

**A REQUEST FOR PROPOSAL
FOR THE PROVISION OF
INVESTIGATIVE SERVICES OF
LICENSED CHILD CARE CENTERS AND HOMES,
CERTIFIED HOMES AND MENTAL
HEALTH FACILITIES
FOR
THE STATE OF NEW MEXICO
CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

**Mary-Dale Bolson, Ph. D.
Cabinet Secretary**

**Marg Elliston, Director
Family Services Division
PERA Building, Room 209
Santa Fe, NM 87502
(505) 827-7659**

March 15, 2004

CYFD Solicitation Number:

VISION AND MISSION STATEMENT

Vision:

The Children, Youth and Families Department (CYFD) partners with communities to strengthen families in New Mexico to be productive and self-sufficient.

Mission:

CYFD believes in the strengths and resiliency of families who are our partners and for whom we advocate to enhance their safety and well-being. We respectfully serve and support children and families and supervise youth in a responsive community-based system of care that is client-centered, family focused, and culturally competent.

Principles:

CYFD believe that children and families should receive:

- Services that promote and build individual and family strengths;
- Early identification and intervention services to address problems as they emerge;
- Access and referrals to a comprehensive array of services that are individualized, community based and, whenever possible, in-home, to meet the unique needs and potential of each child and family;
- Full participation and choice in all aspects in the planning and delivery of services;
- Services that are provided in the least restrictive setting and most normative environment and are integrated and linked, both within CYFD and with other child serving agencies and which use peers, family, and natural supports;
- Culturally competent services delivered without regard to race, ethnicity, religion, national origin, gender, or disability;
- The most effective services that are based on evidence or promising or emerging practices, to achieve positive outcomes; and
- Services that insure smooth transitions to adult service systems.

TABLE OF CONTENTS

<i>Title or Description</i>	<i>Page</i>
Vision and Mission Statement	2
 PART I - PROJECT DESCRIPTION	
A. Background and Project Description	5
B. Eligible Applicants	6
C. Available Funds and Agreement Period.....	6
D. Payment; Reimbursement; Eligible Expenses.....	6
E. Project Manager.....	6
 PART II - CONDITIONS GOVERNING THE RFP	
A. RFP Activities Schedule	7
B. Explanation of RFP Activities.....	7
 PART III - GENERAL REQUIREMENTS	
A. through Q	9-11
 PART IV - PROPOSAL RESPONSE FORMAT	
A. Proposal Format and Instructions; Mandatory Requirements.....	12
B. Proposal Content	12
C. Proposal Format	12
 PART V – PROPOSAL EVALUATION	
Associated point values.....	15
 FORMS	
A. Proposal Fact Sheet.....	16
B. Budget Information and Narrative	17
C. Staff Qualifications and Personnel Costs Summary	20
E. Assurances.....	22

APPENDICES

A. Sample Contract.....24
B. Administrative and Fiscal Standards.....41

PART I - PROJECT DESCRIPTION

A. PROJECT DESCRIPTION

The Children, Youth and Families Department (CYFD) is issuing this statewide Request for Proposal (RFP) to certified private investigators and licensed social workers to provide investigative services for the investigation of complaints, reports pertaining to violation(s) of licensing regulations in licensed/certified child care or mental health facilities or programs, licensed or registered child care homes, including, but not limited to reports of abuse or neglect, lack of supervision, safety violations or any other infraction or deficiency as determined by the Children, Youth and Families Department.

Successful applicant will be required to do the following:

1. Will require a criminal records clearance and a Protective Services screening by all staff working with CYFD investigations before entering into any individual contract for investigative services.
2. Agree to maintain confidentiality in regards to all aspects of the investigation unless to do so violates the laws of the State of New Mexico. Testify in court as needed or as required.
3. Initiate investigations upon receipt of authorization from the Child Care Licensing Surveyor or Licensing and Certification Survey of CYFD to include reviewing all pertinent documentation and background information provided by CYFD.
4. Participate in a pre-investigatory staffing with Children, Youth and Families Department for purpose of formulating an investigation strategy, when required.
5. Contact all appropriate parties subject to the investigation to include conducting interviews with the alleged victims(s), witnesses, children, residents, parents, staff and any others as deemed appropriate by the investigator or as directed by CYFD.
6. Provide status updates to CYFD during the course of the investigation and consult with the designated contact person at CYFD as needed.
7. Prepare written reports within two weeks of completion of the investigation with findings and recommendations. Reports will follow the format set forth by CYFD.
8. Conduct investigations in accordance with the investigation check list provided by CYFD and attach all documentation compiled during the investigation.
9. Attend all training activities or events as arranged by CYFD and participate in an exit staffing upon each complete investigation.

10. Indicate the geographic area, by county, that the applicant is proposing to provide the services

B. ELIGIBLE APPLICANTS

Eligible applicants must be a certified private investigator or a licensed social worker that are separate and independent of the Children, Youth and Families Department.

C. AVAILABLE FUNDS AND AGREEMENT PERIOD

The anticipated funding available under this RFP is approximately \$250,000.00. CYFD reserves the right to alter any proposed allocation based on the review of all the competitive proposal applications and on any reduced legislative or federal appropriation(s) received. The private investigators/licensed social workers will be selected from around New Mexico based on the quality of the proposal. The contract awarded through this RFP is for a one-year period ending on June 30, 2005, with the option to renew the contract for an additional three (3) years, on a yearly basis. Continuation of the contract after June 30, 2005, is contingent upon satisfactory contract compliance by the contractor, as determined by CYFD and upon sufficient funding appropriations from the New Mexico State Legislature. Proposals requesting more than \$50,000.00 per year will not be considered.

D. PAYMENT; REIMBURSEMENT; ELIGIBLE EXPENSES

All funding is provided on a cost reimbursement basis. Specific expenditures will be reimbursed on an actual cost basis by means of a negotiated line item budget.

E. PROJECT MANAGER

It is the intent of the CYFD that the RFP process is open and fair, and that the funds are allocated in a manner that provides the greatest benefit to New Mexico's residents. To ensure that this occurs, the Project Manager is:

Cynthia Lerma	(505) 827-9939 (telephone)
Children, Youth & Families Department	(505) 827-7361 (facsimile)
Family Services Division	
Child Care Services Bureau	
P.O. Drawer 5160	
Santa Fe, NM 87502-5160	

Any inquiries or requests regarding this RFP must be submitted in writing only to the Project Manager by March 26, 2004, and will receive a written response. No other state employee has the authority to respond on behalf of CYFD.

PART II - CONDITIONS GOVERNING THE RFP

A. RFP ACTIVITIES SCHEDULE

The following schedule lists the major RFP activities. CYFD will make every effort to adhere to the schedule.

