

STATE OF NEW MEXICO

NEW MEXICO DEVELOPMENTAL DISABILITIES PLANNING COUNCIL
OFFICE OF GUARDIANSHIP
PROFESSIONAL SERVICES CONTRACT # _____
Petitioning Attorney and Guardian ad Litem (GAL)

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 _____, Attorney at Law hereinafter referred to as (the "Contractor"), and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration ("DFA")

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work for Petitioning Attorney** (see #2 below for Guardian ad Litem (GAL))

A. In a professional and competent manner and in your capacity as an attorney licensed or permitted to practice law in New Mexico, serve as petitioner on behalf of the State of New Mexico in proceedings for court appointment of an adult or entity to serve as guardian for an alleged incapacitated adult pursuant to the New Mexico Uniform Probate Code, NMSA 1978 §§ 45-5-301 through 45-5-315. The State Office of Guardianship is the "Interested Party" in these proceedings, and the pleadings must show the State Office of Guardianship as petitioner. If the Contractor believes the proposed guardian is inappropriate as a guardian for any reason, the Contractor must advise the Agency and the Guardian ad Litem. The Contractor must meet the state requirements to be Commissioned as a Special Assistant Attorney General since are petitioning on behalf of the State of New Mexico.

B. The Contractor must set forth efforts to locate other appointed guardians, persons with a Power of Attorney, agents named in Advance Directives, or surrogates appointed by the alleged incapacitated person, and must notify any such persons of the new guardianship proceedings. The expectation is for efforts to locate meet a due diligence standard. The contractor must make reasonable efforts for guardianship orders not invalidating advance health care or mental health care treatment instructions created by the ward when they had capacity without good cause.

C. The Contractor must advise the Office of Guardianship of previously named guardians, agents, or surrogate decision-makers for possible consideration as the guardian (if willing and appropriate).

D. Contractor will have a petition filed with the court within thirty (30) days after Contractor receives the name of the alleged incapacitated adult in need of guardianship. The Contractor will serve a copy of the petition on the proposed guardian, as well as provide a copy of the proposed order when provided to the GAL. If the proceeding is not completed within four (4) months, Contractor will notify the Agency with a written explanation. Time is of the essence.

E. Services by the Contractor shall be provided in accordance with the laws of the State of New Mexico, including, but not limited to, the Uniform Probate Code, statutes governing the Office of Guardianship, the terms of this contract, Rules of Professional Conduct (Rules 16-101 through 16-805 NMRA 2006), the regulations of the Agency in the New Mexico Administrative Code 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.

F. The alleged incapacitated adult shall:

(1) Be a resident of the State of New Mexico;

(2) Not have income that exceeds two hundred and twenty-five percent (225%) of the HHS poverty guidelines (for 2009-10, their income level cannot exceed \$24,368.00 (this number may change from calendar year to calendar year) and countable resources such as bank accounts, trust funds, life insurance and income producing property shall not exceed \$2,000.00. Burial policies up to \$1,540.00 are not included in countable resources. The alleged incapacitated adult must also be over the age of eighteen (18). These terms and conditions are governed by and more clearly set forth in NMAC 9.4.21.8.

(3) A proposed guardian's gross income must not exceed three hundred percent (300%) of the HHS poverty guidelines. Contractor will refer to NMAC 9.4.21.8 for information regarding proof of income and exceptions.

(4) The Agency by statute can only contract for guardianship services. If the proposed guardian wants to become a conservator, the agency is not opposed but conservatorship is outside the scope of the contract. Any and all fees paid are only for guardianship services.

G. The petitioner for guardianship may be a relative of the alleged incapacitated adult. The petitioner shall have a proposed guardian who is also a relative to the alleged incapacitated adult execute a sworn statement that he or she is unable or unwilling to pay for legal services related to the filing of the petition and that he or she is not under any duty to support the alleged incapacitated adult.

H. Duty to Support:

(1) If the petitioner has a duty to support the alleged incapacitated adult, then the Contractor and the alleged incapacitated adult each shall satisfy the income and resource eligibility requirements stated above.

(2) The Agency shall not pay for legal services under this agreement if the alleged incapacitated adult and the petitioner with a duty to support the alleged incapacitated adult are not income and resource eligible.

(3) The Contractor shall make reasonable inquiry of the petitioner, relatives of the alleged incapacitated adult, or others to discover the identity of any adult with a duty to support the alleged incapacitated adult or to pay sums for the welfare of the alleged incapacitated adult.

