**OUT OF DISTRICT RESIDENTIAL TREATMENT CENTER**

**CONTRACTUAL SERVICES AGREEMENT**

This agreement is made by and between [LEGAL NAME OF DISTRICT PLACING CHILD] hereinafter referred to as the RESIDENT DISTRICT, the [LEGAL NAME OF DISTRICT IN WHICH THE private, nonsectarian, nonprofit educational training center or residential treatment center IS LOCATED], hereinafter referred to as the SERVICE DISTRICT, and [LEGAL NAME OF private, nonsectarian, nonprofit educational training center or residential treatment center], hereinafter referred to as the CONTRACTOR, pursuant to Section 22-13-8 NMSA 1978, as amended. It is hereby agreed between the parties:

1. **SCOPE OF WORK**
   1. The RESIDENT DISTRICT will obtain written informed parental consent in compliance with 34 CFR Sec. 300.300 and Subsection (F) of 6.31.2.13, NMAC before: (i) conducting an initial evaluation or reevaluation; and (ii) initial provision of special education and related services to a child with a disability.
   2. The RESIDENT DISTRICT will ensure that all evaluations and reevaluations are performed in accordance with the requirements of 6.31.2.10, NMAC. The RESIDENT DISTRICT will further ensure that prior written notice meeting the requirements of 34 CFR Sec. 300.503 is provided. The RESIDENT DISTRICT may contract with the SERVICE DISTRICT for evaluations or reevaluations as follows: [SPECIFY SERVICES TO BE PROVIDED BY THE SERVICE DISTRICT.]
   3. The RESIDENT DISTRICT shall, prior to placing a child with, or referring a child to, the CONTRACTOR, initiate and conduct a meeting to develop the Individualized Education Program (IEP). The CONTRACTOR agrees that its representative will attend the meeting. The RESIDENT DISTRICT hereby acknowledges its final responsibility for insuring that the IEP meets the requirements of 34 CFR Secs. 300.320-300.324 and Subsection (B) of 6.31.2.11, NMAC.
   4. Unless the placement is made by a due process decision, the RESIDENT DISTRICT is responsible for ensuring that the least restrictive environment regarding placement has been considered and documented on the IEP in accordance with 34 CFR Secs. 300.114-300.120 and Subsection (C) of 6.31.2.11, NMAC.
   5. At the request of either party, the CONTRACTOR’S administrator and designated personnel and the RESIDENT DISTRICT’S designated personnel shall confer to review compliance with the terms of this Agreement, the programs provided and the progress of students placed with, or referred to the CONTRACTOR by the RESIDENT DISTRICT pursuant to this Agreement. If the CONTRACTOR initiates and conducts these meetings, the RESIDENT DISTRICT shall ensure that any proposed changes in an IEP are made in accordance with a properly constituted and convened IEP team and that prior written notice is provided to the parents by the RESIDENT DISTRICT.
   6. Special education and related services will be provided to children placed under this Agreement as follows:
      1. The CONTRACTOR will provide special education and related services in accordance with the student’s IEP. The CONTRACTOR agrees that all special education will meet the requirements of 34 CFR Part 300 and 6.31.2 NMAC. The CONTRACTOR will provide services as follows:
         1. [Item 1
         2. [Item 2]
         3. [Item 3]
      2. The RESIDENT DISTRICT will provide special education and related services as follows:
         1. [Item 1
         2. [Item 2]
         3. [Item 3]
      3. The SERVICE DISTRICT will provide special education and related services as follows:
         1. [Item 1
         2. [Item 2]
         3. [Item 3]
   7. The parties acknowledge that there will be no charges or fees to the primary caretaker, parent, guardian, or person having custody of a child placed with, or referred to, the CONTRACTOR by the RESIDENT DISTRICT pursuant to this Agreement. This provision shall not be construed to prohibit the RESIDENT DISTRICT from obtaining consent to access the parent’s/child’s private health insurance benefits to pay for related services requires for a free appropriate public education if the parents provide informed consent in accordance with 34 CFR Sec. 300.154(e) or from obtaining consent to access Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under IDEA Part B as permitted under the public benefits or insurance program in accordance with 34 CFR Sec. 300.154(d)(2). Parents must be informed that accessing the parents’ private health insurance benefits may negatively impact future benefits.
