

GSD CONTRACTS REVIEW BUREAU
 Joseph Montoya Building, Rm 2016
 Santa Fe, NM 87505

PROFESSIONAL SERVICES CONTRACT BRIEF
 CRB, Revised 02/20
 (CONTRACT BRIEF MUST BE TYPED)

FY

Agency Code

Organization Code

Contract No.

Amend. No.

Contractor Name: German Burnette & Associates, LLC
 Contractor Address: 11728 Linn Ave., N.E., Albuquerque, NM 87123 Phone: (505) 292-9676
 Agency Contact: Gabriel Aragon Phone: (505) 231-9909

Single-Year Contract: \$ _____ Total Contract Amount Multi-Year Contract: \$ <u>800,000.00</u> Total Contract Amount	Appropriation Period: FY22-FY26	Contract or Amendment Amount: General Fund <u>\$800,000.00</u> Other State Funds <u>0.00</u> Federal Funds <u>0.00</u> Total <u>\$ 800,000.00</u>
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Contract Term: From: / / To: /
 (GSD Approval date to be filled in by Contracts Review Bureau) (Termination Date)

Retroactive: Y/N Date: / /
 Non-profit: Y/N

Operational Budget Capital Outlay

BRIEF DESCRIPTION OF SERVICES AND/OR REASON FOR AMENDMENT:

Serve as outside counsel for the Department of Health upon the Department's designation, providing legal services as appropriate. Establish and maintain an official file for each assigned case containing all correspondence, pleadings, exhibits, etc. Work closely with relevant Department staff and any attorney(s) identified signed as liaison(s) within the Department's Office of General Counsel. Keep the Department's Office of General Counsel timely informed during all litigation stages about dates of settlement conferences, mediations and arbitrations, and hearing dates on all dispositive motions. Travel for trials, hearings, and meetings as necessary and appropriate.

PROCUREMENT PROCEDURE-Check with X the applicable citation

- Section 13-1-125 NMSA 1978, small purchase contract (does not exceed \$60,000 excluding gross receipts tax).
- Section 13-1-120 NMSA 1978, competitive proposal for architect/engineer/landscape/architect/surveyor.
- Section 13-1-111 NMSA 1978, competitive sealed proposal (contract over \$60,000).
- Section 13-1-129 NMSA 1978, contract is based upon Price Agreement #
- Section 13-1-129 NMSA 1978, contract is based upon GSA (please provide all required information)
- Section 13-1-126 NMSA 1978, sole source procurement (requires written determination and GSD approval).
- Section 13-1-127 NMSA 1978, emergency procurement.


REQUIREMENTS-Enter Y (yes) to verify the following mandatory requirements:

- Y The agency certifies to GSD that all relevant requirements of the Procurement Code have been followed.
- Y The agency certifies to GSD that the contractor will perform at all times as an independent contractor for the purpose of IRS tax compliance and is not performing services as an employee of the agency.
- Y The agency certifies to GSD that the agency has performed a legal review and the contract is in compliance with all federal and state laws, rules and regulations.

OTHER REQUIREMENTS-Enter Y (yes), N (no) or N/A (not applicable) to each of the following:

- N/A The agency certifies to GSD that Performance Measures have been outlined as required (attach valid section of strategic plan).
- Y The agency certifies to GSD that the contract complies with GSD rules regarding indemnification and insurance.
- Y The agency certifies to GSD that the requirements of the Governmental Conduct Act, Section 10-16-1 NMSA 1978 regarding conflict of interest with public officers or state employees have been followed. The agency certifies to GSD that the Attorney General's review has been obtained because:
 Contract with former state employee Contract with present state employee
- N/A The agency certifies to GSD that any required performance bonds have been obtained, Section 13-1-148 NMSA 1978

DocuSigned by:



May 2, 2022 | 3:08 PM MDT

Cabinet Secretary, Agency Head or Designee Title Date

GSD USE ONLY			
Category	<input type="text"/>	Date Received CRB	<input type="text"/>
Status	<input type="text"/>	Date Approved CRB	<input type="text"/>
Amendment Type	<input type="text"/>	Staff	<input type="text"/>
Amendment Type	<input type="text"/>		
PURCHASE DOCUMENT			
Number	Amount	Date to FCD	Date from FCD
			Comments: <input type="text"/>

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Contract ID#24236

STATE OF NEW MEXICO

(DEPARTMENT OF HEALTH)
PROFESSIONAL SERVICES CONTRACT #24236

THIS AGREEMENT is made and entered into by and between the State of New Mexico, DEPARTMENT OF HEALTH, hereinafter referred to as the “Agency,” and **GERMAN BURNETTE & ASSOCIATES**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the General Services Department/State Purchasing Division (GSD/SPD Contracts Review Bureau).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. Description of Work

The Contractor shall perform the following work:

1. Serve as outside counsel for the Agency upon the Agency’s designation, providing legal services as appropriate.
2. Establish and maintain an official file for each assigned case containing all correspondence, pleadings, exhibits, etc.
3. Work closely with relevant Agency staff and any attorney(s) identified signed as liaison(s) within the Agency ’s Office of General Counsel.
4. Keep the Agency ’s Office of General Counsel timely informed during all litigation stages about dates of settlement conferences, mediations and arbitrations, and hearing dates on all dispositive motions.
5. Travel for trials, hearings, and meetings as necessary and appropriate.