I. A signed and notarized Affidavit of Indigency from the petitioner or caretaker will suffice to satisfy Section E, above.

J. Before a corporate guardian is recommended to the court, Contractor shall make reasonable inquiry to ascertain the name and address of any relative(s) as required by the probate code, (related by blood or marriage) or interested individuals who would be willing to serve as guardian.

K. Contractor shall take reasonable steps to find least restrictive alternatives to the

proposed guardianship taking into consideration factors that would include, but are not limited to, the extent and scope of the alleged incapacitated adult's incapacity and the recommendation of a limited guardianship where appropriate.

L. Contractor shall make reasonable inquiry as to the existence of any documents executed by the alleged incapacitated adult that would give others control over some aspect of the alleged incapacitated adult's life such as a valid Durable Power Of Attorney, Power of Attorney or Health Care document. If they exist, the Contractor shall recommend a limited guardianship to assist the alleged incapacitated adult with those areas of decision-making not addressed by such instruments.

M. The case file of the Contractor shall include evaluations of capacity, conformed copies of pleadings *in forma pauperis*, documents showing verification of income and resource eligibility or executed affidavit of indigency, documents showing efforts or results of the Contractor to find the names and addresses of any other relatives (related by blood or marriage) or interested individuals who are willing to serve as guardian, documents regarding preparation and filing of the petition for guardianship and conformed copies of notices, petitions and other pleadings filed with the court, including, but not limited to, motions for appointment of a temporary guardian, filing of ancillary conservatorship proceedings or other protective orders as may be necessary and prudent, hearing notices, and order and letters of guardianship, in addition to Sec. M (Annual Reports) and Sec. 2(C)(2) (documents to provide for payment).

N. Contractor will provide conformed copies of the petition, appointment of court visitor, guardian *ad litem* and Qualified Health Care Professional and order appointing guardian to the Agency. If you have the ability, scan the documents and send them by e-mail.

O. Pursuant to NMSA 1978 §45-5-303 (C), unless the alleged incapacitated adult already has an attorney of his/her own choice, the court shall appoint an attorney to represent the alleged incapacitated adult (the guardian *ad litem* ("GAL")). The Agency may provide the guardian *ad litem* and court visitor. The Contractor may recommend to the Agency that the Agency pay a flat fee of \$300.00 for a GAL attorney if:

(1) The petitioner lacks the financial resources to cover such costs, as evidenced by the filing and approval of the District Court that the petitioner may proceed *in forma pauperis*, or the petitioner otherwise is not responsible for the support of the alleged incapacitated adult;

(2) The Contractor has determined that the funds for the court appointed GAL are not available from the District Court and

(3) A volunteer GAL is not available; and,

(4) There is a GAL under contract with the Agency that can provide such services.

(5) If all the above conditions are met, and written approval is received from Agency, the Contractor may make a recommendation to the court as to whom to appoint as GAL.

P. Corporate Guardian Contractor As Guardian: Upon the appointment of a professional guardianship service provider ("corporate guardian") for adjudicated incapacitated adults and before payment will be made for the Contractor's services, the Contractor must:

(1) Provide the corporate guardian and Agency with a copy of the proposed draft court order appointing a professional guardianship service provider at least two weeks in advance of the hearing date.

(2) If the judge has a specific reason to exclude the corporate guardian, the Contractor must notify the Agency prior to the hearing (which may require a continuance).

Q. Annual Reports: Contractor will provide to all newly appointed non-corporate guardians, in writing, an explanation of guardianship and the annual report, perhaps as part of the attorney's completion of services letter to the client. This explanation will include, but is not limited to:

(1) Supplying each newly appointed non-corporate guardian with a written explanation of the requirements under NMSA 1978 §45-5-314. This explanation should also include a statement that neither the District Court nor the Contractor will send the guardian a reminder of when to file their annual report but that annual reports are required by law to be filed annually.

(2) Give the newly appointed non-corporate guardian a blank copy of the annual report (See, NMSA 1978 §45-5-314) that will be used to file with the District Court where the guardian was appointed. The court caption and case number should be appropriately placed on the document so that the guardian may use it as a master copy every year.

(3) Have the newly appointed non-corporate guardian sign a written acknowledgement that they have received the above information and keep that document in the case file.

R. Complaints and Grievances

(1) If there is a complaint against the Contractor, in their capacity as the petitioning attorney, he or she must work with the party making the complaint (or intermediary) to resolve any complaint/grievance within fifteen (15) working days of receipt of the complaint.

