

STATE OF NEW MEXICO
 NEW MEXICO DEPARTMENT OF HEALTH
 PROFESSIONAL SERVICES CONTRACT

This CONTRACT is entered into by and between the State of New Mexico, Department of Health, hereafter DEPARTMENT, and Gadsden Independent School District, hereafter CONTRACTOR. THE PARTIES MUTUALLY AGREE:

ARTICLE 1. SCOPE OF WORK

- A. The CONTRACTOR shall provide quality direct care through integrated primary care, behavioral health services and health promotion and risk reduction services, as well as coordination for these services, through a Level two School-Based Health Center (SBHC) at Gadsden High School to students, children of students and school staff during the 2006-2007 school year, which is hereby incorporated and made a part of this CONTRACT as Attachment A.
- B. PERFORMANCE MEASURES, DEFAULT BY CONTRACTOR – CONTRACTOR shall substantially perform the Performance Measures set forth in Attachment A. In the event the CONTRACTOR fails to obtain the results described in Attachment A, the DEPARTMENT may provide written notice to the CONTRACTOR of the default and specify a reasonable period of time in which the CONTRACTOR shall advise the DEPARTMENT 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 DEPARTMENT from exercising its right pursuant to Article 6 below. Performance will be monitored and evaluated by periodic on site work reviews, review of data reports and scheduled consultations.

ARTICLE 2. LICENSURE

The CONTRACTOR agrees to retain professional licensure, accreditation, credentialing or continuing education required to perform the scope of professional services provided for the DEPARTMENT. The CONTRACTOR agrees to make evidence of licensure or other regulatory requirements for the scope of professional services available to the DEPARTMENT if requested in writing.

ARTICLE 3. COMPENSATION

- A. For services satisfactorily performed pursuant to the Detailed Work Plan (Attachment A), the CONTRACTOR shall be paid by the DEPARTMENT a total amount not to exceed \$85,000.00, including gross receipts. Allowable payments shall be only as outlined in the Budget, which is hereby made a part of this Contract as Attachment B.
- B. 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 or partial 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 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 (30) day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the CONTRACT to the CONTRACTOR at the rate of one and one-half percent 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 agencies, 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 DEPARTMENT.

**THE TOTAL CONTRACT AMOUNT INCLUDING GROSS RECEIPTS TAX SHALL NOT EXCEED
\$85,000.00**

ARTICLE 4. PAYMENT

Payment under this CONTRACT shall be on the basis of deliverables identified in the Budget, Attachment B. Costs claimed for payment must be substantiated. The CONTRACTOR shall submit to the DEPARTMENT at the close of each month a signed invoice reflecting the total allowable costs incurred during the preceding month. No invoices will be reimbursed unless submitted within thirty (30) days after the last day of the month in which services were performed. Source documentation of the actual payments made shall be made available to the DEPARTMENT without notice in accordance with Article 13 (Records and Financial Audit) of this CONTRACT for inspection.

ARTICLE 5. TERM

This CONTRACT shall not become effective until approved by the Department of Finance and Administration. This CONTRACT shall terminate on 6/30/07, unless terminated pursuant to Article 6, infra or Article 7. In accordance with NMSA 1978, Section 13-1-150 no CONTRACT term, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, Section 13-1-150.

ARTICLE 6. TERMINATION

- A. The DEPARTMENT may, by written notice to the CONTRACTOR, terminate the whole or any part of this CONTRACT in any one of the following circumstances:
1. Either the DEPARTMENT or the CONTRACTOR may terminate this CONTRACT without cause upon thirty (30) days written notice to the other party.
 2. The DEPARTMENT may terminate this CONTRACT upon ten (10) days written notice if the CONTRACTOR fails to comply with any term, condition, requirement or provision of this CONTRACT immediately if the CONTRACTOR becomes unable to perform the services contracted for.
 3. If, during the term of this CONTRACT, the CONTRACTOR or any of its officers, employees or agents are convicted of fraud, embezzlement or other serious misuse of CONTRACT funds, the DEPARTMENT may terminate this CONTRACT immediately upon written notice to the CONTRACTOR.
 4. At any time during the term of this CONTRACT, the DEPARTMENT may terminate pursuant to Article 7 (Appropriations).
- B. By the methods of termination provided in this subsection neither party may nullify obligations already incurred for the performance or failure to perform prior to the date of termination. THIS 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.