B. Work Performance

1. Licensure: The Contractor is required to have an active New Mexico Supreme Court attorney licensure or ability to obtain licensure by the time of assignment.
2. Experience in Representing Governmental Entities: Attorneys and law firms submitting offers must have documented experience, skills, and knowledge in representing municipal, county or state governmental entities in litigation.
3. Minimum Civil Litigation Experience: Attorneys and law firms submitting offers must have Principals/Owners/Directors/Partners with at least five (5) years’ general civil litigation experience. Only attorneys approved in advance by the Agency who are listed in the Rate Schedule in Article 2 of this Agreement are permitted to work on, or bill for work on assigned cases. Work performed by unauthorized personnel will not be paid.
4. General and Premises Liability Insurance: Contractor must have active general and premises liability insurance at the minimum required limits of the New Mexico Tort Claims Act (although higher limits are desirable).
5. Special Assistant Attorney General Status: Assignment to represent the Agency in litigation is contingent upon the ability of the Contractor to obtain the designation of Special

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Assistant Attorney General from the N.M Attorney General's Office for purposes of the litigation. Contractor shall comply with all protocols of the Attorney General's Office regarding obtaining such designation and shall provide proof of such designation to the Agency upon request.

C. Resources

1. Timely Records: Contractor shall ensure that case files are created and maintained in a timely manner.
2. Insurance and Certificates: Contractor shall provide proof of liability insurance and current copies of New Mexico State Bar license(s).

D. Billing Limitations: Contractor shall agree to comply with the following billing limitations.

1. Contractor must commit to include any charges for the use of office space to conduct hearings and related proceedings in the hourly rate to be charged for services. Contractor must also commit to include all other administrative costs, including without limitation electronic encryption expenses, secretarial or administrative assistant services and travel and per diem expenses, in the hourly rate to be charged for legal services.
2. Contractor agrees to bill the Agency in 0.10-hour billing units and at pre-approved hourly rates agreed upon in the final contract.
3. Nine-Hour Per Day Maximum. Unless previously approved by the Agency, and except for trials, hearings, critical depositions, emergency situations, or travel time, no individual who is authorized to work on a matter may bill more than nine (9) hours per day.
4. Per Diem and Mileage. Personnel traveling on Agency business must bill their expenses pursuant to the Department of Finance and Administration rules governing per diem and mileage reimbursement, 2.42.2 NMAC, as may be amended from time to time. Like other expenses, Per Diem and Mileage must be billed separately from fees.
5. In-Firm Conferences not Billable. Unless attended in person or telephonically by the Agency contact, the Agency will not pay for intra-office conferences.
6. One-Attorney per Meeting Rule. The Agency generally requires that only one attorney attend meetings, conferences, depositions, hearings, trials, and other events, unless otherwise pre-approved by the Agency contact person. Without such prior approval, the Agency will pay for the attendance of only one attorney at any event.
7. The Agency will not compensate the Contractor for unnecessary or unapproved trial preparation (considering imminence of trial, complexity of case, and likelihood of trial).
8. The Agency will not compensate the Contractor for summer associate time.
9. The Agency will not compensate the Contractor for unauthorized or "we thought you would like to know" communications which are not specific to assigned litigation.
10. The Agency will not compensate the Contractor for time spent researching issues common to civil practice in New Mexico.
11. The Agency will not compensate the Contractor for marketing.
12. The Agency will not compensate the Contractor for charges once a matter is closed or terminated.
13. The following clerical and administrative costs are also not reimbursable:
 - a) Time spent on electronic filing of pleadings, routine copying, faxing, filing or retrieving from files, organization or indexing of pleadings, correspondence or other documents the Contractor prepares or receive.

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- b). Time spent on initial review, listing or copying of incoming mail to determine appropriate routing, filing, etc.
- c) Time spent on scheduling appointments, depositions, or meetings, including travel or court reporter arrangements.
- d) Preparation and review of monthly billing statements.
- e) Time associated with compliance to these practices and procedures or to any legal audit, either internal or external, of bills and expenses.
- f) Maintenance of a calendar or tickler system.
- g) The review of third-party billing statements.
- h) Time associated with investigating conflicts.
- i) Clerical time related to reviewing, opening or closing files.

