

STATE OF NEW MEXICO

NEW MEXICO DEVELOPMENTAL DISABILITIES PLANNING COUNCIL
OFFICE OF GUARDIANSHIP
PROFESSIONAL SERVICES CONTRACT # _____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Developmental Disabilities Planning Council, Office of Guardianship**, hereinafter referred to as the "Agency" and _____ (Court Visitor), hereinafter referred to as the "Contractor".

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work for Court Visitor.

A. Upon court appointment, to act as court visitor pursuant to NMSA 1978 §45-5-303 (E), in those cases assigned by the Agency.

B. In a professional and competent manner the Contractor shall:

(1) Interview the person seeking appointment as guardian. If there is to be a primary and secondary guardian appointed, then both must be interviewed;

(2) Interview the person alleged to be incapacitated;

(3) Visit the present place of abode of the person alleged to be incapacitated;

(4) Visit the place where it is proposed the alleged incapacitated person will reside after the appointment is made, making sure it would qualify as the most appropriate setting for the needs of the ward;

(5) Evaluate the needs of the alleged incapacitated person;

(6) Submit a written report to the court (with copies to the petitioning attorney and guardian ad-litem) at least one week prior to the hearing appointing a guardian. See, e.g., NMSA 1978 § 45-5-303(E). The report shall include the court visitor's:

(a) Recommendations regarding the appropriateness of the appointment of the proposed guardian;

(b) Opinion as to whether the alleged incapacitated person possesses the capacity to care for him/her self;

(c) Opinion as to those aspects of personal care that the alleged incapacitated can manage without supervision or assistance;

(d) Opinion as to those aspects of personal care that the alleged incapacitated person could manage with the supervision or assistance of support services and benefits;

(e) Opinion as to those aspects of personal care that the alleged incapacitated person is unable to manage without the supervision of a guardian; and

(f) Opinion as to any other pertinent information that would help the court determine if the guardianship being petitioned for is necessary to promote and to protect the well being of the alleged incapacitated person and designed to encourage the development of

maximum self reliance and independence.

C. Services shall be provided in accordance with the laws of the State of New Mexico, including but not limited to the Uniform Probate Code, statutes regarding the Office of Guardianship, the terms of this contract and a generally recognized professional standard for guardianship services, such as the Ethics and Standards for Attorneys and Guardians provided by the National Guardianship Association (NGA) or other recognized standards.

D. COMPLAINTS AND GRIEVANCES

Complaints are handled in the manner set forth under NMAC 9.4.21.14 (effective 04/04/06). A copy can be obtained from the Office of Guardianship or by going to the State of New Mexico web site. Contractor is responsible for knowing this information.

E. In monitoring this contract, the Office of Guardianship reserves the right to amend the contract at any time.

F. **NO OVERSPENDING OF CONTRACT:** Contractors will not overspend their contract. The Agency will not pay for services beyond the contracted amount. Any cases taken after the contracted funds are expended will result in the Contractor paying for the services out of his/her own pocket. Contractor, and not the Agency, is responsible for New Mexico Gross receipts taxes, as set forth below.

G. **CONFLICT OF INTEREST:** To avoid even the appearance of impropriety, no one under contract with the Agency may serve on the board of directors of a guardianship services provider contracted by this office. In addition, the guardianship services contractor may not have any state employee, whose job functions have a direct impact on the guardianship program, as determined by the Director of the Agency, serve on their board of directors. If there is any question as to someone serving on their board of directors who falls under this term in the contract, then the Agency should be consulted prior to the appointment of the person to the board.

H. There may be one or more **MANDATORY** contractors' meeting (s) every year that the Contractor or their representative must attend. The Contractor will be charged with knowing and complying with all information presented at this meeting. Notification of meeting date, time and location will be sent to each Contractor 30 days in advance of the meeting.

I. **PERFORMANCE MEASURES, DEFAULT BY CONTRACTOR - Contractor shall substantially perform the Performance Measures set forth in Attachment 1.** In the event the Contractor fails to obtain the results described in Attachment 1, the Agency may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the Agency of specific steps that it will take to achieve these results in the future and the timetable for implementation. Nothing in this subparagraph shall be construed to prevent the Agency from exercising its right pursuant to Paragraph IV below.