1.	Issuance of RFP	March 15 2004
2.	Written Questions Due	March 26, 2004
3.	Proposal Due Date	April 14, 2004 5:00 p.m.
4.	Proposal Evaluation	April 15 - 16, 2004
5.	Funding Recommendations submitted to CYFD Secretary for Approval	April 19, 2004
6.	“Intent to Award” Letters	April 23, 2004
7.	Contract Negotiations	April 26 - 30, 2004
8.	Contract Effective Date	July 1, 2004

B. EXPLANATION OF RFP ACTIVITIES

1. ISSUANCE OF RFP
This RFP is being issued by CYFD on March 15, 2004.
2. Written Questions Due
Written questions are due on March 26, 2004 and must be submitted to the Project Manager, Cynthia Lerma (see Part I, E for contact information).
3. PROPOSAL DUE DATE AND SUBMISSION
Unless CYFD otherwise advises, proposals must be received **no later than 5:00 p.m., Mountain Standard Time on April 14, 2004.** Any proposal received after that time shall be rejected as not meeting the mandatory requirements of the RFP.

Applicants shall submit an original and four (4) copies of a completed proposal (facsimile not accepted). Please label the original proposal (with original signature) as “Original” and submit all copies to the CYFD Contract Officer at:

Debra Pritchard, Contract Officer (505) 827-8056 or 8058
Contracts Section
Children, Youth and Families Department
P.E.R.A. Building, Room 104
1120 Paseo de Peralta
P.O. Drawer 5160
Santa Fe, New Mexico 87502-5160

Receipt of proposals in any CYFD office other than Room 104, defined above, will not be considered as meeting the RFP deadline and will be rejected.

4. PROPOSAL EVALUATION PROCESS

The evaluation of proposals will be performed by an evaluation committee organized by the Project Manager and approved by CYFD management. The evaluations shall be conducted in accordance with the “Process for Selecting Proposals for Award” specified in the RFP (Parts IV and V).

5. FUNDING RECOMMENDATIONS

Funding recommendations will be developed by the evaluation committee based upon the proposal scoring results, and then be forwarded to the CYFD Secretary who, acting in the best interest of the state, has final authority to approve or disapprove a recommended applicant or a funding level.

6. “INTENT TO AWARD” FUNDING LETTER

Notification of intended awards will be issued in writing to the successful applicant(s) as outlined in Part II, Section A, RFP Activities Schedule. Denial letters will also be sent to the unsuccessful applicants.

7. CONTRACT NEGOTIATIONS

Contract negotiations will be conducted with the successful applicant(s) and will occur as outlined in Part II, Section A, RFP Activities Schedule. In the event that mutually agreeable terms cannot be reached within the time specified, CYFD reserves the right to undertake negotiations with the next most advantageous applicant without undertaking a new RFP process.

8. CONTRACT EFFECTIVE DATE

The planned Contract effective date is estimated to be July 1, 2004. Contracts become effective and binding only upon the approval of the New Mexico Department of Finance and Administration.

PART III - GENERAL REQUIREMENTS

A. 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 CYFD. CYFD will make payments to only the prime Contractor.

B. SUBCONTRACTORS

Subcontractors and other business associations proposed by the applicant in the performance of the scope of work under this RFP shall be identified with specificity in the proposal. Prior written approval by CYFD must be received for any subcontract over \$1,000.00.

C. APPLICANT'S RIGHT TO WITHDRAW PROPOSAL

Applicants will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The applicant must submit a written withdrawal request signed by the applicant's duly authorized representative and addressed to the Contract Officer identified in this RFP.

D. CONFIDENTIALITY OF PROPOSALS

All submitted proposals are considered as competitive sealed proposals and are confidential until a final award has been made as required by the New Mexico Procurement Code. After the award of funds, all proposals shall be open to public inspection except any portions of a proposal for which the applicant has made a written request for confidentiality. If such a written request is made, the confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection.

E. PROPOSAL/RFP CONFLICT

In the event an award is made, a negotiated Contract will be prepared by CYFD for work described in the proposal. In the event of a conflict between the RFP and the applicant's proposal, the negotiated Contract shall control.

F. CANCELLATION OF RFP

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when CYFD determines it is in the best interest of CYFD. CYFD shall award contracts, which offer the best possibility for providing the services requested. CYFD is not responsible for any costs incurred in the preparation of proposals.

G. APPROPRIATION CONTINGENCY

Any Contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations from any funding source, including the New Mexico Legislature and the federal government, do not exist. Such termination will be effected by sending written notice to the recipient. CYFD’s decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.

H. GOVERNING LAW

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

I. BASIS FOR PROPOSAL

Only information supplied by CYFD through the Program Manager or in this RFP should be used in the preparation of proposals.

J. CONTRACT TERMS AND CONDITIONS

The Contract between CYFD and a recipient will follow the format specified by CYFD, however, CYFD reserves the right to negotiate with a successful applicant any provision(s) in addition to those stipulated in this RFP. The Contract will follow the format and contain the requirements in the sample Contract located in *Appendix A*. The contents of this RFP, as revised and/or supplemented, and the successful applicant’s proposal will be incorporated into the Contract. Any objections to the terms and conditions shall be specified in writing and shall contain alternative language.

All contracts for professional services are subject to the review and approval of the New Mexico Department of Finance and Administration (DFA) pursuant to NMSA 1978, Section 13-1-118, and DFA Rule 2.40.2 NMAC.

K. APPLICANT QUALIFICATIONS

CYFD may make such investigation as necessary to determine the ability of the applicant to adhere to the requirements of this RFP and to the proposed services specified in the applicant’s proposal. CYFD will reject the proposal of any applicant who is not a responsible applicant/offeror or fails to submit a responsive offer as defined in NMSA 1978, Sections 13-1-83 and 13-1-85.

L. RIGHT TO WAIVE MINOR IRREGULARITIES

CYFD will appoint an “Evaluation Committee.” The Evaluation Committee reserves the right to waive minor irregularities in proposals, which can be corrected without changing the substance

of the proposal and without prejudice to other applicants. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the RFP. This right is the sole discretion of the Evaluation Committee.

M. PROCUREMENT CODE

The *Procurement Code*, NMSA 1978, Sections 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.

N. AMENDMENTS TO RFP

All applicants shall be notified, by return-receipt mail, of any amendment(s) to the RFP. The return receipt will serve as written acknowledgment of the receipt of all RFP amendments.

O. REVISIONS TO PROPOSAL

Revisions to the scope or substantive proposal will not be allowed after the RFP due date. In response to the technical review of proposals by CYFD, clarification to technical irregularities in a proposal must be submitted in writing and received by CYFD and may not change the substance of the proposal.

P. RECORDS RETENTION

The successful Contractor shall maintain and allow access to detailed records documenting services provided and expenses incurred for a minimum of three (3) years after expiration of a Contract.

Q. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY REGULATIONS

”HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and associated regulations. A part of HIPAA, the “Privacy Rule,” protects personal health and client information from inappropriate disclosure. Every agency/entity receiving a contract as a result of this RFP must ensure the confidentiality of client records and health information.