E. Conflicts of interest. Contractor shall disclose any past, existing, or potential conflicts of interest in the course of representing the Agency. This disclosure should include both direct and indirect conflicts of interest and also include any positions Contractor has taken in the recent past, or is presently taking, on issues that may be adverse or harmful to the interests of the Agency. The disclosure must include a description of any previous litigation against the State of New Mexico or any of its political subdivisions in which Contractor or members of Contractor's firm have been involved in any capacity. Contractors must also include a list of matters in which the Contractor or members of the Contractor's firm made pre-litigation demands on behalf of a client against the State of New Mexico or its political subdivisions, if any. If the Agency's Central Purchasing Office determines that a conflict of interest exists, the Contractor shall be required by the Agency's Central Purchasing Office to submit additional documentation limited to a specific description of how the Contractor proposes to overcome the conflict. If the Agency later discovers a conflict of interest that was not previously disclosed as required herein, the contract may be terminated upon the date of such discovery on the basis of failure to satisfy a condition precedent.

2. Compensation.

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed, at the standard hourly rates identified in the rate schedules below, such compensation not to exceed \$800,000, including gross receipts tax and expenses. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed \$800,000. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment in FY22, FY23, FY24, FY25, and FY26 is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the

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GSD/SPD. 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.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. Schedules of rates: the Contractor shall bill for services rendered by the following persons, according to the corresponding identified rate, provided that the Contractor shall bill at a rate of fifty percent (50%) of the corresponding rate for travel time for each person.

Name of Billing Professional	Title	Rate
Elizabeth L. German	Managing Member	\$235/hr
Jason L. Burnette	Member/Partner	\$235/hr
Kari E. Cole	Associate	\$220/hr
Jean M. Bannon	Of Counsel	\$220/hr
Mary Keleher Castle	Of Counsel	\$220/hr
Cindy Cordova	Of Counsel	\$220/hr
Susanna Tenorio	Paralegal	\$95/hr
Gloria Marlow	Paralegal	\$95/hr
Melanie Scholer	Paralegal	\$95/hr
Karen Evans	Paralegal	\$95/hr
Schulyer Willard	Law Clerk	\$95/hr
Kristina Morning Dove	Legal Assistant	\$50/hr
Kristy Greer	Legal Assistant	\$50/hr

Other Expenses	Rate
Photocopies	\$0.15 per page
Litigation Expenses (Filing Fees, Depositions, Expert Fees, etc.)	Actual Cost
Postage & Shipping	Actual Cost
Commercial Messenger (pre-approved)	Actual Cost
Lodging (pre-approved)	Actual Cost/Per Diem
Mileage	\$0.45 per mile
Meals (pre-approved)	Actual Cost/Per Diem
Other Reasonable and Necessary Costs	Actual Cost

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3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GSD/SPD Contracts Review Bureau. This Agreement shall terminate on **March 18, 2026** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. Termination.

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

D. Termination Management. If this agreement 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 AGREEMENT, immediately upon expiration or 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, except as provided in part (4) of this paragraph,

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below; 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, and 4) if providing health services or client support as part of the scope of work of this agreement, continue to provide essential services and supports to ensure the health and safety of individual clients as directed by the Agency during the period of termination management. This requirement is not avoided by an inadvertent expiration of term for the agreement. In this event the Agency may temporarily extend the term, enter into a new short term agreement or otherwise enter into an agreement, consistent with the New Mexico Procurement Code until all transition of services are completed. As of the date of termination of this agreement, the Contractor shall furnish to the Agency: (a) a complete detailed inventory of nonexpendable Agency property or equipment provided to or purchased by the Contractor with agreement funds as defined in Article 31 (Property) of this agreement, and (b) a final closing of the financial records and books of accounts which were required to be kept by the Contractor under the provisions of this agreement regarding financial records. Any non-expendable personal property or equipment provided to or purchased by the Contractor with agreement funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

5. Appropriations.

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

6. Status of Contractor.

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

7. Assignment.

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

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8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

9. Release.

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

10. Confidentiality.

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

The Contractor shall maintain complete confidential records for the benefit of clients, sufficient to fulfill the provisions of the Scope of Work, and to document the services rendered under the Scope of Work. All records maintained pursuant to this provision shall be available for inspection by the Agency. The Contractor shall comply with the Federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act) and applicable regulations and all other state and federal rules, regulations and laws protecting the confidentiality of information. If the Contractor may reasonably be expected to have access to Agency's Protected Health Information (PHI) and will perform business associate functions as defined by HIPAA, Contractor shall execute the HIPAA/HITECH Business Associate Agreement as a separately executed mandatory agreement which is hereby incorporated by reference into and made part of this agreement. Failure to execute the HIPAA/HITECH Business Associate Agreement when required by the Agency shall constitute grounds for termination of this agreement in accordance with Article 4 (Termination) of this agreement.