2. Compensation.

A. The Contractor shall accept a maximum of _____ cases for payment in the _____ Judicial District (s) for a total of _____ cases under the term of this agreement. The Agency will pay \$150.00 per case for the appointed court visitor, if no other source of payment is available.

B. The total amount payable to the Contractor under this Agreement shall not exceed \$_____. The total amount paid for (mileage) under this agreement shall not exceed \$400.00. The Contractor is responsible for paying New Mexico Gross Receipts Taxes, if any, out of the flat fee paid to the Contractor.

(1) The amount payable is inclusive of all services required by NMSA 1978, § 45-5-303(E) and this amount will include any gross receipts tax imposed on Contractor. The Agency is not responsible for any gross receipts taxes due by Contractor. Reimbursement for travel expenses shall be paid pursuant to the section discussing mileage, below. This flat fee shall cover all services by the Contractor

(2) The Agency may pay actual costs, as opposed to fees, not to exceed \$150.00 per case for the appointed court visitor, if no other source of payment is available.

(3) Upon submission to the Agency and subject to the limitations set above, the Contractor shall be paid for mileage at the rate of thirty-two cents (\$.32) per mile when the Contractor travels more than fifty (50) miles in one trip in performance of duties pursuant to this contract. A request for mileage must be timely submitted. The first fifty miles of travel (roundtrip) will not be reimbursable. Payment for costs incurred for overnight travel must be approved in writing by the Agency in advance and will be decided on a case-by-case basis.

(4) The Agency shall not be responsible for any other costs or expenses not approved by the Director of Guardianship Services or his/her designate, in writing, in advance. Claims for reimbursement for allowable costs and expenses shall be included on separate payment invoices that contain an explanation of the costs or expenses, the date the cost or expense was approved, the approval code, if prior approval is required, the alleged incapacitated person's case number, the name of the Petitioning Attorney and any other information requested by the Agency.

C. Cases are usually assigned to the petitioning attorney. The petitioning attorney may then contact the Contractor about being a court visitor. The Agency may also assign a case to the Contractor. In any case, if the Contractor accepts the assignment, the Contractor shall contact the Agency in writing immediately to let the Agency know they have accepted the case and obtain written approval to accept the case. The Agency shall provide the Contractor with the NMDDPC Office of Guardianship Tracking Number, which the Contractor shall include on all invoices or other correspondence concerning the case.

D. Payment will be made after the following items have been received by the Agency:

(i) The Contractor shall submit a separate and distinct bill to the Contracts Manager for the Agency for each case and shall include the Office of Guardianship Internal Case Tracking Number on each bill.

(ii) A NMDDPC Office of Guardianship QUALITY CONTROL FOR COURT VISITORS form.

E. All Correspondence and billing should be sent to the Agency's address. The Agency is located at:

NMDDPC – Office of Guardianship
810 W. San Mateo, Ste. C
Santa Fe, NM. 87505-4144
(505) 476-7321
Fax (505) 476-7322

F. Within fifteen days after the date the Agency receives written notice from the Contractor that payment is requested for services or items of tangible personal property delivered on site and received, the Agency shall issue a written certification of complete or partial acceptance or rejection of the services or items of tangible personal property. If the Agency finds that the services or items of tangible personal property are not acceptable, it shall, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, provide to the Contractor a letter of exception explaining the defect or objection to the services or delivered tangible personal property along with details of how the Contractor may proceed to provide remedial action. Upon certification by the Agency that the services or items of tangible personal property have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. No late payment interest charges will be paid.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on _____ unless terminated pursuant to paragraph 4, infra, paragraph 5 or other reason with legal sufficiency. In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least ten (10) 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. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, 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 THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

B. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such

action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

5. Appropriations.

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

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

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

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

13. Amendment.

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

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

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

Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

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

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. Invalid Term or Condition.

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

22. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

23. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified,

return receipt requested, postage prepaid, as follows:

To the Agency: New Mexico Developmental Disabilities Planning Council
Office of Guardianship
810 W. San Mateo Road, Suite C
Santa Fe, New Mexico 87505

To the Contractor:

24. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represent and warrant 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.