ARTICLE 7. APPROPRIATIONS

- A. The performance of this CONTRACT is subject to the condition precedent that sufficient funds are appropriated, authorized, and allocated by the Legislature of the State of New Mexico and/or by the federal government. If sufficient appropriations, authorizations, and allocations are not made by the Legislature of the State of New Mexico and/or by the federal government, necessitating a decrease in the amount of CONTRACT funds available for expenditure by the DEPARTMENT, this CONTRACT may be terminated or amended to a lower amount of funds upon written notice given by the DEPARTMENT to the CONTRACTOR. If the DEPARTMENT proposes a CONTRACT amendment to unilaterally reduce CONTRACT funding, the CONTRACTOR shall have the option to terminate the CONTRACT upon thirty (30) days written notice to the DEPARTMENT.
- B. The decision of the DEPARTMENT as to the amount of CONTRACT funds available for expenditure from the appropriation, authorization and/or allocation shall be final and binding on the CONTRACTOR.

ARTICLE 8. TERMINATION MANAGEMENT

If this CONTRACT is terminated pursuant to its provisions, or if the parties mutually agree to discontinue their contractual relationship, or upon expiration of the term of the CONTRACT, immediately upon receipt by either the DEPARTMENT or the CONTRACTOR of written notice of termination, the CONTRACTOR shall: 1) not incur any further obligations for salaries, services or any other expenditures of funds under this CONTRACT without the written approval of the DEPARTMENT; 2) continue to provide essential services and supports to ensure the health and safety of individual clients as directed by the DEPARTMENT during the period of termination management; This requirement is not avoided by an inadvertent expiration of term for the CONTRACT. In this event the DEPARTMENT shall extend the term until all transition of services are completed; 3) comply with all directives issued by the DEPARTMENT in the notice of termination as to the performance of work under this CONTRACT; 4) take such action as the DEPARTMENT shall direct for the protection, preservation, retention or transfer of all property titled to the DEPARTMENT and client records generated under this CONTRACT on the date of termination of this CONTRACT, the CONTRACTOR shall furnish to the DEPARTMENT: (a) a complete detailed inventory of nonexpendable DEPARTMENT property as defined in Article 25 (Property) of this CONTRACT, and (b) a final closing of the financial records and books of accounts which were required to be kept by the CONTRACTOR under the provision of this CONTRACT regarding financial records.

ARTICLE 9. STATUS OF CONTRACTOR

The CONTRACTOR, its agents and employees, are independent contractors performing professional services for the DEPARTMENT and are not employees of the DEPARTMENT. Accordingly, the CONTRACTOR, and its agents and employees, shall not be deemed employees for any purpose within the meaning or application of any federal or state unemployment or insurance laws or workers compensation laws or otherwise. CONTRACTOR, its agents and employees shall not be entitled to any of the benefits afforded employees of the DEPARTMENT including but not limited to accruing leave, retirement, insurance, bonding, use of state property or state vehicles, or any consideration not specified in this CONTRACT. 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.

ARTICLE 10. GOVERNING BODIES

- A. The parties agree that the Governing Bodies of the CONTRACTOR shall have the right and responsibility to establish policy for the CONTRACTOR, and shall be elected to ensure that such policy is established by the Governing Bodies in an impartial and independent manner. Nothing herein shall in any way restrict the authority of the Governing Bodies from appropriately delegating day-to-day management responsibilities to its employees, agent or agents. By such delegation, employees and/or agents of the CONTRACTOR must conduct the operation of the CONTRACTOR consistent with the policies and procedures approved by the Governing Bodies.