11. Product of Service -- Copyright.

A. 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.

B. Client information developed under this agreement 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 Agency, except to fulfill the provisions of the Scope of Work under this agreement.

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12. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, 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.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

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C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories. From time to time and in accordance with changes in state and Agency policy, this agreement shall be amended to comport with current policy, rules, regulations, and law.

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger.

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity

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performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

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

19. Records and Financial Audit.

A. 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.

B. The Contractor receiving state or federal funds from the Agency shall comply, if applicable, with auditing requirements under the Single Audit Act (31 U.S.C. §7501, et seq.) and the New Mexico State Auditor's rules and regulations. If the Contractor is determined to be a sub recipient and not a vendor under the federal Single Audit Act, the Contractor shall comply with the audit requirements of the Single Audit Act. This includes the Contractor retaining its financial records for a period five years after the time the audit was released.

C. If the Contractor receives more than \$750,000 in federal funding, or more than \$750,000 from the Agency, in any single fiscal year, the Contractor shall prepare annual financial statements and obtain an audit of, or an opinion on, the financial statements from an external Certified Public Accountant.

D. The Contractor shall maintain the financial statements for a period of no less than six years and shall make the financial statements and the CPA's audit or opinion available to the Agency upon request.

E. Applicable annual financial reports shall be submitted to the Agency no later than six months following the close of the Contractor's fiscal year.

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F. To ensure proper delivery and receipt, the Contractor shall submit their annual audit report or financial reports (if no audit was required to):

Department of Health
Financial Accounting Bureau Chief Suite N-3150
P.O. Box 26110
Santa Fe, New Mexico 87502-6110

G. The Agency may take corrective action as deemed necessary for Contractor's failure to comply with 19-A through 19-F above. Corrective action may include, but is not limited to, termination of agreement and preclusion from engaging Contractor in the future.

20. Indemnification.

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

21. 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 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 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: <https://bewellnm.com>.

22. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the

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remainder of this Agreement shall not be affected and shall be valid and enforceable.

23. 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.

24. 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 Department of Health
P.O. Box 26110
1190 St. Francis Drive,
Santa Fe, NM 87502-6110

To the Contractor:
German Burnette & Associates, LLC
11728 Linn Avenue, NE
Albuquerque, NM 87123
beth@germanassociates.com

25. Authority.

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

26. Licensure.

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

27. Liability Insurance.

The Contractor shall maintain professional and general liability insurance, as required, for all services provided under this agreement and Contractor shall supply evidence of such coverage upon the Agency's request.

28. Federal Grant or Other Federally Funded Agreements.

A. Lobbying. The Contractor shall not use any funds provided under this agreement, either directly or indirectly, for the purpose of conducting lobbying activities or hiring a lobbyist

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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. 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 agreement, 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 agreement, 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 any applicable federal agreement, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. Suspension and Debarment. For agreements that involve the expenditure of federal funds, each party represents that neither it, nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under this agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that it, its employees, and independent contractors are not otherwise ineligible for participation in federal healthcare or education programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors. Each party shall notify the other party immediately upon becoming aware of any pending or final action in any of these areas.

C. 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.

D. Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Sept. 2013)[Federal Grant funded projects only].

1. This agreement and employees working on this agreement will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L.112-239) and FAR 3.908.

2. The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

3. The Contractor shall insert the substance of this clause, including this paragraph (3), in all subcontracts over the simplified acquisition threshold.

E. For agreements and subgrants that involve the expenditure of federal funds for amounts in excess of \$150,000, requires the Contractor to agree to comply with all applicable

standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

F. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) — For agreements that involve the expenditure of federal funds, Contractors that apply or bid for an agreement exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

G. For agreements that involve the expenditure of federal funds, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

29. Governing Bodies.

The parties agree that if the Contractor has one or more Governing Bodies, 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.

30. Property.


A. Title to all property furnished by the Agency shall remain in the Agency. Title to all property acquired by the Contractor, including acquisition through lease-purchase agreement, for the cost of which the Contractor is to be reimbursed as a direct item of cost under this agreement shall immediately vest in the Agency 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 agreement, shall immediately vest in the Agency upon 1) issuance for use of such property in the performance of this agreement or 2) use of such property in the performance of this agreement or 3) reimbursement of the cost thereof by the Agency, whichever first occurs.

