time duration. Status reports on contractor compliance will be provided at the end of each contract, unless non-compliance issues arise that may create cause for earlier

status reports;

- 9) Facilitate travel, lodging and/or meeting room arrangements, if needed, to allow providers, consumers and/or advocates to attend meetings and conferences;
- 10) Be knowledgeable of and able to implement the applicable state, federal and local tax laws related to contractor payments, including the issuance of 1099 reports, as applicable;
- 11) Make appropriate distribution of payment within three (3) business days of receipt of requisition/written directive as authorized and approved by the Department. There may be infrequent instances when a payment may have to be disbursed on the same day of request.
- 12) Submit monthly reports to the Department identifying the distribution of funds for the month in a format to be mutually agreed upon by the offeror and the Department, but to include, at a minimum monthly and year-to-date expenditures and running balance by vendor, funding source and fiscal year and including detail such as date, check numbers and payees. Reports will be due on or before the 8th of each month in order to reimburse the successful offeror;
- 13) Insure the provision of an annual independent audit by a certified public accountant at the end of each fiscal year in accordance with generally accepted governmental auditing standards. A copy of the audit shall be submitted to the Department.

B. Description – Projects to be Fiscally Managed (NOTE: THE DOLLAR AMOUNTS ARE ESTIMATES FOR FY 16 and could change for fiscal years 17, 18 and 19)

1) Office of Peer Recovery and Engagement - \$366,570

Funds will be made available and the Contractor is authorized to pay for the distribution of funds for the Office of Peer Recovery and Engagement (OPRE) for the period of FY 16. The CONTRACTOR shall make payment upon receipt of approved invoices by HSD/BHSD/OPRE staff prior to payment for these services:

a) Development and implementation of Consumer Regional Wellness and Recovery Centers - \$132,919.

1. Pay costs necessary to obtain technical assistance, training and consulting on the design, planning, facilitation, implementation and evaluation of a New Mexico Consumer Network of Wellness Centers.
2. Pay stipends, meeting expenses and travel reimbursement to develop consumer engagement activities requested and convened by the OPRE.

b) Certified Peer Support Worker (CPSW) - \$132,918

Pay all approved related costs for CPSW training and all approved related costs for Peer Coordinator and Trainers and to provide administrative support to the Planning Council.

c) Special Projects - \$100,733

Pay all approved associated special project costs for consumer-run initiatives under the OPRE.

2) Division Initiatives - \$109,258

a) Training - \$75,158

Funds will be made available and the Contractor is authorized to pay for costs associated with the BHSD Training Program and Special Projects during the period of FY 16. The following events are authorized:

1. The development and implementation of a strategic training schedule under the guidance of a Behavioral Health Services Division steering committee. Said schedule will contain workshops based on Best Practice models and be delivered on a local, regional and statewide basis. The targeted participants will be service providers, consumers and other stakeholders in the behavioral health treatment system. The workshops will be designed for the purpose of developing knowledge and enhancing skills, clinically and programmatically. The presenters/trainers will be required to meet the professional standards established by the steering committee. The training program will include approved ad hoc events.
2. Provider fidelity reviews and continuous quality improvement recommendations in the provision of the Intensive Outpatient Program as a mechanism to strategically identify systemic, statewide training needs.
3. Special Project Costs for BHSD-run/approved initiatives, such as, but not limited to: Independent Peer Review, Quality Service Reviews and Recovery Oriented System of Care (ROSC).

b) Behavioral Health Planning Council - \$34,100

Funds will be made available and the Contractor is authorized to pay for costs to support the Behavioral Health Planning Council (BHPC) and will be used for travel reimbursement; stipends, meeting facilities and other related costs needed to conduct the council's business. These funds will be used to expand the council's activities such as conducting public forums around the state; monitoring activities of BHSD providers; conducting sub-committee meetings and additional council meetings, as necessary. Behavioral Health

Services Division (BHSD) funds of thirty four thousand one hundred dollars (\$34,100) will be made available for the whole of FY 16.

The CONTRACTOR shall make payment upon receipt of approved invoices, which HSD staff will review on a monthly basis.

Exhibit B

HSD Data Classification Directive

AUTHORITY

Federal regulations require all state agencies to establish a data classification.

The Health Insurance Portability and Accountability Act (HIPAA) of 1996, specifies requirements for data classification, privacy, and accountability for electronic protected health information (ePHI).

The Internal Revenue Service (IRS) Publication #1075, *Tax Information Security for Federal, State, and Local Agencies and Other Entities*, specifies requirements for data classification and controls for protecting the confidentiality of Federal Tax Information (FTI).

The Social Security Administration (SSA) Electronic Information Exchange Security Requirement, Guidelines, and Procedures for State and Local Agencies, specifies requirements for data classification and controls for protecting the confidentiality of SSA provided data.

PURPOSE

The purpose of this guideline is to provide a classification of HSD data based on its level of sensitivity, value and criticality to the HSD as required by the New Mexico Administrative Code NMAC 1.12.20. Classification of data will aid in determining baseline confidentiality, integrity, and availability controls for the protection of data.

SCOPE

This directive applies to all HSD employees, vendors and/or contractors who have access to critical systems, applications, databases, networks, information, and any other resources managed or maintained by HSD. Contractor access shall be granted based on need-to-know and least-privilege necessary as defined in the contract agreements.

BACKGROUND

Data and information with the highest risk need the greatest level of protection to prevent compromise; data with lower risk requires proportionately less protection. Data and information assets shall be protected according to the risk associated with data classification.