PART IV - PROPOSAL RESPONSE FORMAT

A. PROPOSAL FORMAT AND INSTRUCTIONS; MANDATORY REQUIREMENTS

Any proposal that does not adhere to the format and content provided below, and which does not address each specification and the Mandatory Requirements within this RFP may be deemed non-responsive and rejected on that basis.

MANDATORY REQUIREMENTS:

Each applicant is allowed to submit only **one** proposal. The proposal must be submitted as an original and four (4) copies. Each proposal must be printed on 8 ½ x 11" paper, single-spaced, in font size no smaller than 10 point (larger paper may be used for attachments such as posters, charts, etc.). Pages must be numbered. A maximum of eight pages is allowed for the "Proposal Narrative" section described below and does not include the Fact Sheet or other attachments.

CYFD will not copy or collate proposals. All material submitted in response to this RFP becomes the property of the State of New Mexico. Incomplete or unresponsive proposals will not be accepted. CYFD shall make the final determination as to an proposal's completeness or responsiveness. CYFD is not responsible for costs incurred in the preparation or submission of a proposal.

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

B. PROPOSAL CONTENT

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

1. Letter of Transmittal
2. Table of Contents
3. Proposal Fact Sheet
4. Proposal Narrative
5. Budget and Forms

C. PROPOSAL FORMAT

1. Letter of Transmittal

A Letter of Transmittal must accompany each proposal. The Letter of Transmittal **MUST:**

- a. Identify the submitting organization;
- b. Identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c. Identify the name, title, telephone number, address, and e-mail address (if available) of the person to be contacted for clarification;
- d. Explicitly indicate acceptance of all requirements of the RFP;
- e. Be signed by the person authorized to contractually obligate the organization;
- f. Acknowledge receipt of any and all amendments to this RFP;
- g. Acknowledge that no attempt has been made or will be made by the applicant or to induce any other person or firm to submit or not to submit a proposal;
- h. Acknowledge that the proposal shall remain valid until three months after the closing date of the receipt of the proposals or until the signing of a valid contract, whichever is later; and
- i. Be written on official business letterhead.

2. Table of Contents

Each proposal must contain a Table of Contents.

3. Proposal Fact Sheet

Each proposal must include a Proposal Fact Sheet.

4. Proposal Narrative

The order of information provided shall correspond to the outline that follows and shall be labeled accordingly. Each item must be answered completely.

a. ABILITY TO PROVIDE SERVICES (30 Points)

Describe in detail how you or your agency is qualified to provide the proposed investigative services to the Children, Youth and Families Department. Include, all relevant experience dealing with child abuse and neglect, health and safety violation and any other reports pertaining to violations of regulations.

b. GEOGRAPHICAL AREA (20 Points)

Provide the geographical area(s), by county, in which the services you propose can be provided.

c. TIMELINE (10 Points)

Submit a timeline showing how long each possible investigation may take for an extreme case, an average case and a simple case. Include in you timeline; travel time, investigative time, and report writing time.

d. COST (20 points)

Provide an hourly cost or cost per investigation for investigative services to include interviews, telecommunications and writing reports. Provide cost analysis for travel expenditures. (cost per mile, not to exceed .32 cents a mile).

e. STAFFING (10 points)

Identify the principal personnel to be assigned to this project, their responsibilities in project implementation, the amount of their time to be dedicated to this project, and their relevant skills, knowledge, and experience related to evaluations. Include individual resumes as an attachment.

5. Budget And Forms (10 Points)

This section contains all forms required to be included in the proposal. There are specific instructions provided for each form to be completed.

Form A--Proposal Fact Sheet	Required
Form B—Budget Information/Narrative	Required
Form C-- Staff Qualifications	Required
Form E - Statement of Assurances	Required

PART V - PROPOSAL EVALUATION

The following is a summary of the evaluation factors that will be considered in the impartial evaluation of proposals. Associated point values are specified for each factor.

EVALUATION FACTOR	POINT VALUE
Experience with Investigations (related to children & families and/or children's families)	30
Geographical Area	20
Timeline	10
Cost Analysis	20
Staffing	10
Budget and Forms	10

FORM A - PROPOSAL FACT SHEET Solicitation Number

I. APPLICANT INFORMATION:	
A. Organization Name	
B. Mailing and Street Address:	
C. Telephone Number: Fax Number:	
D. Tax I.D. Number: Federal Income Tax #: State Gross Receipts Tax #:	
E. Person in Organization to Contact Regarding Proposal:	Telephone:
Name:	
Title:	
F. Proposed Funding PROPOSED YEAR-FY05	
III. SIGNATURE OF APPLICANT - I hereby certify that all information contained in this proposal contains no willful misrepresentation and that the information is true and complete to the best of my knowledge.	
Program Director Signature:	
Typed Name:	
Title:	Date:
Board President Signature:	
Typed Name:	
Title:	Date:
The information on this form must be completed before the proposal will be considered for evaluation.	

**FORM B
BUDGET INFORMATION**

OPTION 1 - Hourly Cost per Investigation

Interviews \$ _____ per hour
Telecommunications \$ _____ per hour
Report Writing \$ _____ per hour
Travel \$ _____ per hour

Total Cost per hour \$ _____

Projected number of investigations _____

Total Cost of Proposed Budget not to exceed \$50,000 \$ _____

OPTION 2 – Cost per Investigation

Interviews \$ _____
Telecommunications \$ _____
Report Writing \$ _____
Travel \$ _____ (not to exceed .32 cents per mile)

Total Cost per Investigation \$ _____

Projected number of investigations _____

Total Cost of Proposed Budget not to exceed \$50,000 \$ _____

FORM B (Part 2)
BUDGET NARRATIVE

Line Item Detail for Base Budget			
<u>LINE ITEM CODE</u>	<u>LINE ITEM DESCRIPTION</u>	<u>BASE REQUEST</u>	<u>JUSTIFICATION/ DESCRIPTION</u>

FORM B (Part 2)
BUDGET NARRATIVE INSTRUCTIONS

GENERAL:

Form B is a budget narrative which will describe in detail the line item expenditures requested in Form B to support the proposed project funding.

SPECIFIC:

Line Item Code - Enter the appropriate three digit expenditure code.

Line Item Description - Enter the appropriate budget amount requested.

Base Request - Enter the appropriate budget amount requested.

Justification/Description - Provide a detailed narrative that supports the requested amount.

Note: Total each expenditure category to equal funding request total.

FORM C
STAFF QUALIFICATIONS AND PERSONNEL COSTS SUMMARY

1. STAFF NAME/TITLE (If Known)	2. EDUCATION and TRAINING	3. EXPERIENCE (Note # Years) in FIELD	4. WORK HOURS PER WEEK	5. TOTAL GROSS SALARY (ALL SOURCES)	6. CYFD \$ SHARE OF SALARY

FORM C
INSTRUCTIONS FOR STAFF QUALIFICATIONS AND PERSONNEL COSTS
SUMMARY

This form provides a summary of the job titles, qualifications and costs of all staff members employed to provide the proposed services. Follow the instructions below carefully.