Contract ID#24236

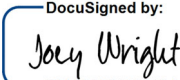
B. Title to the Agency property shall not be affected or lose its identity by reason of affixation to any realty or attachment at law.

C. The Contractor shall maintain a property inventory and administer a program of maintenance, repair, and protection of Agency property so as to assure its full availability and usefulness for performance under this agreement. In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of, or damage to Agency property during the period of this agreement, it shall use the proceeds to repair or replace the Agency property.

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

By: 
DE4AB8E9F82846C...
Dr. David Scrase, Acting Cabinet Secretary or designee
New Mexico Department of Health

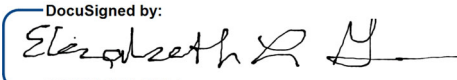
Date: May 2, 2022 | 3:08 PM MDT

By: 
7693383540954D9...
Joey Wright, General Counsel, or Designee
New Mexico Department of Health

Date: May 2, 2022 | 9:37 AM MDT

By: 
D592E24AD813470...
Eve Banner, Chief Financial Officer or Designee
New Mexico Department of Health

Date: May 2, 2022 | 2:21 PM MDT

By: 
8A9BB007194E444...
Elizabeth L. German
German Burnette & Associates, LLC

Date: Apr 29, 2022 | 4:32 PM PDT

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: **03-164953-00-0**

By: 
A1E29200AE974AA...
Taxation and Revenue Department

Date: Apr 28, 2022 | 4:46 PM MDT

Contract ID#24236

This Agreement has been approved by the GSD/SPD Contracts Review Bureau:

By: 

GSD/SPD Contracts Review Bureau

Date: 5/13/2022

New Mexico General Services Department
State Purchasing Division

AGENCY CERTIFICATION FORM

New Mexico Department of Health hereby certifies the following in regard to the attached contractual

Agency Name GERMAN BURNETTE & ASSOCIATES
Name of Contractor


- 1) This contractor IS NOT a former state employee. (See note below)
(circle one)
- 2) This contractor IS NOT a current state employee or a legislator or the family member of a current
(circle one)

state employee or legislator, or a business in which a current state employee or legislator or family member of the current state employee or legislator has an interest of greater than 20%.(See note below)


NOTE: Former employee requires a Former Employee Affidavit (found on CRB website), PERA letter if contractor retired from State of New Mexico and an AG's letter if contractor separated/retired within the last five years to the date of signed contract. No contract may be awarded to a current state employee or legislator, or to a family member of a current state employee or legislator, or to a business in which any of these persons has an interest greater than 20% unless such contract is awarded pursuant to the Procurement Code, except such persons or businesses cannot be awarded a contract through a sole source or small purchase. (See Section 10-16-1 through 10-16-18 NMSA 1978 for further information.)

- 3) This Contractor is a (check one): FOR PROFIT VENDOR
NOT FOR PROFIT VENDOR

- 4) This PSA DOES COMPLY with the Governor's Guidelines for Contract Review and Re-Evaluation and IS an essential contract for the Agency.

DocuSigned by: 
DE4AB8E9F82646C... Signature of Agency Representative** May 2, 2022 | 3:08 PM MDT
Date

I certify that the information stated in paragraphs 1-3 is true.

DocuSigned by: 
8A9BB007194E444... Signature of Contractor Apr 29, 2022 | 4:32 PM PDT
Date

**Must be a DFA authorized signature

HIPAA BUSINESS ASSOCIATE AGREEMENT AND 42 C.F.R. PART 2 QUALIFIED SERVICE ORGANIZATION AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into between the New Mexico Department of Health (“Department”) and German Burnette & Associates, LLC, hereinafter referred to as “Business Associate,” in order to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), including the Standards of the Privacy of Individually Identifiable Health Information and the Security Standards at 45 CFR Parts 160 and 164.

BUSINESS ASSOCIATE, by a related agreement identified by number as Contract ID #24236 (the “Related Agreement”), has agreed to provide services to, or on behalf of, Department (referred to in such Related Agreement as Department or the “Procuring Agency”) which may involve the disclosure by Department to Business Associate (referred to in such Related Agreement as “Contractor”) of Protected Health Information. This Business Associate Agreement is intended to supplement the obligations of the Department and the Contractor as set forth in the Related Agreement and is hereby incorporated therein.

THE PARTIES acknowledge HIPAA, as amended by the HITECH Act, requires that Department and Business Associate enter into a written agreement that provides for the safeguarding and protection of all Protected Health Information, which Department may disclose to the Business Associate, or which may be created or received by the Business Associate on behalf of the Department.