ROLES AND RESPONSIBILITIES

The ITD executive team shall have the responsibility of oversight and enforcement of these directives and procedures to ensure compliance.

The ITD Security Team is responsible for the review, issuance and the ongoing revision of this document every three years, or when there are significant changes, with coordination among organizational entities as required. Directives and associated

changes must be approved in writing by the CIO, or designee, prior to implementation.

DIRECTIVE

A. Public Data

Data should be classified as Public when the unauthorized disclosure, alteration or destruction of that data would result in little or no risk to HSD and its affiliates. Examples of Public data include press releases, office locations, HSD website information and publications. While little or no controls are required to protect the confidentiality of Public data, some level of control is required to prevent unauthorized modification or destruction of Public data.

B. Internal Use Only/Restricted Data

This data is intended for internal HSD business use only with access restricted to a specific workgroup, office, division, group of individuals, or affiliates with a legitimate need. Data should be classified as Internal Use Only when the unauthorized disclosure, alteration or destruction of that data could result in a moderate level of risk to HSD or its affiliates. By default, all HSD Data that is not explicitly classified as Confidential or Public data should be treated as Internal Use Only data. A reasonable level of security controls should be applied to Internal Use Only data.

Internal data is generally not made available to parties outside the HSD community. Some portions of internal data may, however, be public. Disclosure of this data may occur in full or in a redacted form, as appropriate. The handling of this data should be in accordance with protecting the information as appropriate. Unauthorized disclosure could adversely impact the Agency, Affiliates, or Clients. Internal data generally has a low to moderate sensitivity. Examples include, but are not limited to, business program files such as:

- Internal memos
- Internal emails
- Contracts and Proposals prior to contract award

C. Confidential Data

This is highly sensitive data intended for limited, specific use by a workgroup, department, or group of individuals with a legitimate need-to-know. Explicit authorization by the Data Owner is required for access because of legal, contractual, privacy, or other constraints. Unauthorized disclosure could have a serious adverse impact on the business of HSD or affiliates, the personal privacy of individuals, or on compliance with federal or state laws and regulations or HSD contracts. Confidential data types require a very high level of security controls. Examples include:

- Social Security Number
- Income tax records (FTI)
- Date of birth
- Financial Information

- Place of birth
- Driver license numbers
- Mother's maiden name
- Credit card numbers
- Bank account numbers
- Personal address
- Medical records (ePHI)
- Authentication tokens (e.g., personal digital certificates, passwords, etc.)
- Personally Identifiable Information (PII). An individual's name (first name and last name, or first initial and last name) in combination with one or more of the following: a) social security number, b) driver's license number or state identification card number, or c) financial account number, or credit or debit card number, alone or in combination with any required security code, access code or password that would permit access to a consumer's financial account.

TYPES OF CONFIDENTIAL HSD INFORMATION

A. IRS Federal Tax Information (FTI)

FTI is defined as federal tax returns or federal tax information that has **originated** with the IRS. The FTI may be received directly or indirectly from the IRS. A Tax Return means any tax or information return, estimated tax declaration, or refund claim (including amendments, supplements, supporting schedules, attachments or lists) required by or permitted under the Code and filed with the IRS by, on behalf of, or with respect to any person. Examples of returns include forms filed on paper or electronically, such as Forms 1040, 941, 1099, 1120 and W-2.

Definition of Return Information

The definition of return information is very broad. It includes, but is not limited to:

- Any information, besides the return itself, that IRS obtained from any source or developed through any means that relates to the potential liability of any person under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.
- Information extracted from a return, including names of dependents, or the location of a business.
- The taxpayer's name, address, and identification number (SSN or Federal ID).
- Information collected by the IRS about any person's tax affairs, even if identifiers like name, address, and identification number are deleted.
- Whether a return was filed, is or will be examined, or subject to other investigation or processing, including collection activities.
- Information contained on transcripts of accounts.

IRS Pub 1075 stipulates that contractors may not access FTI that is used for the Title IV-A program. Provisions of the Affordable Care Act (ACA) allow contractors that have met the Pub 1075 security controls, and have taken the required IRS training, to have access to the MAGI FTI (Modified Adjusted Gross Income) if needed to support Medicaid and CHIP eligibility determinations. However, contractors may not have access to the IEVS data (Income and Eligibility Verification System). Contractors may have access to FTI as allowed by IRS

Pub 1075 with 45 day advance notice and approval from the IRS.

B. HIPAA Protected Health Information (PHI)

The Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information "protected health information (PHI)."

"Individually identifiable health information" is information, including demographic data, that relates to:

- The individual's past, present or future physical or mental health or condition,
- The provision of health care to the individual, or
- The past, present, or future payment for the provision of health care to the individual, and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number, member number, medical record number, and any number that uniquely identifies an individual in the system).

The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

SAMHSA data as defined by CFR 42 requires additional disclosure restrictions. For purposes of data breaches, this data is PHI and follows the HIPAA rules for disclosure reporting.

C. Personally Identifiable Information (PII)

PII is any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and information which can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual. Within HSD there are many examples of PII.