   8. The CONTRACTOR shall provide the RESIDENT DISTRICT with a list of its licensed teachers and related service providers. The list must be provided prior to the RESIDENT DISTRICT’S submission of the proposed Agreement to the New Mexico Public Education Department (PED) and must be kept current during the term of the Agreement. The list shall include the name and license number of each teacher or related service provider. All teachers and related series providers must have valid and current New Mexico licenses as required by the PED and the New Mexico Regulation and Licensing Department.
   9. The CONTRACTOR shall have a licensed professional present with children placed with, or referred to the CONTRACTOR by the RESIDENT DISTRICT pursuant to this Agreement at all times. Services provided by non-professional personnel shall be provided only under the supervision of a licensed special education professional or therapist. The CONTRACTOR shall further provide the RESIDENT DISTRICT with comparable information about each aide assisting the licensed personnel.
   10. The [SPECIFY RESIDENT DISTRICT, SERVICE DISTRICT AND/OR CONTRACTOR] will provide related services as specified in the student’s IEP as follows: [PROVIDE DETAILED DESCRIPTION OF SERVICES AND PROVIDER]
   11. The [SPECIFY RESIDENT DISTRICT OR CONTRACTOR] will provide transportation services at no cost to the parent (s) as described: [PROVIDE DETAILED DESCRIPTION OF TRANSPORTATION SERVICES]
   12. The [SPECIFY RESIDENT DISTRICT, SERVICE DISTRICT AND/OR CONTRACTOR] will provide instructional materials as described: [PROVIDE DETAILED DESCRIPTION OF INSTRUCTIONAL MATERIALS]
   13. The [SPECIFY RESIDENT DISTRICT, SERVICE DISTRICT OR CONTRACTOR] will provide food services as described: [PROVIDE DETAILED DESCRIPTION OF FOOD SERVICES]
   14. The RESIDENT DISTRICT shall be responsible for the maintenance of child identifiable data. The CONTRACTOR agrees to maintain education records as defined by 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act) and 34 CFR Sec. 300.611 under its control in accordance with said regulations.
   15. CONTRACTOR further agrees to utilize the student identification number or unique student identifier as supplied by the district in preparing and maintaining all reports required by this Agreement.
   16. The CONTRACTOR undertakes and agrees to maintain, to make available and to submit, on official RESIDENT DISTRICT forms such reports and records as are required of RESIDENT DISTRICT by the PED.
   17. The CONTRACTOR agrees that its facility or facilities have adequate classroom and other physical space for providing the services required under this Agreement. Compliance with the Statewide Adequacy Standards established in 6.27.30 NMAC shall be deemed to be adequate space. If CONTRACTOR’S facility or facilities do not comply with the requirements of 6.27.30, NMAC, the RESIDENT DISTRICT shall provide written justification to the PED addressing the adequacy of the facility or facilities. The justification must be submitted to the PED with the proposed Agreement.
2. **COMPENSATION**
   1. The RESIDENT DISTRICT will reimburse the CONTRACTOR and the SERVICE DISTRICT on a monthly basis for services rendered pursuant to this Agreement.
   2. The CONTRACTOR and the SERVICE DISTRICT shall submit a monthly certification to the RESIDENT DISTRICT describing in detail the services provided on the child for the month for which reimbursement is sought. Claims for reimbursement must be submitted on forms approved by the PED.
   3. The RESIDENT DISTRICT shall reimburse the CONTRACTOR in the amount NOT TO EXCEED $\_\_\_\_\_\_\_\_\_\_\_\_ PER MONTH for services provided pursuant to this Agreement. The monthly fee will be prorated based on student attendance and receipt of services.
3. **TERM**