- B. If the CONTRACTOR is not a corporation but a single proprietorship or a partnership, the above requirements of paragraph A does not apply.

ARTICLE 11. ASSIGNMENT

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

ARTICLE 12. SUBCONTRACTING

The CONTRACTOR shall not subcontract any portion of the services to be performed under this CONTRACT without the prior written approval of the DEPARTMENT.

ARTICLE 13. RECORDS AND FINANCIAL AUDIT

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

ARTICLE 14. AUDIT REQUIREMENTS

A. ANNUAL FINANCIAL REPORTS

1. The CONTRACTOR receiving **federal** funds in excess of \$500,000 in any single year that are subject to the Single Audit Act shall submit to the DEPARTMENT an audit conducted by a Certified Public accountant in compliance with the Single Audit Act
2. The CONTRACTOR receiving **federal** funds in excess of \$500,000 that are otherwise exempt from the Single Audit Act or **state** funds from the DEPARTMENT in excess of \$100,000 in any single year shall submit to the DEPARTMENT Annual Financial Statements and a Management Letter expressing an opinion on the Financial Statements prepared by an external Certified Public Accountant.
3. Applicable annual financial reports shall be submitted to the DEPARTMENT no later than six months following the close of the CONTRACTOR's fiscal year.
4. To ensure proper delivery and receipt, the CONTRACTOR shall submit their annual financial reports to:
Department of Health
Office of Internal Audit
ATTN: Financial Review
P.O. Box 26110
Santa Fe, New Mexico 87502-6110
5. Unless allowable under provisions of the Single Audit Act or other specific CONTRACT provisions, CONTRACTORS shall not request payment from the DEPARTMENT for the cost of preparation of annual financial reports required by this Article.

ARTICLE 15. RELEASE

The CONTRACTOR, upon final payment of the amount due under this CONTRACT, releases the DEPARTMENT, its officers and employees, and the State of New Mexico, from all liabilities, claims and obligations not assumed herein by the

State of New Mexico. The CONTRACTOR agrees not to purport to bind the DEPARTMENT, or 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.

ARTICLE 16. PRODUCT OF SERVICES COPYRIGHT

All materials or products developed or acquired by the CONTRACTOR under this CONTRACT 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 CONTRACT. Nothing produced, in whole or in part, by the CONTRACTOR under the CONTRACT shall be the subject of an application for copyright by or on behalf of the CONTRACTOR.

Client information developed under this CONTRACT may not be used by the CONTRACTOR or be transferred to a third party in any form, including aggregate data, without the express written permission of the DEPARTMENT, except to fulfill the provisions of the Detailed Work Plan.

ARTICLE 17. CONFLICT OF INTEREST

The CONTRACTOR represents 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 of services required under this CONTRACT. The CONTRACTOR agrees to comply with the requirements of the New Mexico Financial Disclosure Act (NMSA 1987, Section 10-16A-1, et seq.) and the Governmental Conduct Act (NMSA 1978, Section 10-16-1 et seq.) as applicable. The CONTRACTOR represents and warrants that the services to be performed under this CONTRACT shall not result in a conflict of interest prohibited by state or federal laws, rules or regulations.

ARTICLE 18. AMENDMENT

This CONTRACT shall not be altered, changed or amended except by instrument in writing executed by the parties hereto. From time to time and in accordance with changes in State and Department policy, this CONTRACT shall be amended to comport with current policy, rules, regulations and law.

ARTICLE 19. SCOPE OF AGREEMENT

This CONTRACT 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 CONTRACT. No prior CONTRACT or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this CONTRACT. All attachments are incorporated and made a part of this CONTRACT.

ARTICLE 20. SEVERABILITY

If any portion of this CONTRACT is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this CONTRACT will remain in full force and effect.