D. Federal Parent Locator Service Data

FPLS information consists of the National Directory of New Hires (NDNH) data, Debtor File data, and the Federal Case Registry (FCR) data. These are components of an automated national information system which locates employment, income, asset and home address information on parents in child support cases for state CS agencies. The NDNH contains new hire (W-4), quarterly wage (QW) and unemployment insurance (UI) information on employees in both the public and private sector. The Debtor File contains personal information in identifiable form including names, Social Security numbers, arrearages, and other private data. The FCR collects and maintains records provided by state CD agency registries, which include abstracts of support orders and information from child support cases with name, Social Security number, state case identification number, state Federal Information Processing Standard (FIPS) code, county code, case type, sex, date of birth, mother's maiden name, father's name, participant type

(custodial party, noncustodial parent, putative father, child), family violence indicator (domestic violence or child abuse), order indicator, locate request type, and requested locate source.

E. Data Type Examples

Within HSD, several systems exist which contain confidential data. As stated previously, this data must be protected. For illustration purposes, the table below contains several examples of different types of data with their classification.

HSD Data Type	Data Classification Type (Public, Internal, Or Confidential)
Business data containing Federal Tax Information (FTI)	Confidential
Business data containing electronic Personal Health Information (ePHI)	Confidential
Business data containing personally identifiable information (PII)	Confidential
Business data that does not contain FTI, ePHI, or PII, but should not be public	Internal
Business data that does not contain FTI, ePHI, or PII, and could be public	Public
Content on the HSD Public-Facing Website	Public
Administrative data for system access (passwords, etc.)	Confidential
Technical data, system security architecture and settings	Confidential
Admin data, not security related (org charts, cell phone numbers, etc.)	Internal

REFERENCES

- State Security Rule (TITLE 4 ORGANIZATIONAL AND FUNCTIONAL RESPONSIBILITIES, CHAPTER 3 STATE ENTITY)
- www.sans.org/projects/systemsecurity.php
- HSD Personnel Policy 044.7 Disciplinary Action
- National Institute of Standards and Technology (NIST) Special Publication 800-53 and NIST Special Publication 800-122
- CMS *Catalog of Minimum Acceptable Risk Controls for Exchanges – Exchange Reference Architecture Supplement*
- HIPAA Administrative Simplification Regulations, 45 CFR Parts 160, 162 and 164
- Public Law 93-579, *The Privacy Act of 1974*, as amended.
- Public Law 74-271, *Social Security Act*, as amended, §1816, Use of public agencies or private organizations to facilitate payment to providers of services.
- IRS 1075 Publication
- FNS Handbook 901
- OCSE *Security Requirements For State Agencies Receiving Federal Parent Locator Service Data*, October 2009
- NMAC rule 1.12.20

Exhibit C

HSD's Required Contract Language from Federal Partners, General Counsel and External Auditors, As Applicable

1. Debarment and Suspension

A. Consistent with either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and as a separate and independent requirement of this PSC the 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 A; (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. The Contractor's certification in Paragraph A, above, is a material representation of fact upon which the HSD relied when this PSC was entered into by the parties. The Contractor's certification in Paragraph A, above, shall be a continuing term or condition of this PSC. As such at all times during the performance of this PSC, the Contractor must be capable of making the certification required in Paragraph A, above, as if on the date of making such new certification the Contractor was then executing this PSC for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph A, above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

1) The Contractor shall provide immediate written notice to the HSD's Program Manager if, at any time during the term of this PSC, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances.

2) If it is later determined that the Contractor's certification in Paragraph A, above, 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 the HSD, the HSD may terminate the PSC.

C. As required by statute, regulation or requirement of this PSC, and as contained in Paragraph A, above, the Contractor shall require each proposed first-tier subcontractor whose subcontract will equal or exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. The Contractor shall make such disclosures available to the HSD when it requests subcontractor approval from the HSD. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the HSD may refuse to approve the use of the subcontractor.

2. Additional Financial Audit Requirements For Non-Profit Organizations As Applicable

A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of five (5) years from the date of final payment under this Agreement. The records shall be subject to inspection by the HSD, the Department of Finance and Administration and the State Auditor. The HSD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the HSD to recover excessive or illegal payments.

B. Contract for an independent A-133 audit at the Contractor's expense, as applicable. The Contractor shall ensure that the auditor is licensed to perform audits in the State of New Mexico and shall be selected by a competitive bid process. The Contractor shall enter into a written contract with the auditor specifying the scope of the audit, the auditor's responsibility, the date by which the audit is to be completed and the fee to be paid to the auditor for this service. Single audits shall comply with procedures specified by the HSD. The audit of the contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the Agreement in accordance with procedures promulgated by OMB Circulars or by Federal program officials for the conduct and report of such audits. An official copy of the independent auditor's report shall be made available to the HSD and any other authorized entity as required by law within fifteen (15) days of receipt of the final audit report. The Contractor may request an extension to the deadline for submission of the audit report in writing to the HSD for good cause and the HSD reserves the right to approve or reject any such request. The HSD retains the right to contract for an independent financial and functional audit for funds and operations under this if it determines that such an audit is warranted or desired.

C. Upon completion of the audit under the applicable federal and state statutes and regulations, the Contractor shall notify the HSD when the audit is available for review and provide online access to the HSD, or the Contractor shall provide the HSD with four (4) originals of the audit report. The HSD will retain two (2) and one (1) will be sent to the HSD/Office of the Inspector General and one (1) to the HSD/Administrative Services Division/Compliance Bureau.

D. Within thirty (30) days thereafter or as otherwise determined by the HSD in writing, the Contractor shall provide the HSD with a response indicating the status of each of the exceptions or findings in the said audit report. If either the exceptions or findings in the audit are not resolved within thirty (30) days, the HSD has the right to reduce funding, terminate this Agreement, and/or recommend decertification in compliance with state and/or federal regulations governing such action.