This Agreement shall be effective for the period commencing on [BEGINNING DATE] and ending [ENDING DATE]. (This Agreement shall terminate on the ending date, at the latest, unless terminated pursuant to paragraph 4, infra.) NO PARTY SHALL PERFORM ANY ACT OR SERVICE CONTEMPLATED BY THIS AGREEMENT PRIOR TO THE DATE OF FINAL APPROVAL BY THE PED. THE CONTRACTOR SHALL FORFEIT ALL CLAIMS TO COMPENSATION FOR ANY ACT OR SERVICE PERFORMED PRIOR TO THE DATE OF FINAL APPROVAL BY THE PED. The parties agree that the Agreement shall be amended to reflect any subsequent changes to student’s IEP.

1. **TERMINATION**

This Agreement may be terminated by any party upon written notice delivered to other parties at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. Notwithstanding the provisions of this paragraph, reimbursement will be made to the CONTRACTOR and the SERVICE DISTRICT solely for services provided.

1. **STATUS OF CONTRACTOR**

[If CONTRACTOR is a private, nonsectarian, nonprofit educational training center, insert the following assurance: CONTRACTOR holds a 501(c)(3) Form from the Internal Revenue Service verifying nonprofit status.]

1. **LICENSING**
   1. The CONTRACTOR warrants and assures that it holds and will maintain all required licensing, including but not limited to the following licensing requirements:
      1. Facilities governed by the provisions of 7.8.3, NMAC (REGULATIONS GOVERNING RESIDENTIAL SHELTER CARE FACILITIES FOR CHILDREN), including public or private, profit or nonprofit residential facilities providing services as outlined by 7.8.3 NMAC and any facility providing services as outlined by 7.8.3 NMAC which by State or federal law or regulation must be licensed by the State of New Mexico.
      2. Room and board facilities in public or private schools accredited or supervised by the PED and inspected for fire and safety by the New Mexico State Fire Marshal’s office.
      3. Residential treatment services and day treatment services that provide children and adolescent mental health services, which are licensed by Children, Youth and Families Department, Certification Unit.
   2. If CONTRACTOR will provide services outside of the State of New Mexico, CONTRACTOR certifies that it holds and will maintain in good standing all required licensure from the state in which the facility is located. CONTRACTOR must provide copies of all required licenses to the RESIDENT DISTRICT prior to the provision of services to a student under this Agreement, which copies shall be maintained by the RESIDENT DISTRICT.
   3. The CONTRACTOR [and the SERVICE DISTRICT] shall ensure that any person teaching, supervising an instructional program or providing instructional support services and any person providing health care and administering medications or performing medical procedures pursuant to this Agreement shall hold a valid license or certificate from the PED and the New Mexico Regulation and Licensing Department authorizing the person to perform that function. The CONTRACTOR shall provide a list of names, including any updates, together with licensure file numbers, to the RESIDENT DISTRICT of all persons providing services to the child and for whom a license is required.
   4. The CONTRACTOR shall further perform background checks on all contractor's employees who provide services pursuant to this Agreement and have unsupervised access to students. The background checks shall be submitted through the RESIDENT DISTRICT and shall be at the expense of the CONTRACTOR.
2. **ASSIGNMENT**

Neither party shall assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement.

1. **SUBCONTRACTING**

The CONTRACTOR shall not subcontract any portion of the service to be performed under this Agreement without the prior written approval of the RESIDENT DISTRICT.

1. **CONFLICT OF INTEREST**

The CONTRACTOR warrants that it 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 Agreement.

1. **APPROPRIATION**

The terms of this Agreement are contingent upon receipt of funds under the Public School Finance Act or Part B of the Individuals with Disabilities Education Act, with authorization being made available by the PED for performance of this Agreement. If sufficient appropriations and authorizations are not available, this Agreement shall terminate upon written notice given by the RESIDENT DISTRICT. The decision of the RESIDENT DISTRICT as to whether sufficient appropriations are available shall be accepted by the CONTRACTOR and shall be final.

1. **RECORDS**

The CONTRACTOR will maintain records indicating date, length of time and nature of services rendered. These records shall be subject to periodic scheduled or unscheduled inspection by the RESIDENT DISTRICT, the PED, the United States Department of Education, the Department of Finance and Administration and the State Auditor or designee.

1. **AMENDMENT**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto, and approved by all required approving agencies.

1. **SCOPE OF AGREEMENT**

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

1. **NON-WAIVER**

Nothing in this Agreement shall constitute a waiver of existing legal rights and remedies in the event of a breach of this Agreement.

1. **APPLICABLE LAW**

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

1. **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 and rules and regulations, and executive orders of the Governor of State of New Mexico, the CONTRACTOR agrees to assure that no person in the United States shall, on grounds of race, color, national origin, sex, sexual preference age or disability, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under this agreement. If CONTRACTOR is found to be not in compliance with these requirement during the life of this Agreement, CONTRACTOR agrees to take appropriate steps to correct these deficiencies.

1. **COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS**

The CONTRACTOR shall abide by all state and federal statutory and regulatory requirements.

1. **ACKNOWLEDGMENT OF LOCAL BOARD AND PED AUTHORITY AND RESPONSIBILITY**

The parties acknowledge the authority and responsibility of the RESIDENT DISTRICT and the PED to conduct on-site evaluations of programs and pupil progress to ensure meeting state standards.

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

[LEGAL NAME OF RESIDENT DISTRICT]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

Superintendent

[LEGAL NAME OF SERVICE DISTRICT]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

Superintendent

[LEGAL NAME OF CONTRACTOR]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

[TITLE]

**RECOMMENDED FOR APPROVAL**

The proposed agreement meets the requirements of Section 22-13-8 NMSA and Subsection (B) of 6.31.2.9, NMAC

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

Director

Special Education Bureau

**APPROVED AS TO FORM:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

General Counsel

New Mexico Public Education Department

**APPROVED:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

Secretary of Education

New Mexico Public Education Department