

**ADDENDUM TO EMSI
EXAMINATION MANAGEMENT SERVICE, INC.
EMPLOYER SERVICES –WORKPLACE PACKAGE PLAN
Service Terms & Conditions**

THIS ADDENDUM to the EMSI Employer Services, Inc. – Workplace Package Plan ("Agreement") is made and entered into on this 5th day of June, 2014 by and between Santa Fe County (hereinafter referred to as the "CLIENT" or "County"), a New Mexico political subdivision, and Examination Management Services, Inc., (hereinafter referred to as "EMSI"), whose principal address is 3050 Regent Blvd. Suite 400, Irving, TX 75063.

WHEREAS, pursuant to Section 13-1-125 NMSA 1978 this is a "small purchase" for the provision of Post-Accident and Reasonable Suspicion drug and alcohol testing services that are needed by the County seven days a week between the hours of 5:00 pm to 8:00 am;

WHEREAS, EMSI and County have agreed to the "Employer Services – Workplace Package Plan" with terms and conditions that are acceptable in part but require the removal of certain terms and the addition of other terms and conditions;

WHEREAS, both parties desire to enter into the EMSI Employer Services – Workplace Package Plan with modified and additional terms.

The EMSI Employer Services – Workplace Package Plan is amended and supplemented as follows:

1. The following provisions are inserted as Articles XVI through XXVII:

ARTICLE XVII – EFFECTIVE DATE AND TERM

This Agreement shall become effective upon due execution by all parties and shall terminate one (1) year later, unless earlier terminated pursuant to Article VI (Termination) or Article XIX (Appropriations). There shall be no pre-payment of services. Services shall be paid in accordance with Article III (Compensation) during the term of this Agreement. The CLIENT shall have the option to extend the term of this Agreement in one (1) year increments. The CLIENT shall notify EMSI in writing of CLIENT's request to extend the term in no less than thirty (30) days before the expiration of the initial term of this Agreement or extension thereof.

ARTICLE XVIII – TERMINATION

a) Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

b) Termination for Convenience of the CLIENT. The CLIENT may, in its discretion, terminate this Agreement at any time for any reason by giving EMSI written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the EMSI's receipt of the notice. CLIENT shall pay the EMSI for work and services performed, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work and services performed after the effective date of termination.

ARTICLE XIX – APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are

not made in this or future fiscal years, this Agreement shall terminate upon written notice by the CLIENT to EMSI. Such termination shall be without penalty to the CLIENT, except for any services actually performed by EMSI by the date of termination indicated in the CLIENT's notice to EMSI. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the CLIENT. The CLIENT's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the EMSI in any way or forum, including a lawsuit.

ARTICLE XX – PERSONNEL

All work performed under this Agreement shall be performed by the EMSI or under its supervision in accordance with Article IX. The EMSI represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the CLIENT and (ii) shall be fully qualified or otherwise authorized or permitted under federal, state, and local law to perform such work.

ARTICLE XXI – RELEASE

Upon its receipt of all full and final payments due under this Agreement, EMSI releases the CLIENT, its elected officials, officers, agents and employees from all known liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

ARTICLE XXII– CONFLICT OF INTEREST

EMSI represents that it has no and shall not knowingly acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

ARTICLE XXIII – SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

ARTICLE XXIV - 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 CLIENT: Santa Fe County
102 Grant Avenue
Santa Fe, New Mexico 87504

To EMSI: Examination Management Services, Inc.
3050 Regent Blvd. Suite 400
Irving, Texas 75063

ARTICLE XXV – LIMITATION OF LIABILITY

Either party's liability to the other for any breach of this Agreement shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Article III and Exhibit 1 of this Agreement. In no event shall the either party be liable to the other party for special or consequential damages, even if it was advised of the possibility of such damages prior to entering into this Agreement.

ARTICLE XXVI - INSURANCE

General Conditions. EMSI shall submit evidence of insurance as is required herein upon request. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

General Liability Insurance, Including Automobile. EMSI shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the CLIENT by EMSI; coverage for the use of all owned, non-owned, hired

automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The CLIENT County of Santa Fe shall be a named additional insured on the policy.

Workers' Compensation Insurance. The EMSI shall comply with the provisions of the Workers' Compensation Act.

ARTICLE XXVII – NEW MEXICO TORT CLAIMS ACT

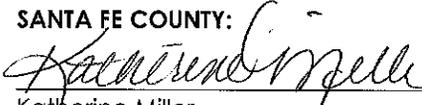
No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the CLIENT Santa Fe County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

ARTICLE XXVIII – SURVIVAL

The provisions of following ARTICLES shall survive termination of this Contract: Article IV (INDEMNIFICATION); Article XXI (RELEASE); Article XI (GOVERNING LAW; COMPLIANCE WITH APPLICABLE LAW); and Article XXVIII (SURVIVAL).

IN WITNESS WHEREOF, the parties have duly executed this Addendum as of the date first written above.

SANTA FE COUNTY:



Katherine Miller
Santa Fe County Manager

10-5-14
Date

Finance Department Approval:



Teresa C. Martinez
Santa Fe County Finance Director

5/21/14
Date

Approved as to Form:



Stephen C. Ross
Santa Fe County Attorney

4/15/14
Date

Examination Management Services, Inc. (EMSI)



(Signature)

4/28/14
Date

By: 

(Print Name)

Its: C.O.O.

(Print Title)