E. This audit shall contain a schedule of financial expenditures for each program to facilitate ease of reconciliation by the HSD. This audit shall also include a schedule of depreciation for all property or equipment with a purchase price of \$5,000 or more pursuant to OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

F. This audit shall include a report on compliance with requirements applicable to each major program and internal control over compliance in accordance with OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

A. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93 or Subparts B and C of 7 C.F.R. Part 3018, as applicable, are hereby incorporated by reference in subparagraph (B) of this certification.

B. The Contractor, by executing this PSC, certifies to the best of its knowledge and belief that:

1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement; and

2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts,

subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance is placed when this PSC is made and entered into. Submission of this certification is a prerequisite for making and entering into this PSC imposed under 31 U.S.C. § 1352. It shall be a material obligation of the Contractor to keep this certification current as to any and all individuals or activities of anyone associated with the Contractor during the pendency of this PSC. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to: (1) a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure; and/or (2) at the discretion of the HSD, termination of the PSC.

4. **Non-Discrimination**

A. The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; and the Americans With Disabilities Act of 1990, Public Law 101-336; in that there shall be no discrimination against any employee who is employed in the performance of this PSC, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex, or marital status.

B. This provision shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

C. The Contractor agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Contractor. The Contractor further agrees to insert similar provisions in all subcontracts for services allowed under this PSC under any program or activity.

D. The Contractor agrees to provide meaningful access to services for individuals with Limited English Proficiency (LEP) in accordance with Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency."

5. **Drug Free Workplace**

A. *Definitions.* As used in this paragraph—
"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C 812, and as further defined in regulation at 21 CFR 1308.11 - 1308.15.
"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
"Criminal drug statute" means a Federal or non-Federal criminal statute involving the

manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

B. The Contractor, if other than an individual, shall:

1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

2) Establish an ongoing drug-free awareness program to inform such employees about:

- (i) The dangers of drug abuse in the workplace;
- (ii) The Contractor's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

i. Provide all employees engaged in performance of the PSC with a copy of the statement required by subparagraph B(1);

ii. Notify such employees in writing in the statement required by subparagraph (B)(1) of this clause that, as a condition of continued employment on this PSC, the employee will:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;

iii. Notify the HSD Program Manager in writing within ten (10) days after receiving notice under (B)(4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

iv. Within thirty (30) days after receiving notice under B(4)(ii) of this paragraph of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

- (i) Taking appropriate personnel action against such employee, up to and including termination; or
- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

v. Make a good faith effort to maintain a drug-free workplace through implementation of B(1) through B(6) of this paragraph.

C. The Contractor, if an individual, agrees by entering into this PSC not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

D. In addition to other remedies available to the HSD, the Contractor's failure to comply with the requirements of subparagraph B or C of this paragraph will render the Contractor in default of this PSC and subject the Contractor to suspension of payments under the PSC and/or termination of the PSC in accordance with paragraph 4, above.

6. Findings and Sanctions

A. The Contractor agrees to be subject to the findings and sanctions assessed as a result of the HSD audits, federal audits, and disallowances of the services provided pursuant to this PSC and the administration thereof.

B. The Contractor will make repayment of any funds expended by the HSD, subject to which an auditor with the jurisdiction and authority finds were expended, or to which appropriate federal funding agencies take exception and so request reimbursement through a disallowance or deferral based upon the acts or omissions of the Contractor that violate applicable federal statutes and/or regulations, subject to sufficient appropriations of the New Mexico Legislature.

C. If the HSD becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by a mutually agreed upon panel of Contractor and the HSD officials. If reconciliation is not possible, both parties shall present their view to the Director of the Administrative Services Division who shall determine whether continued payment shall be made.

7. Performance

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees, its subcontractors, and/or Business Associates (BA) with the following requirements:

A. All work will be performed under the supervision of the Contractor, the Contractor's responsible employees, and the Contractor's subcontracted staff.

B. Contractor agrees that any Federal tax returns or return information (FTI), Protected Health Information (PHI), or Personally Identifiable Information (PII), all together referred to hereafter as Confidential Information, made available to Contractor shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and will not be divulged or made known in any manner to any person or entity except as may be necessary in the performance of this contract. Inspection by, or disclosure to, any person or entity other than an officer, employee, or subcontractor of the Contractor is prohibited.

C. Contractor agrees that it will account for all Confidential Information upon receipt and store such Confidential Information in a secure manner before, during, and after processing. In addition, all related output will be given the same level of protection by the Contractor as required for the source material.

D. The Contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components in Contractor's facilities, including paper files, recordings, video, written records, printers, copiers, scanners and all magnetic and flash memory components of all systems and portable media, and no output will be retained by the Contractor at the time the work is completed or when this Contract is terminated. If immediate purging of all data storage components is not possible, the Contractor certifies that any Confidential Information remaining in any storage component will be safeguarded, using IRS Pub 1075 information storage safeguarding controls, to prevent unauthorized disclosures beyond the term of this agreement as long as Contractor is in possession of such data.

