AGREEMENT FOR INMATE CONFINEMENT

BETWEEN THE COUNTY OF SANTA FE AND

GUADALUPE COUNTY

THIS AGREEMENT is made and entered into this 4th day of December, 2009, by and between Guadalupe County, New Mexico, herein referred to as the "Corrections Customer", and the County of Santa Fe, hereinafter referred to as the "County".

WHEREAS, the Corrections Customer, is in need of a facility for the incarceration, care, and maintenance of persons charged with or arrested for violation of the Correction Customer's ordinances, arrested by the Corrections Customer's law enforcement officials, or arrested by other law enforcement agencies within the Corrections Customer's jurisdiction; and

WHEREAS, the County is the owner of the Santa Fe County Adult Detention Facility ("SFCADF") which has, from time to time, vacant adult bed space; and

WHEREAS, the County is willing to incarcerate the Corrections Customer's inmates on a space available basis.

NOW, THEREFORE, IT IS MUTUALLY AGREED by both parties as follows:

1. **PURPOSE.** The purpose of the Agreement is to establish terms and conditions under which the County shall accept and detain, on a space available basis, the Corrections Customer's inmates who may be delivered to SFCADF, from time to time for incarceration.

2. **COMPENSATION.**

   A. **PER DIEM.** The Corrections Customer shall pay the County $85.00 per full day or partial day no matter how little time of a twenty-four day it constitutes, for each Corrections Customer inmate confined at SFCADF. A day is a twenty-four hour-long unit of time commencing at 00:00:01 a.m., and ending 23:59:59 p.m. The per diem rate will increase each year beginning on July 1, 2010, in an amount equal to five percent (5%) of the then current rate.

   B. **BOOKING FEE.** A $20.00 booking fee shall in addition be charged for each inmate booked into the SFCADF. The booking fee will also increase beginning each year on July 1, 2010, in an amount equal to five (5%) of the then current rate. If an inmate is sentenced to serve multiple weekends as part of his or her judgment and sentence, the booking fee will apply only to the initial booking.

C. **OTHER COSTS.** As provided herein, Corrections Customer shall also be responsible for and pay all incidental and/or related costs as may be provided. The County shall have the right of subrogation to seek reimbursement of any medical, dental, and/or pharmaceutical costs paid for or on behalf of Corrections Customer's inmates.

3. **BILLINGS.** The County shall bill the Corrections Customer on a monthly basis and shall provide the Corrections Customer a statement containing: the names of the Corrections Customer's inmates and their booking numbers; dates of incarceration; the total number of inmates; the total number of days billed; and total Corrections Customer inmate costs for the month. The Customer will pay the bill within thirty (30) days of receipt. If a bill is not paid within forty-five (45) days of the billing date, a late payment charge of 1.5% of the original bill shall accrue per month and be owed to the County.

4. **RIGHT TO DISAPPROVE INMATES.** The SFCADF Director shall have the right to disapprove the housing of any Corrections Customer inmate in the SFCADF. Additionally, the SFCADF Director shall have the right to discontinue housing of any Corrections Customer inmate if housing the inmate ceases to be in the best interest of Santa Fe County, as determined in the sole discretion of the SFCADF Director. The Corrections Customer shall remove the inmate from the facility within seventy-two hours notice of a determination by the SFCADF Director to discontinue housing of any Corrections Customer inmate.

5. **TRANSPORTATION.** The Corrections Customer shall be solely responsible for all transportation costs for its inmates to and from SFCADF, including emergency transportation.

6. **INMATE POSSESSIONS.** The County will store all inmate personal property which is removed from Corrections Customer inmates upon arrival at SFCADF.

7. **MEDICAL CARE AND PROVISION OF SERVICES.**

A. **ROUTINE ON SITE-CARE.** The County shall provide routine on-site medical care, routine dental care, and routine mental health care for Corrections Customer's inmates while they are detained at SFCADF.

B. **PRESCRIPTION PHARMACEUTICALS.** The Corrections Customer will reimburse the County for any pharmaceutical costs for the Corrections Customer's inmates reflected on the monthly billing statement provided by the County to the Corrections Customer.