1. Position Title

Indicate the staff name and associated position title for each position for which you are requesting funds. Include programmatic and administrative staff. If position is vacant at the time of the proposal submission, please indicate this in place of the name and title.

2. Education and Training

Indicate the highest level of education achieved by the staff person named in Item 1 above (high school, AA degree, BA degree). You may also include licensures, certifications or applicable training.

3. Experience

Indicate the applicable job experience of the staff person named in Item 1 above. Please indicate the number of years for each job experience.

4. Work Hours Per Week

Indicate the number of hours per week that the associated staff person works/will work for the proposed program. If the position is vacant, indicate the proposed number of hours the staff person will be working per week.

5. Proposed Gross Salary and Benefits

Indicate the total gross salary (paid by all funding sources) of the staff person named in Item 1 above. If position is vacant, indicate the proposed salary of the position.

6. CYFD Share of Salary and Benefits

Indicate the portion of the total salary to be paid by CYFD for the staff person named in Item 1 above. If position is vacant, indicate the proposed (CYFD) share of the salary for the position.

**FORM E
ASSURANCES**

This form must be completed and signed by all applicants. Include this form in the proposal along with the appropriate attachments. Use N/A for any item(s) that are not applicable.

Corporate Assurances (applicable to corporations only)

Attached

- _____ 1. Copy of current Articles of Incorporation as approved by the NM Corporation Commission.
- _____ 2. Copy of current By-Laws.
- _____ 3. Copy of proof or registration with the NM Department of Taxation and Revenue for the payment of gross receipts tax or proof of the grant of an exemption from payment of federal income tax pursuant to the Internal revenue Code of 1954, 26 USC Section 501(C)(3).
- _____ 4. Copy of most recent non-profit corporate report filed with the NM Corporation Commission.

Licensing Assurances

- _____ 1 If your agency is currently licensed, attach copy of certificate. Attach statement of licensing requirements that have not been met, with timeframes for compliance.
- _____ 2. Attach most recent copy of the Agency Audit or *Federal Review Program Report*.

Program Assurance (yes or no)

- _____ 1. Do you agree to comply with the CYFD Performance Standards?
- _____ 2. Do you agree to comply with the CYFD Policies and Procedures on payment provisions?

I certify that the information provided is true and correct. If awarded a contract I will comply with all contract provisions as well as the administrative and fiscal standards incorporated in this Request for Proposal.

Authorized Signature of the CEO/Director

Date

Printed Title: _____
(Person must be authorized to enter organization into contract.)

APPENDIX A—SAMPLE CONTRACT

STATE OF NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROFESSIONAL SERVICES CONTRACT

This Agreement, Contract #04-690-0000-0000, is entered into between the N.M. Children, Youth and Families Department, hereinafter referred to as “DEPARTMENT” and _____, a _____, hereinafter referred to as “CONTRACTOR.”

The DEPARTMENT and CONTRACTOR do mutually agree as follows:

1. Statement of Work.

The CONTRACTOR shall perform the program of services as set forth in the Statement of Work, which is attached hereto as “EXHIBIT A - STATEMENT OF WORK” and incorporated herein by reference, unless amended or terminated pursuant to Paragraphs 4 or 5.

2. Compensation.

- a. The total amount of the monies payable to the CONTRACTOR under this Agreement, including gross receipts tax and expenses, shall not exceed nineteen thousand dollars (\$19,000.00).
- b. The CONTRACTOR is responsible for payment of any applicable New Mexico gross receipts tax levied on the amounts paid to the CONTRACTOR pursuant to this Agreement.
- c. The CONTRACTOR shall submit certified and documented vouchers for actual work performed to the DEPARTMENT on a monthly basis. The CONTRACTOR’S failure to submit such vouchers within thirty (30) days after they are due may result in the non-availability of funds for payment and/or the denial of payment by the DEPARTMENT.
- d. Payments to the CONTRACTOR shall be made upon satisfactory completion of the work, as determined by the DEPARTMENT, and upon receipt from the CONTRACTOR of certified and documented invoices detailing the work performed. The DEPARTMENT shall pay the CONTRACTOR monthly, pursuant to the budget attached hereto as “EXHIBIT B – BUDGET” and incorporated herein by reference. All costs claimed under this Agreement shall be separate from existing funding sources and not claimed from any other funding source. Within fifteen (15) days after the date the DEPARTMENT receives written notice from the CONTRACTOR that payment is requested for services or items of tangible personal property delivered on site and received, the

DEPARTMENT shall issue a written certification of complete acceptance or rejection of the services or items of tangible personal property. If the DEPARTMENT finds that the services or items of tangible personal property are not acceptable, it shall, within thirty (30) days after the date of receipt of written notice from the CONTRACTOR that payment is requested, provide to the CONTRACTOR a letter of exception explaining the defect or objection to the services or delivered tangible personal property along with details of how the CONTRACTOR may proceed to provide remedial action. Upon certification by the DEPARTMENT that the services or items of tangible personal property have been received and accepted, payment shall be tendered to the CONTRACTOR within thirty (30) days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the CONTRACTOR at the rate of one and one-half percent (1 2%) per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, but has already certified that the services or items of tangible personal property have been received and accepted, payments shall be tendered to the CONTRACTOR within five (5) working days of receipt of funds from that funding agency.

- e. Under cost reimbursement contracts, it is anticipated that costs will be incurred at an approximate level rate; therefore, if the DEPARTMENT determines that the CONTRACTOR is under spending or overspending, then the DEPARTMENT may reduce the budget and/or exercise such other budgetary/fiscal controls deemed appropriate.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION. This Agreement shall terminate on June 30, 2004, unless terminated pursuant to Paragraph 4 or Paragraph 5. This contract is contingent upon satisfactory contract compliance and receipt by the DEPARTMENT of currently anticipated funds from any source, including the New Mexico State Legislature. In the event of future reductions of such funds, the DEPARTMENT reserves the right to reduce payments and services provided for herein, or in the alternative, to exercise the right of termination.

4. Termination.

This Agreement may be terminated by either party hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THE PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE STATE IN SUCH CIRCUMSTANCES AS CONTRACTOR=S DEFAULT/BREACH OF CONTRACT.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and the Congress of the United States for the performance of this Agreement. If sufficient appropriations and authorization are not made by the State of New Mexico or the United States Government, this Agreement shall terminate upon written notice being given by the DEPARTMENT to the CONTRACTOR. The DEPARTMENT=s decision as to whether sufficient appropriations are available shall be accepted by the CONTRACTOR and shall be final.

