**3-WAY INTERGOVERNMENTAL AGREEMENT**

**THIS AGREEMENT, #\_\_\_\_\_\_\_\_\_\_\_\_,** is entered into by and among the **State of New Mexico Public Education Department**, hereinafter referred to as the "DEPARTMENT," the **\_\_\_\_\_\_\_\_\_\_\_\_**, herein after referred to as the “DISTRICT”, and the **\_\_\_\_\_\_\_\_ Regional Educational Cooperative**, hereinafter referred to as the "REC."

**WHEREAS,** the DEPARTMENT is the grantee of certain federal funds made available to States through the United States Department of Education for subgrants to local educational agencies;

**WHEREAS,** the DISTRICT desires to contract with the REC to provide services to implement certain subgrants made to the DISTRICT as described in each attached REC/DISTRICT Agreement;

**WHEREAS,** the DISTRICT authorizes the DEPARTMENT to pay the REC on behalf of the DISTRICT for services rendered,

**NOW THEREFORE,** the DEPARTMENT, the DISTRICT, and the REC in consideration of mutual covenants and agreements herein contained, do hereby agree as follows:

**I. Period of Agreement.**

This Agreement shall become effective on July 1st, 2014 and shall terminate on June 30th, 2015 unless terminated pursuant to Article V, herein of this agreement.

1. **Scope of Agreement.**

The DEPARTMENT shall make payments to the REC on behalf of the DISTRICT for services and costs as specified on each of the **Financial Information Sheet (Exhibit B**.) of the attached REC/DISTRICT Agreement(s). The REC shall submit to the DEPARTMENT certified and documented Requests for Reimbursements for actual work performed and expenses incurred. Requests for Reimbursement must be submitted electronically via the Operating Budget Management System (OBMS) Request for Reimbursement (RfR) module tothe appropriate DEPARTMENT program manager overseeing the relevant portion of the agreement. The REC’s failure to submit such Requests for Reimbursement and supporting documentation, including Quarterly REC Board Certification of approval of the Requests for Reimbursement may result in the non-availability of funds for payment and/or the denial of payment by the DEPARTMENT.

The REC shall provide the services as set forth in the scope of work in each agreement between the District and the REC. The District shall be responsible for ensuring such services/goods are provided/received as set forth in the agreement. Such agreements shall not be entered into prior to the DISTRICT’S receipt of notice of grant award from the DEPARTMENT. Each Agreement must describe the federal subgrant, the scope of work including deliverables and timelines, and the effective dates. Separate DISTRICT/REC Agreement Exhibits (Exhibit A & Exhibit B) shall be utilized for each grant award. The DISTRICT authorizes the DEPARTMENT to reimburse the REC on behalf of the DISTRICT for services rendered as reflected in this Agreement and any addenda.

**III. Limitation of Cost.**

The total amount of the monies payable to the REC shall not exceed \_\_\_\_\_\_\_\_\_\_\_\_\_, the total amount set forth in the budgets attached to each DISTRICT/REC Agreement as “**EXHIBIT B – FINANCIAL INFORMATION SHEET**”, attached hereto and incorporated by reference as though fully set forth herein. Each **EXHIBIT A – STATEMENT OF WORK** must have a corresponding **EXHIBIT B – FINANCIAL INFORMATION SHEET.**

**IV.       Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **June 30th**, 2015 unless terminated pursuant to paragraph VI. (Termination), or paragraph V (Appropriations). 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.

**V.        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.

**VI. Payment.**

The DEPARTMENT shall make payments to the REC on behalf of the DISTRICT for services and costs specified in each “**EXHIBIT B**.” and on the REC/DISTRICT Distribution Form. The REC shall submit to the DEPARTMENT certified and documented Requests for Reimbursements for actual work performed and expenses incurred to the DEPARTMENT. Requests for Reimbursement must be submitted electronically via the Operating Budget Management System (OBMS) Request for Reimbursement (RfR) module tothe appropriate DEPARTMENT program manager overseeing the relevant portion of the agreement. The REC’s failure to submit such Requests for Reimbursement and supporting documentation, including REC Quarterly Board Certification of approval of the Requests for Reimbursement, after services are provided may result in the non-availability of funds for payment and/or the denial of payment by the DEPARTMENT.