C. **OFF-SITE CARE.** The Corrections Customer shall pay all costs of off-site medical, dental and mental health care of its inmates at any off-site medical facility. The County shall make arrangements with specialists or hospitals for the treatment of Corrections Customer's inmates with health care problems that may extend beyond the services provided on-site but in no event will the County be responsible for charges incurred by

Corrections Customer's inmates for off-site care. Corrections Customer shall be responsible for the cost of all medical, dental, and/or mental health care provided away from the SFCADF, including the cost of transportation to and from the medical facility and the cost of providing security, on behalf of the Corrections Customer, during a hospital confinement, which shall be at the rate of $20.00 per officer, per hour. Corrections Customer will also be charged $.32 per mile for transportation to and from an appointment. Corrections Customer shall be solely responsible for providing security for Corrections Customer inmates for any period of hospital confinement exceeding 24 hours.

D. **SERVICES.** Nothing herein contained shall be construed to require the County to provide services, treatment, facilities or programs for any inmates confined pursuant to this Agreement which it does not provide for similar inmates not confined pursuant to this Agreement. Nothing herein shall be construed to require the County to provide services, treatment, facilities or programs to Corrections Customer inmates above, beyond or in addition to that which is required by applicable law.

8. **TERM.** This Agreement shall become effective when signed by both parties. The term of this Agreement is four years. Nothing in this Agreement shall be construed to require the County to house Correction Customer inmates at the SFCADF indefinitely.

9. **TERMINATION.** This Agreement may be terminated by either party upon sixty (60) days written notice to the other party. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. If notice of termination is given by either party, the **Correction Customer must pick up its inmates within the 60-day written notice period or be subject to triple charges ($255.00) per full or partial day beginning on the 61st day.** The County is under no obligation to accept the Corrections Customer's inmates.

10. **FACILITIES AND EQUIPMENT.** Any and all facilities and equipment used by the County pursuant to this Agreement, and any amendment hereto, shall remain the property of the County or of any entity with whom the County may enter into an agreement for the use or lease of that entity's property or facilities. The Corrections Customer shall not be responsible for the maintenance, upkeep, or repair of any County facility or property used pursuant to this Agreement.

11. **ESCAPES.** In the event any Corrections Customer inmate escapes from the County's custody, the County will use all reasonable means to recapture the inmate. The escape shall be reported to the Corrections Customer. The County shall have the primary responsibility for and authority to direct the pursuit and retaking of the inmate or inmates within its own territory. Any cost in connection therewith shall be chargeable to and borne by the County; however, the County shall not be required to expend unreasonable amounts to pursue and return inmates from other counties, states or other countries.

12. **DEATH OF AN INMATE.**

A. **NOTIFICATION.** In the event of the death of a Corrections Customer inmate in the custody of the County pursuant to this Agreement, the County Coroner shall be notified. The Corrections Customer shall receive copies of any records made at or in connection with such notification.

B. **AUTOPSY AND DISPOSITION OF INMATE'S BODY.** The County shall perform, or have performed an autopsy on the body of a Corrections Customer inmate who died while in the custody of the County. The County shall notify the Corrections Customer of the death of Corrections Customer inmate and furnish information as requested and follow the instructions of the Corrections Customer with regard to disposition of the body. Corrections Customer hereby designates Andy J. Madrid as the official(s) authorized to request from and provide instructions to the County regarding deceased inmates. The body shall not be released except upon written order of said appropriate official(s) of Corrections Customer. The written order shall be provided within three calendar days of receipt by Corrections Customer of notice of such death. All expenses related to any necessary preparation of the body and shipment charges shall be paid by Corrections Customer. With Corrections Customer's consent, the County may arrange for burial and all matters related or incidental thereto, and all such expenses shall be paid by Corrections Customer. The provisions of this paragraph shall govern only the relations between or among the parties to this Agreement and shall not affect the liability of any relative or other person for the disposition of the deceased or for any expenses connected therewith.

C. **DEATH CERTIFICATE.** Corrections Customer shall receive a certified copy of the death certificate for any of its inmates who have died while in the County's custody.

13. **NO THIRD PARTY BENEFICIARIES.** This Agreement does not create, and by entering into this Agreement, both parties do into intend to create any right, title, or interest in or for the benefit of any person other than the County or the Corrections Customer, and no person shall claim any right, title, or interest under this Agreement, or seek to enforce this Agreement as a third party beneficiary of this Agreement or otherwise.