6. Board of Directors.

Board members for the CONTRACTOR shall be residents of the area served by the organization and representative of the social, economic, linguistic, ethnic and racial target population. Employees and Contractors for the DEPARTMENT are prohibited from serving as a board member of any social service provider receiving DEPARTMENT funds and any person employed by a non-profit organization receiving DEPARTMENT funds shall not serve as a board member of that organization.

- a. The CONTRACTOR shall not employ persons related to a board member by consanguinity or affinity within the third degree. This includes, but is not limited to spouse, mother, father, brother, sister, grandparents, aunt, uncle, niece, nephew, first cousins, mother-in-law, father-in-law, brother-in-law, or sister-in-law.
- b. The CONTRACTOR shall make available to the DEPARTMENT, upon request, copies of the minutes taken at meetings of its Board of Directors, copies of amendments to the Articles of Incorporation and Bylaws, and copies of its Annual Report to the New Mexico Corporation Commission. The minutes need not include details of confidential matters, such as personnel matters of communications protected by the lawyer-client privilege.

7. Assurances of Compliance.

If the DEPARTMENT so requests, the CONTRACTOR shall provide, within a reasonable time specified in the request by the DEPARTMENT, reasonable assurance of its past and future compliance with the terms of this Agreement. The CONTRACTOR agrees to a program and a facilities review, including, but not limited to: meeting with consumers; review

of service records and plans; review of staffing ratios and job descriptions; and meetings with any staff directly or indirectly involved in the provision of services hereunder, which may be conducted at any reasonable time by the DEPARTMENT, the State of New Mexico, and the United States of America.

8. Default.

If the CONTRACTOR fails to perform any obligation imposed hereby or imposed by operation of law, or otherwise becomes in default of this Agreement, the DEPARTMENT shall have the right, at its option, to terminate this contract, in which event the CONTRACTOR shall immediately return to the DEPARTMENT all property and unexpended funds which had been provided to it by the DEPARTMENT and which remains in the control or possession of the CONTRACTOR. Any waiver of any right or remedy by the DEPARTMENT shall not be deemed a waiver of that or any right or remedy in the future. The rights and remedies provided hereby are in addition to any others available at law or equity.

9. Status of Contractor.

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

10. 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 DEPARTMENT.

11. Subcontracting.

The CONTRACTOR shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the DEPARTMENT. For any subcontract(s) approved by the DEPARTMENT, the CONTRACTOR shall remain responsible to the DEPARTMENT for the performance of any subcontract.

12. Records and Audit.

The CONTRACTOR shall maintain, for three (3) years, detailed time records, which indicate the date, time, and nature of services rendered. These records shall be subject to inspection by the DEPARTMENT and the State Auditor or their designee. The DEPARTMENT shall have a right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the DEPARTMENT to recover excessive and/or illegal payments.

The CONTRACTOR shall comply, if applicable, with the auditing requirements under the Single Audit Act, Circular A-133 and the New Mexico State Auditor's rules and regulations. Single Agency Audits shall comply with procedures specified by the DEPARTMENT. Upon completion of the audit under the applicable federal and state regulations, the CONTRACTOR shall provide the DEPARTMENT with two (2) original copies of the audit report. Within one (1) month thereafter, or as otherwise determined by the DEPARTMENT in writing, the CONTRACTOR shall provide the DEPARTMENT with a statement indicating the status of each of the exceptions or findings contained in the said audit report.

The CONTRACTOR shall maintain accurate financial records, books, files, and reports ("financial records") in accordance with generally accepted accounting principles, state and federal laws and regulations, and requirements of the DEPARTMENT.

13. Release.

The CONTRACTOR's acceptance of final payment of the amount due under this Agreement shall operate as a release of the DEPARTMENT, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. 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.

14. 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 DEPARTMENT.

15. 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 DEPARTMENT no later than the termination date of this Agreement. Nothing 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, without the prior written approval of the DEPARTMENT.

16. Conflict of Interest.

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 this Agreement. The CONTRACTOR certifies that the requirements of the New Mexico Government Conduct Act, Sections 10-16-1 through 10-16-18 N.M.S.A. 1978, regarding contracting with a public officer or state employee have been followed.

17. Amendment.

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and approved by the Department of Finance and Administration.

18. 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.

19. Notice.

The New Mexico Procurement Code, Sections 13-1-28 through 13-1-199 N.M.S.A. 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.

20. 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 agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age or handicap, 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 the CONTRACTOR is found to not be in compliance with these requirements during the term of this Agreement, the CONTRACTOR agrees to take appropriate steps to correct these deficiencies.

21. Applicable Law.

All contracts are subject to, and shall be performed in accordance with the provision of any applicable federal, state, and DEPARTMENT regulations. This Agreement shall be governed by the laws of New Mexico.

22. Workers' Compensation.

The CONTRACTOR agrees to comply with state laws and regulations applicable to workers= compensation benefits for its employees. If the CONTRACTOR fails to comply with the Workers' Compensation Act and applicable regulations when required to do so, this Agreement may be terminated by the DEPARTMENT.

23. Hold Harmless Agreement.

The CONTRACTOR shall defend and hold harmless the DEPARTMENT and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorney's fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, which result in any way or to any degree from the wrongful act or omission of the CONTRACTOR, its employees, agents or servants.

24. Discrimination.

No person shall on the grounds of race, color, national origin, sex or sexual preference, disability, age or religion, be excluded from participating in, be denied the benefit of, or otherwise be subjected to discrimination under any activity performed pursuant to this Agreement. No program shall refuse to treat or provide services to an individual solely on the basis of the person=s disability. Non-performance of this clause shall be grounds for immediate termination of this Agreement.

25. Property.

All property, with a purchase price of \$1,000.00 or more, acquired under a cost reimbursable contract, must be approved by the DEPARTMENT prior to purchase. The approval process requires three price bids on the property.

- a. Title to all property furnished to the CONTRACTOR by the DEPARTMENT shall remain in the DEPARTMENT's name. Title to all property, with a purchase price of \$1,000.00 or more, acquired by the CONTRACTOR in part or whole, under cost reimbursable contracts, (including purchase by lease-purchase agreement for the cost of which the contractor is to be reimbursed under this Agreement) shall immediately vest in the DEPARTMENT upon reimbursement of the cost thereof by the DEPARTMENT.

- b. The CONTRACTOR shall maintain a current property inventory record and shall establish and administer, in accordance with sound business practices, a program for the maintenance, repair, protection, and preservation of the DEPARTMENT property so as to assure its full availability and usefulness for the performance of this Agreement. DEPARTMENT property shall, unless otherwise provided herein or approved in writing by the DEPARTMENT, be used only for the performance of this Agreement.
- c. In the event that the CONTRACTOR is indemnified, reimbursed, or otherwise compensated for any loss or destruction of, or damages to, DEPARTMENT property, the CONTRACTOR shall use the proceeds to repair, renovate, or replace the Department property involved, or shall credit such proceeds against the cost of the work, or shall otherwise reimburse the DEPARTMENT as directed by the DEPARTMENT.