(2) A copy of any complaint, written or otherwise, shall be forwarded to the Agency within five days of its receipt. If the complaint is resolved, a summary of the resolution should be sent to the Agency.

(3) Any complaint that cannot be resolved within the aforementioned fifteen (15) day period must be forwarded to the Agency within two (2) working days following the aforementioned fifteen (15) day period along with an explanation as to why this complaint/grievance remains unresolved.

S. Any cases billed to the Agency that have not been assigned to the Contractor by the Office of Guardianship will not be paid. The Contractor shall never accept cases on the behalf of the Agency without prior written approval from the Agency.

T. **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 guardianship services out of his/her own pocket. Contractor is responsible for New Mexico Gross receipts taxes, as set forth below.

U. **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.

V. There may be one or more MANDATORY contractor s' 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.

W. Performance Measures, default by Contractor:

Contractor shall substantially comply with 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 4 below.

- (1) Contractor will keep all records for each case for a minimum of five years.
- (2) Contractor agrees to permit the Agency access to those files for a period of five years.

2. Scope of Work for Guardian Ad-Litem.

A. The Contractor shall, in a professional and competent manner, represent alleged incapacitated adults as the *GUARDIAN AD LITEM* (GAL) contractor in proceedings for court appointment of a person to serve as the individual's guardian under the NM Uniform Probate Code, NMSA 1978, §§ 45-5-301 through 45-5-315). The Contractor shall, at minimum:

- (1) Interview, in person, the alleged incapacitated person prior to the hearing;
- (2) Present the alleged incapacitated person's declared position to the court;
- (3) Interview the proposed guardian, and review the report of the qualified health care professional and the court appointed visitor;
- (4) Determine if it is necessary to obtain an independent medical or psychological assessment.

a. The Contractor shall:

(1) Meet in person with the "alleged incapacitated person as soon after appointment is feasible. At this meeting, the GAL shall:

- (i) Communicate to the alleged incapacitated person the role of the GAL;
- (ii) Assess the alleged incapacitated physical and social situation, the alleged incapacitated person's educational, vocational and recreational needs, along with the alleged incapacitated person's preference and the support system available to the ward;

(iii) Attempt to gather any missing necessary information regarding the alleged incapacitated person (e.g. advance directives, powers of attorney, living wills and organ donation documents) to assure that all least restrictive alternatives will be considered by the court, such as a Limited Guardianship.

(2) Provide services in accordance with the laws of the state of New Mexico, specifically, the Uniform Probate Code, 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.

(3) Treat all professionals and service providers with courtesy and respect;

(4) Develop and maintain a working knowledge of the services, providers and facilities available in the community so that the GAL can discuss with the alleged incapacitated person the least restrictive alternatives available to him/her, before presenting to the court the alleged incapacitated person's position;

(5) Avoid all appearances of impropriety or conflict of interest in representing the alleged incapacitated person's position, including complying with the New Mexico Rules of Professional Conduct.

3. Compensation.

A. Under the terms of this agreement, the agency shall assign cases to the contractor for Petitioning Attorney (PET) and Guardian Ad Litem (GAL) services that are to be performed primarily, but not limited to the Roswell area. It is at the discretion of the contractor to accept cases that are not within the area(s) mentioned above. The Agency shall pay the Contractor a flat fee of \$600.00 per case for PET services and \$300.00 per case for GAL services. In addition to the flat fee, the Agency, at its discretion, may also pay the Contractor a premium or additional amount of up to \$300.00 for each PET or GAL case that falls within areas of the state that are deemed to be difficult to serve or that the contractor must drive an excessive distance. The total amount paid for mileage and allowable travel expenses under this agreement shall not exceed \$900.00 (\$128.64 for mileage and \$85 for 1 days per Diem is for the attendance of the mandatory contractors meeting).

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

(6) The amount payable is inclusive of all services required and contracted for as GAL and this amount will include any gross receipts tax imposed on Contractor. Reimbursement for travel expenses shall be paid pursuant to the section on mileage, as set forth below.

(7) 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. 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.

(8) The Contractor shall receive no other compensation for legal services performed nor seek or accept compensation for services from any other person or entity including, but not limited to, the incapacitated adult, the petitioner, the named guardian, family members, or the estate of the alleged incapacitated adult. It is also agreed that any fee collected from anyone for services provided under this contract, other than the fee authorized and paid under this contract, is illegal and grossly excessive as well as breach of fiduciary duty and shall be reported to the State Bar of New Mexico for disciplinary board action. In addition, such action may be grounds for immediate termination of the contract at the discretion of the Agency.

