

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

This **Governmental Services Agreement (GSA)** is made and entered into by and between the State of New Mexico, **Human Services Department** (hereinafter referred to as "HSD") and **Children Youth and Families** (hereinafter referred to as the "Contractor") and is effective as of the date set forth below upon which it is executed by the Contractor and HSD.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

The purpose of this agreement is to establish the terms, conditions, requirements, standards, service, delivery areas, and procedures whereby the Contractor will provide services for the Childcare, Home Visiting and Pre-K Program as detailed in Exhibit A, Scope of Work, attached to this GSA, and incorporated in this GSA by reference.

2. **Compensation.**

A. The total amount payable to the Contractor under this GSA, excluding gross receipts tax and expenses, shall not exceed forty two million two hundred twenty thousand three hundred dollars (\$42,220,300.00). This amount is a maximum and not a guarantee that the work assigned to Contractor under this GSA to be performed shall equal the amount stated herein.

1. For TANF Childcare participants, HSD will transfer to the CONTRACTOR up to thirty nine million six hundred nineteen thousand three hundred dollars and thirty six cents (\$39,619,300.00) over the term of the GSA.
2. For Supplemental Nutrition Assistance Program (SNAP) E&T Childcare participants, HSD will transfer to the CONTRACTOR up to five hundred sixty thousand dollars (\$560,000.00) for SNAP E&T Administration HSD will transfer forty one thousand dollars (\$41,000.00) over the term of the GSA.
3. For TANF Pre-Kindergarten program, HSD will reimburse to the CONTRACTOR up to one million five hundred thousand dollars (\$1,500,000.00) over the term of the GSA.
4. For TANF Home Visiting program, HSD will reimburse to the CONTRACTOR up to five hundred thousand dollars (\$500,000.00) over the term of the GSA.

B. HSD shall pay to the Contractor in full payment for services satisfactorily performed excluding gross receipts tax. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties and to approval by HSD. All invoices MUST BE received by HSD no later than ten (10) days after the termination

of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

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

3. **Term.**

This GSA shall be effective July 01, 2009 and shall terminate on June 30, 2010, unless amended, extended, or terminated pursuant to the terms of this GSA.

4. **Termination.**

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

B. **Termination Management.**

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

or equipment provided to or purchased by the Contractor with contract funds shall become property of HSD upon termination and shall be submitted to HSD as soon as practicable.

**5. Appropriations.**

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

**6. Status of Contractor.**

The Contractor and its agents and employees are independent Contractors performing professional services for HSD and are not employees of HSD. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of HSD vehicles, or any other benefits afforded to HSD employees of the State of New Mexico as a result of this GSA. 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 HSD 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 GSA or assign any claims for money due or to become due under this Agreement without the prior written approval of HSD.

**8. Subcontracting.**

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

**9. Release.**

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

**10. Confidentiality.**

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

**11. Product of Service -- Copyright.**

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

**12. Conflict of Interest; Governmental Conduct Act.**

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

**13. Amendment.**

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

**14. Merger.**

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

**15. Penalties for violation of law.**

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

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures

that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this GSA. If Contractor is found not to be in compliance with these requirements during the life of this GSA, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

The laws of the State of New Mexico shall govern this GSA, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G), NMSA 1978. By execution of this GSA, 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 GSA.

**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 GSA may be terminated by HSD.

**19. Records and Audit.**

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

**20. Liability.**

As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damages to persons or property to the extent they result from negligence of that party's employees or agents. The liability of each party shall be subject in all cases to the immunities and limitations of New Mexico state law. In the event that any action, suit or proceeding related to the services performed by Contractor or any officer, agent, employee, servant or sub-contractor under this GSA is brought against Contractor, Contractor shall, as soon as practicable but no later than five (5) business days after Contractor receives notice thereof, notify the legal counsel of HSD and the Risk Management Division of the New Mexico General Services Department by certified.

**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 GSA, Contractor certifies, by signing this GSA, to:

(1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

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

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

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

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

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

**22. Invalid Term or Condition.**

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

**23. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this GSA 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 GSA shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**24. Notices.**

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

To HSD:                      Paul Lucero, Contract Manager  
Income Support Division  
Department of Human Services  
2009 S Pacheco Street/P O Box 2348  
Santa Fe, NM 8704

To the Contractor:      Children Youth & Families Department  
Child Care/Pre-K/Home Visiting Program  
Mohammed Hussien  
PO Drawer 5160  
Santa Fe, NM 87502

**25. Sanctions.**

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

B.     The Contractor will make repayment of any funds expended by HSD subject to the jurisdiction and authority of which an auditor finds were expended, or to which the United States Department of Health and Human Services (DHHS) takes exception and requests reimbursement through a disallowance or deferral is based upon the acts or omissions of the Contractor which violate applicable federal statues and/or regulations, subject to sufficient appropriations of the New Mexico Legislature.

C.     If 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 the Contractor and officials of HSD. If reconciliation is not possible, both parties shall present their views to the HSD'S Director of the Administrative Services Division (ASD) who shall determine whether continued payment shall be made.

**26. Authority.**

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

**27. Debarment and Suspension.**

A. Pursuant to 45 C.F.R. Part 76, the Contractor certifies by signing this GSA, 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 GSA, 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; (4) have not, within a three-year period preceding the effective date of this GSA, had one or more public Agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

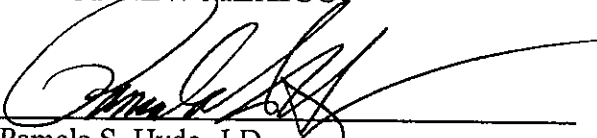
B. Contractor's certification in Paragraph A is a material representation of fact upon which the HSD relied when this GSA was entered into by the parties. Contractor shall provide immediate written notice to HSD's Contract Manager if, at any time during the term of this GSA, Contractor learns that its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

C. As required by 45 C.F.R. Part 76, Contractor shall require each proposed first-tier sub-contractor whose subcontract will equal or exceed \$25,000.00, to disclose to HSD, in writing, whether as of the time of award of the subcontract, the sub-contractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. Contractor shall make such disclosures available to HSD when it requests sub-contractor approval from HSD. If the sub-contractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal department or agency, HSD may refuse to approve the use of the sub-contractor.

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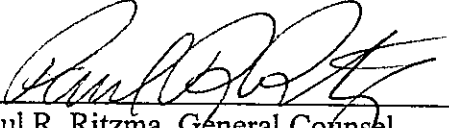


IN WITNESS WHEREOF, the parties execute this GSA as set forth below:  
STATE OF NEW MEXICO:

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

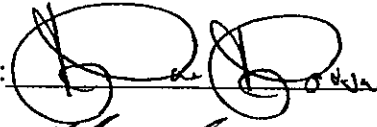
Date: 7/1/09

Approved as to form and legal sufficiency:

By:   
Paul R. Ritzma, General Counsel  
Human Services Department

Date: 6/30/09

**Governing Contractor Official:**


Title:  
Signature: 

Date: 7/14/09

Designee: 

Date: 7/22/09

Approved as to Form and Legal Sufficiency:

By:   
General Counsel

Date: 7.13.2009