E. Any spoilage or any intermediate hard copy printout that may result during the processing of Confidential Information will be given to the HSD or his or her designee. When this is not possible, the Contractor will be responsible for the destruction (in a manner approved by the HSD) of the spoilage or any intermediate hard copy printouts, and will provide the HSD or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

F. All computer systems, office equipment, written records, and portable media receiving, processing, storing, or transmitting Confidential Information must meet the requirements defined in relevant federal regulations such as IRS Publication 1075, HIPAA Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164), HIPAA Security Rule (45 CFR Part 160 and Subparts A and C of Part 164), and/or any other Federal requirements that may apply to this contract. To meet functional and assurance requirements, the security features of the Contractor's environment must provide for security across relevant managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Confidential Information.

G. No work involving Confidential Information furnished under this contract will be subcontracted without prior written approval of the HSD.

H. The Contractor will maintain a list of its employees, subcontractors, and/or business related entities with authorized access (electronic or physical) to HSD Confidential Information. Such list will be provided to the HSD and, upon request, to the federal agencies as required.

I. The Contractor will provide copies of signed acknowledgments for its staff and its subcontractors and/or Business Associates, to provide certification that relevant information security awareness and training was completed. These certifications will be provided to the HSD upon contract start and, at a minimum, annually thereafter during the term of this agreement.

J. Upon request, the Contractor will provide the HSD copies of its current plans or policies that document Contractor's privacy and security controls as they relate to HSD Confidential Information. This includes, at a minimum, any System Security Plans which describe the administrative, physical, technical, and system controls to be implemented for the security of the department's Confidential Information. The plan shall include the requirement for a contractor notification to the department Security Officer or Privacy Officer of breaches or potential breaches of information within 24 hours of their discovery.

K. All incidents affecting the compliance, operation, or security of the HSD's Confidential Information must be reported to the HSD. The Contractor shall notify the HSD of any instances of security or privacy breach issues or non-compliance promptly upon their discovery, but no later than a period of 24 hours (as stated above). Notification shall include a description of the privacy and security non-compliance issue and corrective action planned and/or taken.

L. The Contractor must provide the HSD with a summary of a corrective action plan to provide any necessary safeguards to protect PII from security breaches or non-compliance discoveries. The corrective action plan must contain a long term solution to possible future privacy and security threats to PII. In addition to the corrective action, the Contractor must provide daily updates as to the progress of all corrective measures taken until the corrective action plan is resolved. The Contractor shall be responsible for all costs of implementing the corrective action plan.

M. The HSD will have the right to seek remedies consistent with the liability terms of this contract agreement and/or terminate the contract or agreement if the Contractor or its Subcontractors or Business Associates fail to provide the safeguards or meet the security and privacy requirements to safeguard Confidential Information as described above, consistent with the liability and/or termination clauses herein.

N. All client files created or used to provide services under this contract are at all times property of HSD. Upon HSD's request, all such client files shall be returned to HSD upon HSD's request or no later than the final agreed upon termination date of this contract.

8. **Criminal/Civil Sanctions**

A. Each officer, employee, and/or subcontractor of the Contractor to whom tax returns or tax return information is or may be disclosed shall be notified in writing by the Contractor that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Contractor shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by Internal Revenue Code (IRC) Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

B. Each officer, employee, and/or subcontractor to whom tax returns or tax return information is or may be disclosed shall be notified in writing by Contractor that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know may constitute a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Contractor shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

C. Additionally, it is incumbent upon Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C.552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to HSD records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing

that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. Furthermore, the Contractor will inform its officers and employees of the penalties imposed by the HIPAA Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164), and HIPAA Security Rule (45 CFR Part 160 and Subparts A and C of Part 164), which provide that any officer or employee of a contractor, who willfully discloses Protected Health Information in any manner to any person not entitled to receive it, may be subject to civil and criminal penalties of up to \$50,000 and up to one year imprisonment.

D. Contractor agrees that granting access to Confidential Information to any individual must be preceded by certifying that each individual understands the HSD's applicable security policy and procedures for safeguarding the Confidential Information. Contractors must maintain authorizations issued to such individuals to access Confidential Information through annual recertification. The initial certification and recertification must be documented and placed in a file for the HSD's review. As part of the certification and at least annually afterwards, Contractor will be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches per Section 10 of IRS Publication 1075.)

9. Inspection

The HSD and/or its regulating federal partners (such as IRS, CMS, FNS, etc.) shall have the right to send its officers and/or employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work related to Confidential Information under this contract. On the basis of such inspection, the HSD and/or regulating federal partners may communicate specific measures to be performed or met by the Contractor as may be required in cases where the Contractor is found to be noncompliant with contract safeguard.

10. Contractor's Responsibility for Compliance with Laws and Regulations

A. The Contractor is responsible for compliance with applicable laws, regulations, and administrative rules that govern the Contractor's performance of the Scope of Work of this Agreement and Exhibit A, including but not limited to, applicable State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements and licensing provisions.

B. The Contractor is responsible for causing each of its employees, agents or subcontractors who provide services under this Agreement to be properly licensed, certified, and/or have proper permits to perform any activity related to the Scope of Work of this Agreement and Exhibit A.

C. If the Contractor's performance of its obligations under the terms of this agreement qualifies it as a Business Associate of the HSD as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder, the Contractor agrees to the HSD Business Associate Agreement (Agreement), attached herein as Exhibit D, and comply with the terms of the Agreement and subsequent updates.