**VII. Termination of Agreement.**

This Agreement may be terminated by any of the parties hereto upon written notice delivered to the other parties at least thirty days prior to intended date of termination.

**By such termination, none of the parties may nullify obligations already incurred for performance or failure to perform prior to the date of termination.**

**VIII. Funds Accountability.**

The parties shall provide for strict accountability of all monies made subject to this Agreement. The DISTRICT and REC shall maintain fiscal records for a minimum of seven (7) years follow generally accepted accounting principles and account for all receipts and disbursements of funds transferred between the DISTRICT and REC pursuant to this Agreement. The DISTRICT will include all monies made subject to this Agreement in its annual audit and will provide the DEPARTMENT with copies of the annual audits.

**IX. Maintenance of Records.**

The DEPARTMENT shall maintain records as required of any administering state agency pursuant to applicable state law and regulation. The DISTRICT and the REC shall maintain fiscal and programmatic records relative to those funds and activities that have been made subject to this Agreement for a minimum of seven (7) years after submission of the final expenditure report for each subgrant made subject to this Agreement.

**X. Confidentiality.**

Any confidential information provided to or developed by the DISTRICT or the REC in the performance of this Agreement shall be kept confidential and shall not be made available to any third party individual or organization by the DISTRICT or the REC without the prior written approval of the DEPARTMENT or as required by a court of competent jurisdiction.

**XI. Amendments.**

This Agreement shall not be altered, changed, or amended except by an instrument, in writing, executed and approved by all parties.

**XII. Assignment.**

The REC 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 DISTRICT and DEPARTMENT.

**XIII. Applicable Law.**

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

It is the responsibility of the REC and the DISTRICT to ensure that all State and Federal requirements relating to the subgrants are met.

**XIV. Acquisition of Property.**

No equipment will be acquired with subgrant funds made subject to this Agreement unless required/allowed by the USDE pursuant to the subgrant.

**XV. Liability.**

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation or requirements applicable to the performance of the Agreement. Each party shall be liable for its actions according to this Agreement subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et. seq., NMSA 1978, as amended.

**XVI. Execution of Documents.**

The DEPARTMENT, the DISTRICT, and the REC agree to execute any document(s) necessary to implement the terms of this Agreement.

**XVII. Equal Opportunity Compliance.**

The DISTRICT and the REC agree 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 DISTRICT and the REC agree to assure 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, or, if the employer has fifty or more employees, spousal affiliation, or, if the employer has fifteen or more employees, 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 either the DISTRICT and/or the REC are found not to be in compliance with these requirements during the life of this Agreement, the DISTRICT and the REC agrees to take appropriate steps to correct these deficiencies.

**XVIII. Workers’ Compensation.**

The DISTRICT and the REC agree to comply with state laws and rules applicable to workers’ compensation benefits for its employees. If the DISTRICT and/or the REC fail to comply with the Workers’ Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the DEPARTMENT.

**XIX. Lobbying Certification.**

The DISTRICT and the REC, by signing below, certify to the best of his/her knowledge and belief, that:

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

**IN WITNESS WHEREOF,** the DEPARTMENT, the DISTRICT, and the REC have caused this Agreement to be executed, said Agreement to become effective when signed by all the parties.

**Municipal School District: Public Education Department**

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**Hanna Skandera**

**Superintendent of Schools Secretary-Designate of Education**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Regional Educational Cooperative**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Director**

**Date\_**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# LEGAL CERTIFICATION

*This agreement is legally sufficient as to form.*

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

*Legal Counsel*

*Public Education Department*