ARTICLE 21. INDEMNIFICATION

- A. The CONTRACTOR shall defend, indemnify and hold harmless the DEPARTMENT 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 CONTRACT, if caused by the negligent or tortuous act or failure to act of CONTRACTOR, its officer, employees, servants, or agents.
- B. In the event that any action, suit or proceeding related to the services provided by the CONTRACTOR under this

CONTRACT is brought against the CONTRACTOR, the CONTRACTOR shall, as soon as practicable, but no more than two (2) working days after notice of such action, suit or proceeding, notify the Office of General Counsel of the Department by certified mail.

ARTICLE 22. LIABILITY INSURANCE

The parties to this CONTRACT shall maintain professional or general liability insurance, as applicable, for all services provided under this CONTRACT and shall supply evidence of such coverage upon the DEPARTMENT's request.

ARTICLE 23. BONDING

Each person employed by the CONTRACTOR who handles funds under this CONTRACT, including personnel authorizing payment of such funds, shall be covered by the terms of a fidelity bond providing for indemnification of losses occasioned by (1) any fraudulent or dishonest act or acts committed by any of the CONTRACTOR's employees either alone or in collusion with others; (2) failure of the CONTRACTOR or any of its employees to perform faithfully his duties or to account properly for all monies and property received by virtue of this position or employment. The fidelity bond shall be in an amount equal to 25% of the total CONTRACT amount, unless the CONTRACT amount is less than \$100,000 per year. In such cases a minimum bond of \$10,000 will be sufficient. The CONTRACTOR shall submit a copy of the bond to the DEPARTMENT within thirty (30) days of the effective date of this CONTRACT. The bond shall include Third Party coverage for property of clients. If the CONTRACTOR is a sole proprietorship or partnership, the proprietor or the partners must be considered employees under the terms of the bond. Loss payment by the bonding company shall be made to the State of New Mexico, Department of Health. (i.e., State of New Mexico Department of Health shall be named as Loss Payee). CONTRACTOR shall provide the DEPARTMENT with a Certificate of Insurance evidencing this coverage. The certificate shall provide the DEPARTMENT with thirty (30) days written notice of bond cancellation. The bond shall remain in effect for the term of the CONTRACT plus thirty (30) days. In lieu of a Third Party Fidelity bond, the DEPARTMENT reserves the right to require a financial guarantee bond (i.e., surety bond) naming the DEPARTMENT as obligee and in an amount to be determined. The DEPARTMENT retains the authority to waive either of these bond requirements.

ARTICLE 24. CLIENT RECORDS AND INFORMATION

- A. The CONTRACTOR shall maintain complete confidential records for the benefit of clients, sufficient to fulfill the provisions of the Detailed Work Plan, and to document the services rendered under the Detailed Work Plan. All records maintained pursuant to this provision shall be available for inspection by the DEPARTMENT.
- B. The CONTRACTOR shall protect the confidentiality of all confidential information and records and shall not release any confidential information to any other third party without the express written authorization of the client when the record is a client record, or the DEPARTMENT.
- C. The CONTRACTOR shall comply with the Federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and applicable regulations and all other State and Federal rules, regulations and laws protecting the confidentiality of information. If the CONTRACTOR is not a Covered Entity as defined by HIPAA, CONTRACTOR shall execute the HIPAA Business Associate Agreement, which is hereby incorporated and made part of this CONTRACT as Attachment C.

ARTICLE 25. PROPERTY

- A. Title to all property furnished by the DEPARTMENT shall remain in the DEPARTMENT. Title to all property acquired by the CONTRACTOR, including acquisition through lease-purchase CONTRACT, for the cost of which

the CONTRACTOR is to be reimbursed as a direct item of cost under this CONTRACT shall immediately vest in the DEPARTMENT upon delivery of such property to the CONTRACTOR. Title to other property, the costs of which is to be reimbursed to the CONTRACTOR under this CONTRACT, shall immediately vest in the DEPARTMENT upon 1) issuance for use of such property in the performance of this CONTRACT or 2) use of such property in the performance of this CONTRACT or 3) reimbursement of the cost thereof by the DEPARTMENT, whichever first occurs.