11. Contractor's Responsibility for Compliance with Laws and Regulations Relating to Information Security

A. The Contractor agrees to monitor and control all its employees, subcontractors, consultants, or agents performing the Services under this Agreement in order to assure compliance with the following regulations and standards insofar as they apply to Contractor's processing or storage of HSD's Confidential Information or other data:

1. The Federal Information Security Management Act of 2002 (FISMA);
2. The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
3. The Health Information Technology for Economic and Clinical Health Act (HITECH Act);
4. IRS Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies to include any Service Level Agreement requirements;
5. Electronic Information Exchange Security Requirements, Guidelines, And Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration; and
6. NMAC 1.12.20, *et seq.* "INFORMATION SECURITY OPERATION MANAGEMENT".

Exhibit D

HIPAA Business Associate Agreement

This Business Associate Agreement ("BAA") is entered into between the New Mexico Human Services Department ("Department") and [REDACTED], hereinafter referred to as "Business Associate", in order to comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), including the Standards of the Privacy of Individually Identifiable Health Information and the Security Standards at 45 CFR Parts 160 and 164.

BUSINESS ASSOCIATE, by this PSC ____ has agreed to provide services to, or on behalf of the HSD which may involve the disclosure by the Department to the Business Associate (referred to in PSC ____ as "Contractor") of Protected Health Information. This Business Associate Agreement is intended to supplement the obligations of the Department and the Contractor as set forth in PSC ____, and is hereby incorporated therein.

THE PARTIES acknowledge HIPAA, as amended by the HITECH Act, requires that Department and Business Associate enter into a written agreement that provides for the safeguarding and protection of all Protected Health Information which Department may disclose to the Business Associate, or which may be created or received by the Business Associate on behalf of the Department.

1. Definition of Terms

- a. **Breach.** "Breach" has the meaning assigned to the term breach under 42 U.S.C. § 17921(1) [HITECH Act § 13400 (1)] and 45 CFR § 164.402.
- b. **Business Associate.** "Business Associate", herein being the same entity as the Contractor in the same or Related Agreement, shall have the same meaning as defined under the HIPAA standards as defined below, including without limitation Contractor acting in the capacity of a Business Associate as defined in 45 CFR § 160.103.
- c. **Department.** "Department" shall mean in this agreement the State of New Mexico Human Services Department.
- d. **Individual.** "Individual" shall have the same meaning as in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502 (g).
- e. **HIPAA Standards.** "HIPAA Standards" shall mean the legal requirements as set forth in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations and policy guidance, as each may be amended over time, including without limitation:
 - i. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of

Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.

- ii. Breach Notification Rule. "Breach Notification" shall mean the Notification in the case of Breach of Unsecured Protected Health Information, 45 CFR Part 164, Subparts A and D
- iii. Security Rule. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C, including the following:
 - f. Security Standards. "Security Standards" hereinafter shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.306.
 - g. Administrative Safeguards. "Administrative Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.308.
 - h. Physical Safeguards. "Physical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.310.
 - i. Technical Safeguards. "Technical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.312.
 - j. Policies and Procedures and Documentation Requirements. "Policies and Procedures and Documentation Requirements" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.316.
 - k. Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning as in 45 CFR §160.103, limited to the information created, maintained, transmitted or received by Business Associate, its agents or subcontractors from or on behalf of Department.
 - l. Required By Law. "Required By Law" shall have the same meaning as in 45 CFR §164.103.
 - m. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
 - n. Covered Entity. "Covered Entity" shall have the meaning as the term "covered entity" defined at 45 CFR §160.103, and in reference to the party to this BAA, shall mean the State of New Mexico Human Services Department.

Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Standards. All terms used and all statutory and regulatory references shall be as currently in effect or as subsequently amended.

2. Obligations and Activities of Business Associate

- a. General Rule of PHI Use and Disclosure. The Business Associate may use or disclose PHI it creates for, receives from or on behalf of, the Department to perform functions, activities or services for, or on behalf of, the Department in accordance with the specifications set forth in this BAA and in this PSC [REDACTED];

- provided that such use or disclosure would not violate the HIPAA Standards if done by the Department; or as Required By Law.
- i. Any disclosures made by the Business Associate of PHI must be made in accordance with HIPAA Standards and other applicable laws.
 - ii. Notwithstanding any other provision herein to the contrary, the Business Associate shall limit uses and disclosures of PHI to the "minimum necessary," as set forth in the HIPAA Standards.
 - iii. The Business Associate agrees to use or disclose only a "limited data set" of PHI as defined in the HIPAA Standards while conducting the authorized activities herein and as delineated in PSC [REDACTED], except where a "limited data set" is not practicable in order to accomplish those activities.
 - iv. Except as otherwise limited by this BAA or PSC [REDACTED], Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - v. Except as otherwise limited by this BAA or PSC [REDACTED], Business Associate may disclose PHI for the proper management and administration of the Business Associate provided that the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - vi. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j).
 - vii. Business Associate may use PHI to provide Data Aggregation services to the Department as permitted by the HIPAA Standards.
- b. Safeguards. The Business Associate agrees to implement and use appropriate Security, Administrative, Physical and Technical Safeguards, and comply where applicable with subpart C of 45 C.F.R. Part 164, to prevent use or disclosure of PHI other than as required by law or as provided for by this BAA or PSC [REDACTED]. Business Associate shall identify in writing upon request from the Department all of those Safeguards that it uses to prevent impermissible uses or disclosures of PHI.
- c. Restricted Uses and Disclosures. The Business Associate shall not use or further disclose PHI other than as permitted or required by this BAA or PSC [REDACTED], the HIPAA Standards, or otherwise as permitted or required by law. The Business Associate shall not disclose PHI in a manner that would violate any restriction which has been communicated to the Business Associate.
- i) The Business Associate shall not directly or indirectly receive remuneration in exchange for any of the PHI unless a valid authorization has been provided to the Business Associate that includes a specification of whether the PHI can