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

By: _____ Date: _____
Patrick W. Putnam, Executive Director
New Mexico Developmental Disabilities Planning Council

By: _____ Date: _____
Attorney – Certifying legal sufficiency
Elena Moreno, Legal Counsel
NMDDPC, Office of Guardianship

By: _____ Date: _____
Court Visitor
Contractor

The records of the Taxation and Revenue Department reflect that the Contractor, CV is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

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ID Number: _____

By: _____ Date: _____
Taxation and Revenue Department

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

By: _____ Date: _____
DFA Contracts Review Bureau

Attachment One

Scope of Work

Performance Measures

Attach a copy of a page or portion from the agency's Strategic Plan that connects the professional services contract to the agency's Strategic Plan's goals, objectives, activities, outputs and outcomes.

Performance Measures in Scope of Work shall contain measurable goals and objective that are linked to the performance measures of the Agency's Strategic Plan: To provide guardianship services to income and resource eligible incapacitated adults under the Office of Guardianship Act 28-16B-1 et.al. and to make sure that the New Mexico Uniform Probate Code, Guardianship Code is complied with to the letter and intent of the law.

Goal: In a professional and competent manner, after court appointment, to serve as court visitor under §45-5-303E, in an Agency approved case.

Objective: Services shall be provided in accordance with the laws of the State of New Mexico, specifically, the Uniform Probate Code Chapter 45 et.al., NM Chapter 28, Human Rights, Article 16B, the terms of this contract, and a generally recognized professional standard for guardianship services, such as the Ethics and Standards for Guardians provided by the National Guardianship Association (NGA) or other recognized standards.

Activities:

1. Interview the person seeking appointment as guardian. If there is to be a primary and secondary guardian appointed, then both must be interviewed;
2. Interview the person alleged to be incapacitated;
3. Visit the present place of abode of the person alleged to be incapacitated;
4. Visit the place where it is proposed the alleged incapacitated person will be detained or reside of the requested appointment is made, making sure it would qualify as the most integrated setting appropriate to the needs of the ward;
5. Evaluate the needs of the alleged incapacitated person;
6. Submit a written report to the court (with pre-guardianship hearing copies to the petitioning attorney and guardian ad-litem. The report shall include:
 - (a) Recommendations regarding the appropriateness of the appointment of the proposed guardian;
 - (b) Does the alleged incapacitated person possess the capacity to care for him/her self?

(c) The aspects of personal care that the alleged incapacitated can manage without supervision or assistance;

(d) Those aspects of personal care that the alleged incapacitated person could manage with the supervision or assistance of support services and benefits;

(e) Those aspects of personal care that the alleged incapacitated person is unable to manage without the supervision of a guardian; and

(f) Any other pertinent information that would help the court determine if the guardianship being petitioned for is necessary to promote and to protect the well being of the alleged incapacitated person and designed to encourage the development of maximum self reliance and independence.

7. There will be a MANDATORY Contractors meeting that the person named on the contract or their representative must attend. If a representative attends, the contractor will be charged with knowing and complying with all information as is they were present themselves. Prior notification of meeting date, time and location will be sent to each contractor 30 days in advance.

Evaluations:

The following documents will be sent to the Office of Guardianship:

1. Quality Control Forms

2. Other:

(a) all billing and case file records shall be subject to immediate inspection and copying by the New Mexico Developmental Disabilities Planning Council Office of Guardianship, the New Mexico Department of Finance and Administration and the New Mexico State Auditor;

(b) the New Mexico Developmental Disabilities Planning Council Office of Guardianship shall have the right to audit all billings and monthly reports both before payment is made and for five years after payment has been made;

(c) the Contractor shall provide documentation necessary to ensure compliance with the terms of the contract;

(d) the Director of the Office of Guardianship or their designee periodically may conduct an independent comprehensive program review;

(e) at the discretion of the NMDDPC Office of Guardianship, an outside CPA may be brought in to audit the guardianship services contractors billing for cases that are funded by the NMDDPC Office of Guardianship;