

II. B. 2.

THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY

RESOLUTION NO. 2017-

A RESOLUTION
APPROVING LEASE AGREEMENT NO. 2018-0119-PW BETWEEN SANTA FE
COUNTY AND SANTA FE RECOVERY CENTER, INC. FOR THE OPERATION
OF A DETOXIFICATION AND SOBERING CENTER
AT 2052 GALISTEO STREET, SANTA FE, NM

WHEREAS, Santa Fe County (“County”) owns certain premises located at 2052 Galisteo Street, Santa Fe, NM (the “Premises”); and

WHEREAS, the County previously leased approximately 6,439 sq. ft. of office space and related facilities at the Premises to Christus St. Vincent Regional Medical Center (“Christus St. Vincent”) for the operation of a detoxification and sobering center; and

WHEREAS, in May 2017, Christus St. Vincent informed the County that it would cease operation of the detoxification and sobering center and assign its agreement with the County to the Santa Fe Recovery Center, Inc., a nonprofit corporation whose mission is to work with individuals to sustain lifelong recovery from alcoholism, addiction, and related mental health issues, by providing culturally relevant , evidence-based, treatment and education in partnership with other community organizations; and

WHEREAS, Christus St. Vincent also terminated its lease agreement with the County concerning the Premises; and

WHEREAS, on June 13, 2017, the County approved the assignment of the service agreement from Christus St. Vincent to Santa Fe Recovery Center, Inc. to facilitate Santa Fe Recovery Center, Inc.’s continued operation of an enhanced detoxification and sobering center that benefits the City of Santa Fe as well as Santa Fe County and the community; and

WHEREAS, the County wishes to lease approximately 5,070 sq. ft. of office space and related facilities at the Premises to Santa Fe Recovery Center, Inc. for the Center’s operation and maintenance of an enhanced detoxification and sobering center for the period of November 22, 2017 to June 30, 2018, during which time the County intends to complete a competitive solicitation for a provider of this valuable and beneficial community service; and

WHEREAS, Lease Agreement No. 2018-0119-PW (Exhibit A, attached) contains terms and conditions that are agreeable to the County and Santa Fe Recovery Center, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners (BCC) of the County as follows:

1. Lease Agreement No. 2018-0119-PW is hereby approved, and the Chair of the BCC is hereby directed and authorized to execute the Lease on behalf of the County.
2. Pursuant to Section 13-6-2.1 NMSA 1978, County staff is hereby authorized and directed to submit Lease Agreement No. 2018-0119-PW to the State Board of Finance for approval. Lease Agreement No. 2018-0119-PW shall not be effective until approved by the State Board of Finance.
3. The County Manager is hereby authorized to negotiate and execute on behalf of the County such changes or amendments to Lease Agreement No. 2018-0119-PW as may be required by the State Board of Finance.

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF OCTOBER, 2017.

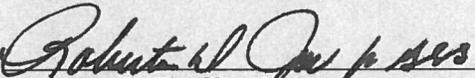
THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

Henry P. Roybal, Chair
Board of County Commissioners of Santa Fe County

ATTESTATION:

Geraldine Salazar, Santa Fe County Clerk

Approved as to form:


Gregory S. Shaffer, County Attorney

LEASE AGREEMENT BETWEEN
SANTA FE COUNTY AND SANTA FE RECOVERY CENTER, INC.
FOR LEASE OF PREMISES AT 2052 SOUTH GALISTEO STREET,
SANTA FE, NEW MEXICO

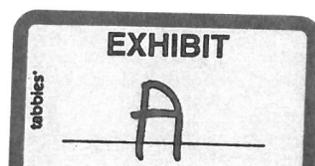


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LEASE AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2017 (**“Execution Date”**) by and between **Santa Fe County**, a political subdivision of the State of New Mexico hereinafter referred to as **“County”**, and **Santa Fe Recovery Center, Inc.** a New Mexico nonprofit corporation, hereinafter referred to as the **“Lessee.”** County and Lessee are referred to individually as a **“Party”** and collectively as the **“Parties.”**

RECITALS

WHEREAS, the County owns real property and improvements located at 2052 South Galisteo Street, Santa Fe, New Mexico 87505 (**“Property”**); and

WHEREAS, in 2013 Santa Fe County and Christus St. Vincent Regional Medical Center (**“Christus St. Vincent”**) entered into Lease Agreement No. 2014-0027-PW/GG to provide for Christus St. Vincent’s lease of a County-owned facility to operate and maintain a sobering center (the **“Sobering Center”**). The Sobering Center was operated in 4,374 square feet of office, exam and detox treatment space at 2052 South Galisteo Street, a County-owned facility; and

WHEREAS, Christus St. Vincent’s Sobering Center was governed by the terms and conditions in Professional Services Agreement No. 2016-0150-DWI/BT (the Service Agreement) the term of which expired June 30, 2017; and

WHEREAS, the term of Lease Agreement No. 2014-0027-PW/GG is due to expire November 1, 2017, however prior to the expiration of the Lease Agreement, Christus St. Vincent has notified the County that, effective August 24, 2017, Christus St. Vincent will discontinue its operation and maintenance of the Sobering Center and has identified another entity, the Santa Fe Recovery Center, Inc., as an entity who is willing and qualified to assume the operation and maintenance of a detoxification center in the same facility at 2052 South Galisteo Street; and

WHEREAS, due to the necessity of sobering and detoxification services to serve and benefit the community and the County and Christus St. Vincent’s desire to not suffer a lapse in this important community service, on June 13, 2017, the County approved the assignment of the Service Agreement by Christus St. Vincent to Santa Fe Recovery Center, Inc. (Amendment No. 1 to Agreement No. 2016-0150-DWI/BT); and