THE PARTIES additionally acknowledge the Confidentiality of Alcohol and Drug Abuse Patient Records statute and regulations require that Department and Business Associate enter into a written agreement that provides for the safeguarding and protection of all drug and/or alcohol abuse information that is individually identifiable to the patient, which the Business Associate may receive, store, process or otherwise deal with from the Department.

1. Definition of Terms

- a. **Breach.** “Breach” has the meaning assigned to the term breach under 42 U.S.C. § 17921(1) [HITECH Act § 13400 (1)] and 45 CFR § 164.402.
- b. **Business Associate.** "Business Associate", herein being the same entity as the Contractor in the Related Agreement, shall have the same meaning as defined under the HIPAA standards as defined below, including without limitation Contractor acting in the capacity of a Business Associate as defined in 45 CFR § 160.103.
- c. **Department.** "Department" shall mean in this agreement the State of New Mexico Department of Health.
- d. **Individual.** "Individual" shall have the same meaning as in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502 (g).

- e. HIPAA Standards. “HIPAA Standards” shall mean the legal requirements as set forth in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations and policy guidance, as each may be amended over time, including without limitation:
 - i. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.
 - ii. Breach Notification Rule. “Breach Notification” shall mean the Notification in the case of Breach of Unsecured Protected Health Information, 45 CFR Part 164, Subparts A and D
 - iii. Security Rule. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C, including the following:
 - A. Security Standards. “Security Standards” hereinafter shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.306.
 - B. Administrative Safeguards. “Administrative Safeguards” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.308.
 - C. Physical Safeguards. “Physical Safeguards” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.310.
 - D. Technical Safeguards. “Technical Safeguards” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.312.
 - E. Policies and Procedures and Documentation Requirements. “Policies and Procedures and Documentation Requirements” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.316.
 - f. Protected Health Information. "Protected Health Information" or “PHI” shall have the same meaning as in 45 CFR §160.103, limited to the information created, maintained, transmitted or received by Business Associate, its agents or subcontractors from or on behalf of Department.
 - g. Required By Law. "Required By Law" shall have the same meaning as in 45 CFR §164.103.
 - h. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
 - i. Covered Entity. "Covered Entity " shall have the meaning as the term “covered entity” defined at 45 CFR §160.103, and in reference to the party to this agreement, shall mean the State of New Mexico Department of Health.
 - j. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Standards. All terms used and all statutory and regulatory references shall be as currently in effect or as subsequently amended.

2. **Obligations and Activities of Business Associate**

- a. General Rule of PHI Use and Disclosure. The Business Associate may use or disclose PHI it creates for, receives from or on behalf of, the Department to perform functions, activities or services for, or on behalf of, the Department in accordance with the specifications set forth in this Agreement, or the Related Agreement; provided that such use or disclosure would not violate the HIPAA Standards if done by the Department; or as Required By Law.
 - i. Any disclosures made by the Business Associate of PHI must be made in accordance with HIPAA Standards and other applicable laws.
 - ii. Notwithstanding any other provision herein to the contrary, the Business Associate shall limit uses and disclosures of PHI to the “minimum necessary,” as set forth in the HIPAA Standards.
 - iii. The Business Associate agrees to use or disclose only a “limited data set” of PHI as defined in the HIPAA Standards while conducting the authorized activities herein and as delineated in the Related Agreement(s), except where a “limited data set” is not practicable in order to accomplish those activities.
 - iv. Except as otherwise limited by this Agreement or the Related Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - v. Except as otherwise limited by this Agreement or the Related Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate provided that the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - vi. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j).
 - vii. Business Associate may use PHI to provide Data Aggregation services to the Department as permitted by the HIPAA Standards.
- b. Safeguards. The Business Associate agrees to implement and use appropriate Security, Administrative, Physical and Technical Safeguards, and comply where applicable with subpart C of 45 C.F.R. Part 164, to prevent use or disclosure of PHI other than as required by law or as provided for by this Agreement or the Related Agreement. Business Associate shall identify in writing upon request from the Department all of those Safeguards that it uses to prevent impermissible uses or disclosures of PHI.
- c. Restricted Uses and Disclosures. The Business Associate shall not use or further disclose PHI other than as permitted or required by this Agreement, the Related Agreement, the HIPAA Standards, or otherwise as permitted or required by law. The Business Associate shall not disclose PHI in a manner that would violate any restriction which has been communicated to the Business Associate.