14. **INDEMNITY.** Corrections Customer shall defend, indemnify, and hold harmless County and its Elected Officials, agents and employees from any losses, liabilities, damages, claims, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorney's fees) resulting from, or directly or indirectly arising out of, Corrections Customer's performance or non-performance of its obligations under this Agreement, including but not limited to Corrections Customer's breach of any representation or warranty made herein. In the event that any suit based upon such a claim, action, loss, or

damage is brought against the County, Corrections Customer shall defend the same at its sole cost and expense; provided, that the County retains the right to participate in said suit; and if any partial judgment be rendered against the County and its officers, agents or employees, or any of those, or jointly against the County and Corrections Customer and their respective officers, agents, and employees, or any of them, Corrections Customer shall satisfy the same.

15. **INSURANCE.** Corrections Customer shall secure and retain an insurance policy naming the County as an additional insured and providing coverage against all claims, losses, damage and/or damages arising from the services to be performed by the County under this Agreement, including without limitation claims based on alleged violations of civil rights, and coverage to protect the County against all claims actions, losses, damage and or damages arising under this Agreement. Such insurance shall be issued by a company which is permitted to conduct business in the state of New Mexico and which shall maintain a rating of not less than "A:7" in Best's Key Rating Guide.

During the life of this Agreement, Corrections Customer shall maintain an insurance policy for the mutual protection and benefit of it and the County, naming the County and its agents and employees as additional insured to cover claims that may arise out of or result from the County's services under this Agreement, whether performed by the County or by a subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall provide coverage as follows:

For claims for damages because of any person as a result of an act directly or indirectly related to the employment of such person by the County in the amount of one million fifty thousand dollars ($1,050,000.00);

For claims for bodily injury including without limitation claims for vehicular liability, occupational illness or disease, or death of employees, with the following limits: ten million dollars (10,000,000.00) each occurrence and ten million dollars ($10,000,000.00) aggregate.

All insurance policies required under this Agreement shall contain a provision that the County shall receive written notice at least thirty days prior to the cancellation of any of the coverage's provided under the policies. Customer shall provide the County certificates of insurance evidencing the required insurance and showing the County as additional insured.

16. **WORKER'S COMPENSATION.** The County shall comply with state laws and rules applicable to worker's compensation benefits for its employees.

17. **SUBCONTRACTING.** The County may subcontract the services to be performed under this Agreement.

18. **RECORDS AND AUDIT.**

A. **County Information.** The County shall maintain detailed records and shall endeavor to ensure that billing statements are accurate and correspond to inmate housing and booking records. Such records shall be subject to inspection by the Corrections Customer, the Department of Finance and Administration and the State Auditor.

B. **Customer Information.** The Corrections Customer shall provide as requested all court and/or arrest documents necessary to justify the Corrections Customer's inmate incarceration and shall furnish any and all criminal histories of Corrections Customer inmates in custody at SFCADF.

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

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

21. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of New Mexico. County and Corrections Customer agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state courts of New Mexico located in Santa Fe County.

22. **REPRESENTATION AND WARRANTIES.** The County hereby represents that it is in compliance with the Americans with Disabilities Act.

23. **NON-DISCRIMINATION.** The County is an Equal Opportunity Employer.

24. **ACCESS BY CORRECTIONS CUSTOMER.** The Corrections Customer, through permission of the SFCADF Director, may inspect the conditions under which its inmates are detained at the SFCADF. Access to SFCADF shall be coordinated through the SFCADF Director, the Jail Administrator or their designee.

25. **SEVERABILITY.** Should any part of the Agreement be determined invalid or unenforceable by a court, the remainder of this Agreement shall not be affected and shall remain valid and enforceable to the fullest extent of the law.

26. **NOTICE.** All notices called for or contemplated under this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or three days after

mailing to each party by certified mail, return receipt requested, postage prepaid, addressed as set forth below:

Santa Fe County
ATTN: County Manager,
CC: Legal Department
P.O. Box 276
Santa Fe, NM 87504

Guadalupe County
ATTN: County Manager
~~565 River Road~~ 130 South 4th St., #101
Santa Rosa, NM 88435

IN WITNESS WHEREOF, the County and the Contractor have caused this Agreement to be executed, said Agreement to become effective when signed by both parties.

Customer

Authorized Signatory

Date: 12-4-2009

COMMISSION CHAIRMAN
Printed Title of Authorized Signatory

County of Santa Fe:

Santa Fe Board of County Commissioners, Chairperson

Attest to:

Valerie Espinoza
Santa Fe County Clerk

Date: 12/16/2010

Approved as to legal form:

for Stephen C. Ross
Santa Fe County Attorney

Date: 11 September 2009