C. With the exceptions noted above, the Agency shall not be responsible for any other costs or expenses not approved by the Office of Guardianship, 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.

D. Payment Provision:

1. Cases are usually assigned to the petitioning attorney. The petitioning attorney normally will contact the Contractor about being a GAL. The Agency may also contact the Contractor directly. In any case, if the Contractor accepts the assignment, the Contractor shall contact the Agency in writing (e-mail will suffice) immediately to let the Agency know they have accepted the case. The Agency shall provide the Contractor with a tracking number, which the Contractor shall include on all invoices or other correspondence concerning the case.

2. Payment will be made after the following items have been received from the Contractor. It is preferred that documents filed with the court be scanned and e-mailed to the Office of Guardianship as .pdf files, but mailing or faxing the document will suffice. This list is not exclusive, but represents the minimum documentation that must be submitted:

(i) A separate and distinct bill to the Contracts Manager for the Agency for each with the tracking number on each bill.

(ii) A copy of the first page of the report filed with the court with the court stamp on it.

(iii) An Agency QUALITY CONTROL FOR GUARDIAN AD LITEM form.

3. All correspondence will be sent to the agency whose address is:

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

4. All Invoices for payment must be submitted through NMDDPC's online billing system.

5. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

4. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on _____ unless terminated pursuant to paragraph 4, infra, or paragraph 5. 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.

5. Termination.

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.*

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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. Amendment.

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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

21. 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.

22. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

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

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

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

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

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

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

23. Invalid Term or Condition.

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

24. Enforcement of Agreement.

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

25. Notices.

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

To the 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:

26. 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: _____
Frank Fajardo, Guardianship Manager
New Mexico Developmental Disabilities Planning Council

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

By: _____ Date: _____

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

ID Number: _____

By: _____ Date: _____
Taxation and Revenue Department

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

Vendor Number: _____

By: _____ Date: _____
DFA Contracts Review Bureau

Attachment One

Scope of Work

Performance Measures

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, represent "any interested adult" as a petitioner in proceedings for court appointment of a adult to serve as guardian for an alleged incapacitated adult.

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. Provide services to income and resource eligible alleged incapacitated adults. A petition for guardian will be filed within thirty (30) days after notice of assignment. All bills must be presented to the Agency on or before _____.

2. Case shall include evaluation, filing forms for proceedings *in forma pauperis*, verification of income and resource eligibility or executed affidavit of indigency, verification of gross income of proposed guardian if other than a corporate guardian, reasonable discovery from the petitioner of the names and addresses of any other relatives (related by blood or marriage) or interested individuals by who are willing to serve as guardian, preparation and filing of the petition for guardianship and notices as required by law, motion for appointment of a temporary guardian if necessary, filing of ancillary conservatorship proceedings or other protective orders as may be necessary and prudent, adult appearances before the Court for hearing and other judicial proceedings related to the case and preparation of the order and letters of guardianship, in addition to Sec. J (Annual Reports) and Sec. L (Documentation for payment).

3. Take reasonable steps to find least restrictive alternatives to the proposed guardianship, including but not limited to consideration of the alleged incapacitated adult's incapacity and recommendation of limited guardianship were appropriate.

4. Contractor shall make reasonable inquiry as to if there is a valid Durable Power Of Attorney and/or Power of Attorney for Health Care document in effect, if there is then the Contractor shall recommend a limited guardianship to cover only those things not addressed by these

instruments.

5. Efforts must be made to appoint a successor guardian in the petition/and the prepared court order for guardianship when there is a family appointment.

6. Contractor will explain the Probate Code requirements of an annual report and the penalty for late filing of the annual report to all newly appointed non-corporate guardians in the form of a letter approved by the office of guardianship.

a. Supply each newly appointed non-corporate guardian with a written explanation of the requirements under the Code §45-5-314. This should also include a statement that the District Court nor Contractor will NOT send them a reminder of when to file their annual report but that annual reports are required by law to be filed annually.

b. Give the newly appointed guardian a blank copy of the annual report (from NMSA 1978, §45-5-314) with the heading completed to be used to file with the District Court where the guardian was appointed.

c. Keep an acknowledgement form signed by the guardian that they have received the above information and maintain it in the case file.