- be further exchanged for remuneration by the entity receiving the PHI of that individual, except as provided for under the exceptions listed in 45 C.F.R. §164.502 (a)(5)(ii)(B)(2).
- ii) Unless approved by the Department, Business Associate shall not directly or indirectly perform marketing to individuals using PHI.
 - d. Agents. The Business Associate shall ensure that any agents that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, in accordance with 45 C.F.R. § 164.502(e)(1)(ii), and shall make that agreement available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.
 - e. Availability of Information to Individuals and the Department. Business Associate shall provide, at the Department's request, and in a reasonable time and manner, access to PHI in a Designated Record Set (including an electronic version if required) to the Department or, as directed by the Department, to an Individual in order to meet the requirements under 45 CFR § 164.524. Within three (3) business days, Business Associate shall forward to the Department for handling any request for access to PHI that Business Associate receives directly from an Individual. If requested by the Department, the Business Associate shall make such information available in electronic format as required by the HIPAA Standards to a requestor of such information and shall confirm to the Department in writing that the request has been fulfilled.
 - f. Amendment of PHI. In accordance with 45 CFR § 164.526, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Department directs or agrees to, at the request of the Department or an Individual, to fulfill the Department's obligations to amend PHI pursuant to the HIPAA Standards. Within three (3) business days, Business Associate shall forward to the Department for handling any request for amendment to PHI that Business Associate receives directly from an Individual.
 - g. Internal Practices. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI, available to the Department or to the Secretary within seven (7) days of receiving a request from the Department or receiving notice of a request from the Secretary, for purposes of the Secretary's determining the Department's compliance with the Privacy Rule.
 - h. PHI Disclosures Recordkeeping. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the HIPAA Standards and 45 CFR § 164.528. Business Associate shall provide such information to the Department or as directed by the Department to an Individual, to permit the Department to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by the

Department. Within three (3) business days, Business Associate shall forward to the Department for handling any accounting request that Business Associate directly receives from an individual.

- i. PHI Disclosures Accounting. Business Associate agrees to provide to the Department or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 (h) of this Agreement, to permit the Department to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- j. Security Rule Provisions. As required by 42 U.S.C. § 17931 (a) [HITECH Act Section 13401(a)] , the following sections as they are made applicable to business associates under the HIPAA Standards, shall also apply to the Business Associate: 1) Administrative Safeguards; 2) Physical Safeguards; 3) Technical Safeguards; 4) Policies and Procedures and Documentation Requirements; and 5) Security Standards. Additionally, the Business Associate shall either implement or properly document the reasons for non-implementation of all safeguards in the above cited sections that are designated as “addressable” as such are made applicable to Business Associates pursuant to the HIPAA Standards.
- k. Civil and Criminal Penalties. Business Associate agrees that it will comply with the HIPAA Standards as applicable to Business Associates, and acknowledges that it may be subject to civil and criminal penalties for its failure to do so.
- l. Performance of Covered Entity's Obligations. To the extent the Business Associate is to carry out the Department's obligations under the HIPAA Standards, Business Associate shall comply with the requirements of the HIPAA Standards that apply to the Department in the performance of such obligations.
- m. Subcontractors. The Business Associate shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, with 45 C.F.R. § 164.502(e)(1)(ii), and shall make such information available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement. Upon the Business Associate's contracting with a subcontractor for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

3. Business Associate Obligations for Notification, Risk Assessment, and Mitigation

During the term of this BAA or PSC [REDACTED], the Business Associate shall be required to perform the following pursuant to the Breach Notification Rule regarding Breach Notification, Risk Assessment and Mitigation:

Notification

- a. Business Associate agrees to report to the Department Contract Manager or HIPAA Privacy and Security Officer any use or disclosure of PHI not provided for

by this BAA or PSC [REDACTED], and HIPAA Standards, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, as soon as it (or any employee or agent) becomes aware of the Breach, and in no case later than three (3) business days after it (or any employee or agent) becomes aware of the Breach, except when a government official determines that a notification would impede a criminal investigation or cause damage to national security.

- b. Business Associate shall provide the Department with the names of the individuals whose unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by the Department, provide information necessary for the Department to investigate promptly the impermissible use or disclosure. Business Associate shall continue to provide to the Department information concerning the Breach as it becomes available to it, and shall also provide such assistance and further information as is reasonably requested by the Department.

Risk Assessment

- c. When Business Associate determines whether an impermissible acquisition, use or disclosure of PHI by an employee or agent poses a low probability of the PHI being compromised, it shall document its assessment of risk in accordance with 45 C.F.R. § 164.402 (in definition of "Breach", ¶ 2) based on at least the following factors: (i) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the protected health information has been mitigated. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons documenting the determination of risk of the PHI being compromised. When requested by the Department, Business Associate shall make its risk assessments available to the Department.
- d. If the Department determines that an impermissible acquisition, access, use or disclosure of PHI, for which one of Business Associate's employees or agents was responsible, constitutes a Breach, and if requested by the Department, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with the Department about the timeliness, content and method of notice, and shall receive the Department's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate. The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to the Department.