26. Lobbying Certification.

The CONTRACTOR, by signing below, certifies to the best of his/her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid by or on the behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than 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 in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit a Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of facts upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

27. Insurance.

- a. The CONTRACTOR shall obtain and maintain at all times during the term of this agreement a liability insurance policy issued by an insurance company licensed to do business in the State of New Mexico, which policy shall include the area(s) covered by this agreement, with adequate liability insurance coverage provided for herein of at least \$100,000 for damage to or destruction of property arising out of a single occurrence; \$300,000 to any person for any number of claims arising out of a single occurrence for all damages other than property damage; or \$500,000 for all claims arising out of a single occurrence within thirty (30) days of the effective date of this agreement. The CONTRACTOR shall furnish the DEPARTMENT with written evidence of such insurance coverage within thirty (30) days of the effective date of this contract.
- b. The CONTRACTOR shall secure and notify the DEPARTMENT in writing, of adequate fire and extended hazard insurance on all property in the custody of the CONTRACTOR which is furnished or owned by the DEPARTMENT or in which the
- c. DEPARTMENT has a financial interest, within thirty (30) days of the effective date of this contract.
- d. The CONTRACTOR shall immediately notify the DEPARTMENT upon cancellation or revocation of any insurance policy required by this Article.

28. Bonding.

- a. The CONTRACTOR shall obtain and maintain at all times during the term of this agreement a blanket Fidelity Bond covering the activities of the CONTRACTOR in an amount of at least 25% of the total dollar amount of the current budget incorporated herein. The CONTRACTOR shall furnish the DEPARTMENT with a copy of the Bond Certificate within thirty (30) days of the effective date of this Contract.
- b. The CONTRACTOR shall notify the DEPARTMENT in writing of any change in the CONTRACTOR'S Bond status within twenty-four (24) hours of such change.

29. Health Insurance Portability and Accountability Act of 1996.

The CONTRACTOR agrees to comply with the Health Insurance Portability and Accountability Act of 1996, and the terms in “**Exhibit C**”, which is attached and incorporated by reference.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the Department of Finance Administration, below.

By: _____ **Date:** _____
CONTRACTOR

By: _____ **Date:** _____
DEPARTMENT

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

By: _____ **Date:** _____
Office of General Counsel, CYFD

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 New Mexico gross receipts and compensating taxes. (Check here _____ if exempt)

NEW MEXICO TAX IDENTIFICATION NUMBER:

By: _____ **Date:** _____
N.M. Taxation and Revenue Department

This Agreement has been approved by the Department of Finance and Administration's (D.F.A.) Contracts Review Bureau:

By: _____ **Date:** _____
Contracts Review Bureau, D.F.A.

By: _____ **Date:** _____
ATTORNEY GENERAL (if applicable)

EXHIBIT A - STATEMENT OF WORK

ORGANIZATION'S NAME

PURPOSE:

The purpose of this contract is to

The DEPARTMENT has implemented an "Outcome Management System" to meet the requirements of the N.M. Governmental Accountability Act. "Outcomes" are defined as performance results for a specific program's clients and customers. The necessity for setting outcome targets in contracts assists in evaluating the effectiveness of the services being provided. The activities and tasks described in this Statement of Work are intended to yield the following outcome(s):

Outcome One.....

Outcome Two.....

THE CONTRACTOR SHALL:

1. Develop.....

2., 3, 4,

5. Collect, evaluate and report in writing on data to measure the outcomes and effectiveness of the activities described in task numbers 1 through 4. The Department shall be consulted on data sets and analytic techniques within thirty (30) working days from the effective date of this Agreement.

6. Submit to the Department monthly requests for reimbursement and monthly written reports of accomplishments of the activities described in this Statement of Work. Such reports shall be due by the fifteenth day of the following month.

7. Submit to the Department a written "Final Report" within thirty (30) days of the termination of this Agreement. The Final Report will detail the activities and accomplishments of the project and how the outcomes were achieved. Additionally, the Contractor may describe how the project can be improved if it was continued.

THE DEPARTMENT SHALL:

1. Reimburse the Contractor for verified direct services and incurred costs as stated in "EXHIBIT B" and as claimed on invoices to the DEPARTMENT.

2. Provide technical assistance, monitoring and site visits of the various programs/projects of the Contractor.

Unless initialed by both parties, nothing inserted below this line on this page is a valid part of this Agreement.

EXHIBIT C
HEALTH INSURANCE PORTABILITY
AND ACCOUNTABILITY REGULATIONS

1. Definitions.

- a. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and regulations promulgated there under.
- b. **“Individual”** shall have the same meaning as the term “individual” in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- c. **“HIPAA Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subpart A and E.
- d. **“Protected Health Information”** shall have the same meaning as the term “protected health information” in 45 CFR 164.501, limited to the information created or received by CONTRACTOR from or on behalf of the DEPARTMENT.
- e. **“Required By Law”** shall have the same meaning as the term “required by law” in 45 CFR 164.501.
- f. **“Secretary of U.S. DHHS”** as used in this Agreement shall mean the Secretary of the U.S. DEPARTMENT of Health and Human Services or his designee.

2. The CONTRACTOR agrees to:

- a. Not use or further disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as Required by Law.
- b. Use safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Mitigate to the extent practicable, any harmful effect that is know to CONTRACTOR of a use or disclosure of Protected Health Information by CONTRACTOR in violation of the requirements of this Agreement.
- d. Report to the DEPARTMENT any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Ensure that any agent, including a sub contractor, to whom it provides Protected Health Information received from or created or received by CONTRACTOR on behalf of the DEPARTMENT agrees to the same

restrictions and conditions that apply through this Agreement to CONTRACTOR with respect to such information.

- f. Provide access, at the request of the DEPARTMENT, and in the time and manner designated by the DEPARTMENT, as directed by the DEPARTMENT, to an Individual in order to meet the requirements under 45 CFR 164-524.
- g. Make any amendment(s) to Protected Health Information that the DEPARTMENT directs or agrees to, pursuant to 45 CFR 164.526 at the request of the DEPARTMENT or an Individual, and in the time and manner designated by the DEPARTMENT.
- h. Make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created, or received by CONTRACTOR on behalf of the DEPARTMENT, available to the DEPARTMENT, or at the request for the DEPARTMENT to the Secretary of U.S. DHHS, in a time and manner designated by the DEPARTMENT or the Secretary of U.S. DHHS determining the DEPARTMENT'S compliance with HIPAA Privacy Rule.
- i. Document such disclosures of Protected Health Information 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 protected Health Information in accordance with 45 CFR 164.528.
- j. Provide to the DEPARTMENT or an Individual, in time and manner designated by the DEPARTMENT, information collected or obtained in accordance with the Scope of Work of this Agreement, to permit the DEPARTMENT to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

3. General Use and Disclosure Provisions.

Except as otherwise limited in this Agreement, CONTRACTOR may use or disclose Protected Health Information to perform functions, activities, or services for or on behalf of, the DEPARTMENT as specified in the Scope of Work, Exhibit A of the Agreement, provided that such use or disclosure would not violate the HIPAA Privacy Rule if done by the DEPARTMENT.