- i) The Business Associate shall not directly or indirectly receive remuneration in exchange for any of the PHI unless a valid authorization has been provided to the Business Associate that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual, except as provided for under the exceptions listed in 45 C.F.R. §164.502 (a)(5)(ii)(B)(2).
 - ii) Unless approved by the Department, Business Associate shall not directly or indirectly perform marketing to individuals using PHI.
- d. Agents. The Business Associate shall ensure that any agents that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, in accordance with 45 C.F.R. § 164.502(e)(1)(ii), and shall make that agreement available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.
- e. Availability of Information to Individuals and the Department. Business Associate shall provide, at the Department's request, and in a reasonable time and manner, access to PHI in a Designated Record Set (including an electronic version if required) to the Department or, as directed by the Department, to an Individual in order to meet the requirements under 45 CFR § 164.524. Within three (3) business days, Business Associate shall forward to the Department for handling any request for access to PHI that Business Associate receives directly from an Individual. If requested by the Department, the Business Associate shall make such information available in electronic format as required by the HIPAA Standards to a requestor of such information and shall confirm to the Department in writing that the request has been fulfilled.
- f. Amendment of PHI. In accordance with 45 CFR § 164.526, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Department directs or agrees to, at the request of the Department or an Individual, to fulfill the Department's obligations to amend PHI pursuant to the HIPAA Standards. Within three (3) business days, Business Associate shall forward to the Department for handling any request for amendment to PHI that Business Associate receives directly from an Individual.
- g. Internal Practices. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI, available to the Department or to the Secretary within seven (7) days of receiving a request from the Department or receiving notice of a request from the Secretary, for purposes of the Secretary's determining the Department's compliance with the Privacy Rule.
- h. PHI Disclosures Recordkeeping. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the HIPAA Standards and 45 CFR § 164.528. Business Associate shall provide such information to the Department or as directed by the Department to an Individual, to permit the Department to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by the Department. Within three (3) business days, Business Associate shall forward to the

Department for handling any accounting request that Business Associate directly receives from an individual.

- i. PHI Disclosures Accounting. Business Associate agrees to provide to the Department or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 (h) of this Agreement, to permit the Department to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- j. Security Rule Provisions. As required by 42 U.S.C. § 17931 (a) [HITECH Act Section 13401(a)], the following sections as they are made applicable to business associates under the HIPAA Standards, shall also apply to the Business Associate: 1) Administrative Safeguards; 2) Physical Safeguards; 3) Technical Safeguards; 4) Policies and Procedures and Documentation Requirements; and 5) Security Standards. Additionally, the Business Associate shall either implement or properly document the reasons for non-implementation of all safeguards in the above cited sections that are designated as “addressable” as such are made applicable to Business Associates pursuant to the HIPAA Standards.
- k. Civil and Criminal Penalties. Business Associate agrees that it will comply with the HIPAA Standards as applicable to Business Associates and acknowledges that it may be subject to civil and criminal penalties for its failure to do so.
- l. Performance of Covered Entity's Obligations. To the extent the Business Associate is to carry out the Department 's obligations under the HIPAA Standards, Business Associate shall comply with the requirements of the HIPAA Standards that apply to the Department in the performance of such obligations.
- m. Subcontractors. The Business Associate shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, with 45 C.F.R. § 164.502(e)(1)(ii), and shall make such information available to the Department upon request. Upon the Business Associate’s contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement. Upon the Business Associate’s contracting with a subcontractor for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

3. Business Associate Obligations for Notification, Risk Assessment, and Mitigation

During the term of this Agreement and Related Agreement, the Business Associate shall be required to perform the following pursuant to the Breach Notification Rule regarding Breach Notification, Risk Assessment and Mitigation:

Notification

- a. Business Associate agrees to report to the Department Contract Manager or HIPAA Privacy and Security Officer any use or disclosure of PHI not provided for by this Agreement, the Related Agreement and HIPAA Standards, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, as soon as it (or any employee or agent) becomes aware of the Breach, and in no case later than three (3) business days after it (or any employee or agent) becomes aware of the Breach, except when a government official determines that a notification would impede a criminal investigation or cause damage to national security.

- b. Business Associate shall provide the Department with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by the Department, provide information necessary for the Department to investigate promptly the impermissible use or disclosure. Business Associate shall continue to provide to the Department information concerning the Breach as it becomes available to it and shall also provide such assistance and further information as is reasonably requested by the Department.

Risk Assessment

- c. When Business Associate determines whether an impermissible acquisition, use or disclosure of PHI by an employee or agent poses a low probability of the PHI being compromised, it shall document its assessment of risk in accordance with 45 C.F.R. § 164.402 (in definition of “Breach”, ¶ 2) based on at least the following factors: (i) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the protected health information has been mitigated. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons documenting the determination of risk of the PHI being compromised. When requested by the Department, Business Associate shall make its risk assessments available to the Department.
- d. If the Department determines that an impermissible acquisition, access, use or disclosure of PHI, for which one of Business Associate’s employees or agents was responsible, constitutes a Breach, and if requested by the Department, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with the Department about the timeliness, content and method of notice, and shall receive the Department’s approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate. The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to the Department.