7. The Contractor will be assigned cases by the Agency for payment under this contract. Contractor will not be paid for any cases they accept that are not approved or from the Agency.

8. There will be MANDATORY Contractors' meetings that the Contractor or their representative must attend. The Contractor will be charged with knowing and complying with all information presented at the meeting. 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 Agency:

1. Complaints:

(a) a determination about a complaint, in writing, within fifteen (15) working days of receipt of the complaint; documentation (an investigative summary) on how determination was made for all resolved complaints within five (5) working days of the determination;

(b) all unresolved complaints/grievances within two (2) working days of the 15-day deadline for grievance resolution.

(c) The Contractor shall mail to the Director a copy of any complaint filed by the Contractor as guardian against a governmental entity, law enforcement officer, or public employee.

2. Within 48 hours, the Contractor shall send to the Agency a copy of any court or administrative action filed against the Contractor as a guardian or against the Contractor if the action alleges conduct that would constitute a violation of the terms of the contract.

3. Within 24 hours, the Contractor shall notify the Agency of the death of any client, any life threatening injury or occurrence involving a client, and any serious injury sustained by a client.

4. Other:

(a) A conformed copy of the petition, the order appointing guardian and the letters of guardianship.

(b) All billing and case file records shall be subject to immediate inspection and copying by the Agency, the New Mexico Department of Finance and Administration and the New Mexico State Auditor;

(c) The New Mexico Developmental Disabilities Planning Council Agency 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;

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

(e) The Director of the Agency or their designee periodically may conduct an independent comprehensive program review;

(f) At the discretion of the Agency, an outside CPA may be brought in to audit the guardianship services Contractors billing for cases that are funded by the Agency.

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. The Contractor shall, in a professional and competent manner, represent alleged incapacitated adults as the GUARDIAN AD-LITEM (GAL) in proceedings for court appointment of a person to serve as the individuals guardian under the NM Uniform Probate Code, Sec. 45-5-301 through 45-5-315 (NMSA 1978). Specifically but not limited to, the Contractor shall:

- a. interview in person the alleged incapacitated person prior to the hearing;
- b. present the alleged incapacitated person's declared position to the court;
- c. interview the qualified health care professional, the court appointed visitor and the proposed guardian;
- d. review both the medical report or psychological assessments or both if necessary and obtain independent medical or psychological assessments if necessary.

2. The Contractor as a (GAL) shall meet in person with the "alleged incapacitated person as soon after appointment is feasible. At this meeting, the GAL shall:

- a. communicate to the alleged incapacitated person the role of the GAL;
- b. assess the alleged incapacitated physical and social situation, the alleged incapacitated person's educational, vocational and recreational needs, along with the alleged incapacitated person's preference and the support system available to the ward;
- c. Attempt to gather any missing necessary information regarding the alleged incapacitated person (e.g. such as advance directives that exist, powers of attorney, living wills and organ donation documents to assure that all least restrictive alternatives will be considered by the court, such as a Limited Guardianship.

3. Avoid all appearances of impropriety or conflict of interest in representing the alleged

incapacitated person's position, including complying with Rule 16-108(F) of the NM Rules of Professional Conduct, Article 1, Client-Lawyer Relationship.

4. The Contractor must work to resolve any complaint/grievance that might arise from a case, acting as the Guardian Ad- Litem Attorney within fifteen (15) working days of receipt of the complaint.

a. A copy of any received "written complaint" shall be forwarded to the Agency immediately for "logging in".

b. All unresolved complaints/grievances must be forwarded to the Director of the NMDDPC Office of Guardianship within two (2) working days following the fifteen (15) working day deadline for contractor grievance resolution, with an explanation as to "why" this complaint/grievance remains unresolved.

Evaluations:

1. All billing and case file records shall be subject to immediate inspection and copying by the Agency, the New Mexico Department of Finance and Administration and the New Mexico State Auditor;

2. the Agency 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;

3. the Contractor shall provide documentation necessary to ensure compliance with the terms of the contract;

4. the Deputy Director of the Agency, or their designee, may periodically conduct an independent comprehensive program review;

5. at the discretion of the Agency, an outside CPA may be brought in to audit the Contractors billing for cases that are funded by the Agency;

6. If the guardianship services contractor fails to meet its performance or program related obligations under the negotiated contract, the Agency deputy director, in its sole discretion, may implement a corrective action plan.

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 if 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/herself?
 - (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 if 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;