4. Specific Use and Disclosure Provisions:

- a. Except as otherwise limited in this Agreement, CONTRACTOR may use Protected Health Information for the proper management and administration of the CONTRACTOR or to carry out the legal responsibilities of the CONTRACTOR.

- b. Except as otherwise limited in this Agreement, CONTRACTOR may disclose Protected Health Information for the proper management and administration of the CONTRACTOR, provided that disclosures are required by law, or CONTRACTOR 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 CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Agreement, CONTRACTOR may use Protected Health Information to provide Data Aggregation services to the DEPARTMENT as permitted by 42 CFR 164.504(e)(2)(i)(B).
- d. The CONTRACTOR may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with §164.502(j)(1).

5. Obligations of the DEPARTMENT:

- a. The DEPARTMENT shall provide CONTRACTOR with the notice of privacy practices that the DEPARTMENT produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- b. The DEPARTMENT shall provide CONTRACTOR with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect CONTRACTOR permitted or required uses and disclosures.
- c. The DEPARTMENT shall notify CONTRACTOR of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- d. The DEPARTMENT shall notify CONTRACTOR of approved request(s) of amendment(s) to a record.

6. Permissible Requests by the DEPARTMENT.

The DEPARTMENT shall not request CONTRACTOR to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Privacy Rule if done by the DEPARTMENT.

7. Term.

a. Termination for Cause.

Upon the DEPARTMENT'S knowledge of a material breach by the CONTRACTOR, the DEPARTMENT shall provide an opportunity for CONTRACTOR to cure the breach, or end the violation and terminate this contract in accordance with the Termination provisions of the Agreement. If the CONTRACTOR does not cure the breach or end the violation within the time specified by the DEPARTMENT, or immediately initiate termination of this contract in accordance with the Termination provisions of the Agreement, the CONTRACTOR has breached a material term of the provisions of this Agreement and the DEPARTMENT may initiate Termination of this contract in accordance with this Agreement.

b. Effect of Termination.

(i). Except as provided in Paragraph (ii) below, upon termination of this Agreement, for any reason, CONTRACTOR shall return or destroy all protected Health Information received from the DEPARTMENT, or created or received by CONTRACTOR on behalf of the DEPARTMENT. This provision shall apply to Protected Health Information that is in the possession of sub-contractors or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the Protected Health Information.

(ii). In the event that CONTRACTOR determines that returning or destroying the Protected Health Information is infeasible, CONTRACTOR shall provide to the DEPARTMENT notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, CONTRACTOR shall extend the protections of this Agreement to such Protected health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as CONTRACTOR maintains such Protected Health Information.

8. Miscellaneous.

- a. Regulatory References: A reference in this Agreement to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. Amendment: The Parties agree to take such action as is necessary to amend the provisions in this Agreement from time to time as is necessary for the DEPARTMENT to comply with the requirements of the HIPAA Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

- c. Survival: The respective rights and obligations of Contractor under Article 7, Paragraph A, entitled “Effect of Termination,” shall survive the termination of this Agreement.
- d. Interpretation: Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the DEPARTMENT to comply with the HIPAA Privacy Rule.

-----End of Exhibit C-----

APPENDIX B

ADMINISTRATIVE AND FISCAL STANDARDS

REVISED - DECEMBER, 2000

ADMINISTRATIVE STANDARDS

Personnel

- A. The agency shall have a current and dated organizational chart, which accurately reflects the staff structure of authority, responsibility and accountability within the agency. The organizational chart must illustrate the relationship of each position or department to all other positions or departments within the agency.
- B. The agency shall have written personnel policies and procedures approved and signed by the board of directors. All policies and procedures shall be reviewed annually, and any changes, additions, deletions, etc., shall be dated and signed by the board of directors. Procedures must be in place, which allow employees to provide input into changes in agency and personnel policies and procedures.
- C. The agency personnel policies and procedures must include, at a minimum:
 - a. Mission of agency;
 - b. American Disabilities Act;
 - c. Annual Report;
 - d. Benefits;
 - e. Disciplinary Procedures;
 - f. Drug Free Workplace;
 - g. Employee Orientation and Annual Agency Training Plan;
 - h. Equal Employment Opportunity Statement;
 - i. Grievance Procedures;
 - j. Hiring / Firing Policies;
 - k. Hours of Work;
 - l. Job Qualifications and Job Descriptions;
 - m. Law Enforcement Records Checks;
 - n. Leave / Holiday Policies;
 - o. Performance Review System;
 - p. Personnel Files;
 - q. Promotion Policies;
 - r. Quality Assurance;
 - s. Salary Policy and Plan;
 - t. Termination /Resignation Procedures
- D. The agency shall distribute a copy of all personnel policies and procedures to all new employees and make them available to all employees.

- E. The agency shall maintain current, written job descriptions and job qualifications for all positions (staff, consultants and direct service volunteers) in the agency. Each job description shall include, at a minimum: Job title; salary range; duties and responsibilities of the position; required minimum experience; required minimum training and required minimum education.
- F. The agency shall maintain a current, accurate and confidential personnel record for each paid and direct service volunteer employee. A personnel record on each employee shall contain, at a minimum: Job description; initial application / resume; documentation of reference letters; results of employment investigation; law enforcement records check; education and experience as required; wage and salary information; job performance evaluation; documentation and verification of all previous and ongoing training, including all component specific training and education; incident reports; and commendations or disciplinary actions, if any. This information must be reliable, accurate, and current. All employee records must be kept in a locked file to ensure confidentiality.

Note: All licensed child care facilities, adolescent shelter cares, mentoring programs, experiential wilderness programs and respite care services must abide by Children, Youth and Families Department regulations governing criminal record checks.

- G. The immediate supervisor shall conduct job performance evaluations semi-annually for all new employees and at least annually for all current employees. Said evaluation should document the review and results of the evaluation with the employees and be included in the personnel file.
- H. The agency shall be headed by an agency director appointed by and responsible only to the board of directors. The board shall delegate to the director such authority and responsibility necessary to operate the agency. The director shall be responsible for the daily operation of the agency through decision-making, authorization of expenditures, and the implementation of policies and procedures.

Board of Directors

- A. The board shall have a written mission statement approved by the board of directors. The board shall describe the purpose for which the agency provides services.
- B. The board shall approve and review annually the written long-range plan and goals. The long-range plan and goals should describe in general terms who is served and the services provided.
- C. The board shall ensure that the agency has current articles of incorporation, which meet all of the legal requirements of the governmental jurisdiction in which the agency is located.