Mitigation

- e. In addition to the above duties in this section, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI, by Business Associate in violation of the requirements of this Agreement, the Related Agreement or the HIPAA Standards. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by the Department, Business Associate shall make its mitigation and corrective action plans available to the Department.
- f. The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of the Breach, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of

what the Business Associate and the Department are doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).

Notification to Clients

- g. Business Associates shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of a State or jurisdiction, Business Associate shall, if requested by the Department, notify prominent media outlets serving such location(s), following the requirements set forth in 45 CFR §164.406.

4. Obligations of the Department to Inform Business Associate of Privacy Practices and Restrictions

- a. The Department shall notify Business Associate of any limitation(s) in the Department's Notice of Privacy Practices, implemented in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. The Department shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. The Department shall notify Business Associate of any restriction in the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d. The Department shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Department.

5. Term and Termination

- a. Term. This Agreement shall be effective concurrently with the effective date of Contract No. 24236 between Business Associate and the Department (the Related Agreement). This Agreement shall also terminate concurrently with the Related Agreement, except that obligations of Business Associate under this Agreement related to final disposition of PHI in this Section 5 shall survive until resolved as set forth immediately below.
- b. Disposition of PHI upon Termination. Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI in its possession and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon mutual agreement of the Parties that return, or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree, to the extension of all protections, limitations and restrictions required of Business Associate hereunder, for so long as the Business Associate maintains the PHI.
- c. If Business Associate breaches any material term of this Agreement, the Department may

either:

- i. provides an opportunity for Business Associate to cure the Breach and the Department may terminate this Contract without liability or penalty in accordance with Termination Article of the Related Agreement if Business Associate does not cure the breach within the time specified by the Department; or,
- ii. immediately terminate this Contract without liability or penalty if the Department determines that cure is not reasonably possible; or,
- iii. if neither termination nor cure are feasible, the Department shall report the breach to the Secretary.

The Department has the right to seek to cure any breach by Business Associate and this right, regardless of whether the Department cures such breach, does not lessen any right or remedy available to the Department at law, in equity, or under this Contract, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

- 6. Penalties and Training.** Business Associate understands and acknowledges that violations of this Agreement may result in notification by the Department to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by the Department, Business Associate shall participate in training regarding use, confidentiality, and security of PHI

7. Miscellaneous

- a. Interpretation. Any ambiguity in this Agreement, or any inconsistency between the provisions of this Agreement and the Related Agreement, shall be resolved to permit the Department to comply with the HIPAA Standards.
- b. Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Standards will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, the Department shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate shall promptly take such actions. In the event there is a change in federal or state laws, rules or regulations, or in the interpretation of any such laws, rules, regulations or general instructions, which may render any of the material terms of this Agreement unlawful or unenforceable, or which materially affects any financial arrangement contained in this Agreement, the parties shall attempt amendment of this Agreement to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the Agreement pursuant to its termination provisions.

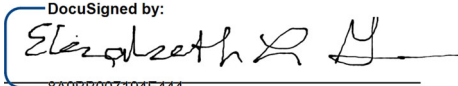
- d. No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Department, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- e. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or workforce members assisting Business Associate in the fulfillment of its obligations under this Agreement and the Related Agreement available to the Department, at no cost to the Department, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against the Department or its employees based upon claimed violation of the HIPAA standards or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate’s performance under this Agreement or the Related Agreement, except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.
- f. Additional Obligations. Department and Business Associate agree that to the extent not incorporated or referenced in any Business Associate Agreement between them, other requirements applicable to either or both that are required by the HIPAA Standards, those requirements are incorporated herein by reference.

IN WITNESS THEREOF, the parties hereto separately acknowledge this Business Associate Agreement in addition to their execution of the Related Agreement.

NEW MEXICO DEPARTMENT OF HEALTH

BUSINESS ASSOCIATE

By: 
DocuSigned by:
DE4AB8E9F82646C...
 Authorized Signature Designee

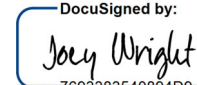
By: 
DocuSigned by:
8A9BB007192E444...
 Elizabeth L. German

Title: Managing Member

Date: May 2, 2022 | 3:08 PM MDT

Date: Apr 29, 2022 | 4:32 PM PDT

Approved as to form and legal sufficiency:

By: 
DocuSigned by:
7093383540894D9...
 Office of General Counsel

Date: May 2, 2022 | 9:37 AM MDT

Campaign Contribution Disclosure Form

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.


Signature

January 24, 2022
Date

Managing Member
Title (Position)