Mitigation

- e. In addition to the above duties in this section, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI, by Business Associate in violation of the requirements of this Agreement, the Related Agreement or the HIPAA Standards. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by the Department, Business Associate shall make its mitigation and corrective action plans available to the Department.
- f. The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of the Breach, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate and the Department are doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).

Notification to Clients

- g. Business Associates shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of a State or jurisdiction, Business Associate shall, if requested by the Department, notify prominent media outlets serving such location(s), following the requirements set forth in 45 CFR §164.406.

4. Obligations of the Department to Inform Business Associate of Privacy Practices and Restrictions

- a. The Department shall notify Business Associate of any limitation(s) in the Department's Notice of Privacy Practices, implemented in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. The Department shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. The Department shall notify Business Associate of any restriction in the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d. The Department shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Department.

5. Term and Termination

- a. Term. This BAA terminates concurrently with PSC _____, except that obligations of Business Associate under this BAA related to final disposition of PHI in this Section 5 shall survive until resolved as set forth immediately below.
- b. Disposition of PHI upon Termination. Upon termination of this PSC [REDACTED] and BAA for any reason, Business Associate shall return or destroy all PHI in its possession, and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree, to the extension of all protections, limitations and restrictions required of Business Associate hereunder, for so long as the Business Associate maintains the PHI.
- c. If Business Associate breaches any material term of this BAA, the Department may either:
 - i. provide an opportunity for Business Associate to cure the Breach and the Department may terminate this PSC [REDACTED] and BAA without liability or penalty in accordance with Article 4, Termination, of PSC [REDACTED], if Business Associate does not cure the breach within the time specified by the Department; or,
 - ii. immediately terminate this PSC [REDACTED] without liability or penalty if the Department determines that cure is not reasonably possible; or,
 - iii. if neither termination nor cure are feasible, the Department shall report the breach to the Secretary.

The Department has the right to seek to cure any breach by Business Associate and this right, regardless of whether the Department cures such breach, does not lessen any right or remedy available to the Department at law, in equity, or under this BAA or PSC [REDACTED], nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

6. Penalties and Training.

Business Associate understands and acknowledges that violations of this BAA or PSC [REDACTED] may result in notification by the Department to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by the Department, Business Associate shall participate in training regarding use, confidentiality, and security of PHI.

7. Miscellaneous

- a. Interpretation. Any ambiguity in this BAA, or any inconsistency between the provisions of this BAA or PSC [REDACTED], shall be resolved to permit the Department to comply with the HIPAA Standards.

- b. Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by Business Associate with this BAA or the HIPAA Standards will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this BAA or PSC [REDACTED], the Department shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate shall promptly take such actions. In the event there is a change in federal or state laws, rules or regulations, or in the interpretation of any such laws, rules, regulations or general instructions, which may render any of the material terms of this BAA unlawful or unenforceable, or which materially affects any financial arrangement contained in this BAA, the parties shall attempt amendment of this BAA to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the BAA and PSC [REDACTED] pursuant to its termination provisions.
- d. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Department, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- e. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or workforce members assisting Business Associate in the fulfillment of its obligations under this BAA and PSC [REDACTED] available to the Department, at no cost to the Department, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against the Department or its employees based upon claimed violation of the HIPAA standards or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate's performance under this BAA or PSC [REDACTED], except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.
- f. Additional Obligations. Department and Business Associate agree that to the extent not incorporated or referenced in any Business Associate Agreement between them, other requirements applicable to either or both that are required by the HIPAA Standards, those requirements are incorporated herein by reference.

APPENDIX C
Letter of Transmittal Form

Letter of Transmittal Form

RFP#: _____

Offeror Name: _____

Items #1 to #7 EACH MUST BE COMPLETED IN FULL Failure to respond to all seven items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

1. Identity (Name) and Mailing Address of the submitting organization:

2. For the person authorized by the organization to contractually obligate on behalf of this Offer:

Name _____
Title _____
E-Mail Address _____
Telephone Number _____

3. For the person authorized by the organization to negotiate on behalf of this Offer:

Name _____
Title _____
E-Mail Address _____
Telephone Number _____

4. For the person authorized by the organization to clarify/respond to queries regarding this Offer:

Name _____
Title _____
E-Mail Address _____
Telephone Number _____

5. Use of Sub-Contractors (Select one)

- No sub-contractors will be used in the performance of any resultant contract OR
 The following sub-contractors will be used in the performance of any resultant contract:

(Attach extra sheets, as needed)

6. Please describe any relationship with any entity (other than Subcontractors listed in (5) above) which will be used in the performance of any resultant contract.

(Attach extra sheets, as needed)

7. Acceptances/Concurrences

On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement (Section II C - General Requirements).

On behalf of the submitting organization named in item#1, above, I explicitly indicate acceptance of the Contract Terms and Conditions attached as Appendix B.

I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section IV of this RFP.

I acknowledge receipt of any and all amendments to this RFP.

_____, 2015
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

APPENDIX D

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Campaign Contribution Disclosure Form

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

"Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Person" means any corporation, partnership, individual, joint venture, association or any other private legal entity.

"Prospective contractor" means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

"Representative of a prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature Date

Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

APPENDIX E
NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM

New Mexico Employees Health Coverage Form

1. For all contracts solicited and awarded on or after January 1, 2008: If the Offeror 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, Offeror must agree to 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.
2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
3. Offeror must agree 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://www.insurenwnewmexico.state.nm.us/>.
4. 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); these requirements shall apply the first day of the second month after the Offeror reports combined revenue (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

Signature of Offeror: _____ Date _____