- D. The board shall ensure that the agency has current by-laws, which are filed with the appropriate local, state, or federal body. At a minimum, the agency by-laws should include:
- a. Membership (types, qualifications, rights, duties);
 - b. Size of board of directors;
 - c. Method of selection;
 - d. Terms of office;
 - e. Duties and responsibilities of officers;
 - f. Committees;
 - g. Quorums;
 - h. Recording of minutes;
 - i. Method for amending by-laws;
- E. The board of directors shall periodically review the appropriateness of its governing documents and adherence to their specifications.
- F. The board of directors shall ensure that the agency complies with applicable legal requirements and regulations of all governmental and legally authorized agencies under whose authorities it operates. These include, but are not limited to those regarding equal employment opportunity, worker's compensation, unemployment insurance, affirmative action, safety, licensing, etc.
- G. The board of directors shall conduct a periodic, systematic assessment of the agency's effectiveness.
- H. Board members shall be residents of the area served by the organization and representative of the social, economic, linguistic, ethnic, and racial target population. The Contractor shall not employ persons related to a board member by consanguinity or affinity within the third degree. This includes, but is not limited to, spouse, mother, father, brother, sister, grandparents, aunt, uncle, niece, nephew, first cousin, mother-in-law, father-in-law, brother-in-law or sister-in-law.
- I. The board of directors of the agency shall hold meetings as prescribed in the by-laws but not less than four times per year.
- J. An agenda shall be developed and followed for all board meetings.
- K. A permanent record shall be kept of all meetings of the board of directors. Minutes of the meetings of the agency's board of directors are required in order to accurately record the decisions made and actions taken. These minutes shall include, but not be limited to, meeting date, names of members attending, topics discussed, decisions reached, actions taken, and attachment of any documents referenced. Board minutes shall be signed and approved by an officer of the board.
- L. The board of directors shall review and approve all aspects of the agency's operations including policy, personnel, budget, fund-raising, etc., including quarterly financial reports.

- M. The board shall determine the amount of capital outlay expenditures which must receive prior approval from the board.
- N. The board of directors shall review and approve agency line item budgets and any and all subsequent budget adjustments.
- O. Provisions shall exist for the orientation of new board members to the Board. This orientation shall consist of, but not be limited to: the organizational goals and objectives, organization operations, roles and responsibilities of board members, and financial overview of the organization's assets and liabilities.
- P. The board of directors shall make continual and on-going efforts to provide all board members with training related to their participation on the board.

Note: For profit agencies, units of government, and other public / private entities, shall establish maintain an advisory board which shall have the same responsibilities as those listed above for boards of directors, with the exception of #3, #4, #5, #6, #12, and #13. Sole proprietorships shall develop other mechanisms for eliciting community and department input to be mutually agreed upon by the Department and the provider.

Physical Facilities

The physical facilities must meet all licensing requirements per classification and should be located, constructed, equipped, and operated to promote the efficient and effective conduct of the agency's programs, to protect the health and safety of the persons serviced and the staff, to promote the integration of those served into the community, to be accessible to persons served, staff and the community, meet the American's With Disabilities Act (ADA) and the Drug-Free Workplace Act of 1988.

Administrative Record-keeping

Records and reports (including, but not limited to, fiscal, personnel, program evaluation, management information systems, governance, etc.) should guide the operations, support the assessment and improvement in quality of services, measure and communicate productivity, and reflect the agency's status.

All records should be maintained for a minimum of three years. This would be the three prior years plus the current years records.

FISCAL STANDARDS

COMPLIANCE

- A. The agency shall comply with all federal and state statutes, rules and regulations. Cost principles, administrative requirements and audit requirements, applicable to federal grants shall apply to state funds, as well. See attached source sheet.
- B. The agency shall comply with all aspects of the provisions of the contract, including all insurance, bonding and audit requirements.
- C. The agency shall obtain and maintain at all times during the term of this contract a Blanket Bond covering the activities of the agency in the amount of at least 25% of the total dollar amount of the current CYFD contract amount.
- D. The agency shall obtain and maintain at all times during the term of this contract a liability insurance policy issued by an insurance company licensed to do business in the State of New Mexico. The policy shall include liability insurance coverage provided in the amount of at least \$100,000 for damage to or destruction of property arising out of a single occurrence; \$300,000 to any person for any number of claims arising out of a single occurrence for all damages other than property damage; or \$500,000 for all claims arising out of a single occurrence. The policy shall be secured by the agency within thirty (30) days of the effective date of the current contract.
- E. The agency shall secure and maintain adequate fire and extended hazard insurance on all property in the custody of the agency, which is furnished or owned by the Department or in which the Department has a financial interest, within thirty (30) days of the effective date of the current agreement.
- F. The agency is responsible to provide Worker's Compensation Insurance for its employees as required by New Mexico State law.
- G. The agency shall maintain the fiscal records of the agency in accordance with generally accepted accounting principles (GAAP) applicable to their type of organization.

FISCAL BOOKS OF RECORDS

- 1. The agency must maintain the following books of record:
 - A. Chart of Accounts
 - B. General Ledger
 - C. Cash Receipts and Cash Disbursements Journals
 - D. General Journal for adjusting entries, correcting entries, accrual entries, and cost allocation entries, if not provided for in cash journals.

- E. Subsidiary ledgers, if applicable to the organization.
- F. Capital Outlay Inventory that includes at a minimum - description of property; serial number or other ID number; date of purchase; acquisition cost by funding source(s); location and use of property; and disposition data including date of disposition and sale price, if any.
- G. Payroll journals and employee earnings records.

2. Recommended supplementary financial records include:

- A. Balance Sheet
- B. Statement of Revenue and Expenditures
- C. Fiscal Policy and Procedures, which must include:
 - 1. Handling of cash / checks
 - 2. Handling of voided checks
 - 3. Authorized check signatures
 - 4. Bank Reconciliations
 - 5. Separation of duties

REPORTS

- 1. The agency shall complete in full the State and Federal payroll tax forms in accordance with the required time period and shall ensure payroll taxes are paid within the required time frame.
- 2. The agency shall complete in full and submit the required forms of the State Department of Labor.
- 2. The agency shall submit timely program and financial reports to the funding agencies as specified in the contracts.

SOURCE SHEET

ADMINISTRATIVE REQUIREMENTS

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, also known as the Common Rule.

OMB Circular A-110, *Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.*

FASB and AICPA Statements and Professional Pronouncements

COST PRINCIPLES

OMB Circular A-87, *Cost Principles for State and Local Governments*.

OMB Circular A-122, *Cost Principles for Non-Profit Organizations*.

FASB and AICPA Statements and Professional Pronouncements

AUDITS

OMB Circular A-133, *Audits of States, Local Governments and Nonprofit Organizations*

OMB *Compliance Supplement for Audits of States, Local Governments and Nonprofit Organizations*

U.S. General Accounting Office, *Government Auditing Standards*, (The Yellow Book, Current Revision)

FASB and AICPA Statements and Professional Pronouncements