- B. Title to the DEPARTMENT property shall not be affected or lose its identity by reason of affixation to any realty or attachment at law.
- C. The CONTRACTOR shall maintain a property inventory and administer a program of maintenance, repair and protection of DEPARTMENT property so as to assure its full availability and usefulness for performance under this CONTRACT. In the event the CONTRACTOR is indemnified, reimbursed, or otherwise compensated for any loss or destruction of, or damage to DEPARTMENT property during the period of this CONTRACT, it shall use the proceeds to repair or replace the DEPARTMENT property.

ARTICLE 26. APPLICABLE LAW

This CONTRACT shall be governed by the laws of the State of New Mexico.

ARTICLE 27. 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 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.

ARTICLE 28. WORKERS' COMPENSATION ACT

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 CONTRACT may be terminated by the DEPARTMENT.

ARTICLE 29. POLITICAL ACTIVITY

No funds hereunder shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.

ARTICLE 30. LOBBYING

The CONTRACTOR shall not use any funds provided under this CONTRACT, either directly or indirectly, for the purpose of conducting lobbying activities or hiring a lobbyist or lobbyists on its behalf at the federal, state, or local government level, as defined in the Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1, et seq., and applicable federal law.

ARTICLE 31. PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 to 13-1-199, imposes both criminal and civil penalties for violation of its provisions. New Mexico statutes impose criminal penalties where bribes, gratuities or kickbacks have been solicited, given or received in contracts involving public money.

ARTICLE 32. NEW MEXICO EMPLOYMENT OPPORTUNITY

The CONTRACTOR is strongly encouraged, in collaboration with Temporary Assistance of Needy Families (TANF) and New Mexico Welfare to Work contractors, to train and employ TANF recipients who are seeking employment opportunities. The CONTRACTOR is also strongly encouraged to train and employ populations enrolled in supported employment programs. The CONTRACTOR will provide quarterly reports documenting efforts to comply with this provision.

ARTICLE 33. GRANT

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any Department, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, 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 influencing or attempting to influence an officer or employee of any Department, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

ARTICLE 34. NON -WAIVER

The failure of a party to insist upon strict adherence to any term of this CONTRACT on any occasion shall not be considered a waiver or deprive that party of the right thereafter to that term or any other of this CONTRACT.

ARTICLE 35. NOTICES

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

To the DEPARTMENT: New Mexico Department of Health
 P.O. Box 26110
 1190 St. Francis Drive, Rm. N4095
 Santa Fe, NM 87502-6110

To the CONTRACTOR: **Gadsden Independent School District**
 PO Drawer 70
 Anthony NM 88021

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IN WITNESS WHEREOF the parties have executed this CONTRACT at Santa Fe, New Mexico. The effective date is the date of approval by the Department of Finance and Administration set out hereinafter.

STATE OF NEW MEXICO

NEW MEXICO DEPARTMENT OF HEALTH:

CONTRACTOR: Gadsden Independent School District

By: _____
Michelle Lujan Grisham, J.D., Secretary

By: _____

Date: _____

Title: _____

Date: _____

CERTIFIED FOR LEGAL SUFFICIENCY:

By: _____
Department of Health
Assistant General Counsel

Date: _____

TAXATION AND REVENUE:

The CONTRACTOR is registered for the payment of gross receipts taxes to the State of New Mexico.

N.M. Tax Identification #: 01-507932-005

By: _____
Taxation and Revenue Department

Date: _____

DEPARTMENT OF FINANCE AND ADMINISTRATION:

This CONTRACT is approved and effective the date shown:

By: _____
State Contracts Officer

Date: _____