WHEREAS, effective July 1, 2017, sobering and detoxification services will be assumed and continued at the County-owned facility by Santa Fe Recovery Center, Inc., a non-profit corporation whose mission is to work with individuals to sustain lifelong recovery from alcoholism, addiction, and related mental health issues, by providing culturally relevant, evidence-based, treatment and education in partnership with other community organizations. Santa Fe Recovery Center’s services will include assessment, screening treatment, counseling, navigation and other supportive and wrap around services for individuals in need of such services ; and

WHEREAS, Santa Fe Recovery Center, Inc. agreed to be bound by all the terms and conditions in the Service Agreement, as amended, and will honor and perform all obligations under the Service Agreement; and

WHEREAS, the term of the Service Agreement with Santa Fe Recovery Center, Inc. has been extended to June 30, 2018, to provide for sufficient time for the County to procure this essential public service through a competitive solicitation; and

WHEREAS, the County and Santa Fe Recovery Center, Inc. wish to continue to provide the detoxification and sobering services in the same County-owned property located at 2052 South Galisteo Street and as more specifically provided in this Lease Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

1. **Premises**: The Premises consist of approximately 5,070 square feet of office, exam, treatment space, and other improvements depicted on **Exhibit A**, including associated parking. Lessee has inspected the Premises and knows the extent and condition thereof and accepts same in its present condition, subject to and including all defects, latent and/or patent.

2. **Term**: The Term of this Agreement shall commence on November 22, 2017, and terminate June 30, 2018. This Lease Agreement shall not be effective until approved by the State Board of Finance.

3. **Right to Terminate**: Either Party may terminate this Agreement by providing a 90 day's prior written notice to the other Party.

4. **Rent**:
a. During the Term of this Agreement and in consideration of this Lease, Lessee shall pay the County \$7,182.50 per month. Lessee will meet its rental obligations through monthly cash payment.

b. Lessee shall, no later than the end of each month during the Term of this Agreement, submit to the County the payment of \$7,182.50.

Lessee's statement shall be submitted to:

Attn: Director
Santa Fe County Community Services Director
Santa Fe County
102 Grant Avenue
P.O. Box 276
Santa Fe, NM 87504

5. **Maintenance**: In addition to rent, Lessee shall pay to the County \$300.00 each month during the Term of this Agreement for County's maintenance of the Premises as provided herein. Such charge must be paid in cash no later than the 10th of each month.

6. **Purpose**:
a. **In General** - This Agreement is made for the purpose of setting forth the terms and conditions upon which the Lessee will lease, occupy and use the Premises to maintain and

operate a detoxification and sobering center as provided for in Professional Service Agreement No. 2016-0150-DWI/BT. Lessee shall not use or permit the Premises to be used for any other purpose without the prior written consent of the County, which may be granted or withheld at the County's sole discretion.

b. No Nuisance - Lessee shall not do or permit any act or thing to be done upon the Premises that will obstruct or interfere with the rights of County or any others, or injure or create a nuisance. Lessee shall not cause, maintain, or permit any nuisance or waste on or about the Premises, or allow the Premises to be used for any unlawful purpose. Within 72 hours of receiving written notice from County that a nuisance exists, Lessee shall abate or otherwise cause the nuisance to be abated. If Lessee has not taken corrective action within 72 hours, then County may enter and abate the nuisance at the sole cost of Lessee without any liability whatsoever to County. Lessee shall not allow any offensive matter, refuse or substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, to remain on the Premises or within a distance of 50 feet thereof, and shall prevent any accumulation thereof from occurring.

7. Alterations: Lessee shall make no modifications, improvements or additions (Construction) to the Premises without the prior written consent of the County, which may be granted or withheld at the County's sole discretion. All approved Construction shall be done at Lessee's sole cost and shall comply with the terms and conditions of all federal, state and local rules, regulations, codes, and laws (Applicable Laws) that govern such Construction. Lessee's contractor(s) shall also submit to County a Certificate of Insurance as evidence of General Liability and Workers' Compensation Insurance Coverage. Such coverage limits shall be subject to approval by the County and such certificate shall name the County as an additional insured.

8. Repair and Maintenance:

a. Lessee - During the Term of this Agreement, and any extension thereof, Lessee shall, at its sole cost, repair and maintain the Premises and its furniture, fixtures and equipment (FF&E) in a clean, sanitary and safe condition and in compliance with the terms, covenants and conditions of this Agreement and all Applicable Laws. Lessee shall be responsible for those items which are of a permanent nature to the Premises, including every part and appurtenance thereof, including without limitation, the exterior and interior of all doors, door checks, windows, glass, walls, ceilings, floors, carpets, fixtures, interior plumbing, lighting painting, sewage facilities within or connected to the Premises and interior electrical systems.

b. Failure by Lessee to Repair and Maintain - Repair and maintenance shall be to the sole satisfaction of County, and if Lessee fails to fulfill any duty imposed under this Section (Repair and Maintenance) within a reasonable period of time, County may, but is not required to, perform those duties at Lessee's sole cost. Lessee shall promptly cooperate with County if County undertakes to perform any such duties. No action by County taken pursuant to this Section (Failure by Lessee to Repair and Maintain) shall constitute a waiver of any of Lessee's obligations under this Section (Repair and Maintenance). Lessee's obligations under this Section (Repair and Maintenance) shall survive the expiration or termination of this Agreement.

c. County (if applicable) - During the Term of this Agreement, and any extension thereof, County shall, at its sole cost, repair and maintain the roof, Premises exterior, exterior plumbing, HVAC system (including periodic changing of air conditioning filters), and common areas of the Premises (if applicable) in a clean, sanitary and safe

condition and in compliance with the terms, covenants and conditions of this Agreement and all Applicable Laws. Common areas are the parking lot and sidewalk at 2052 South Galisteo Street, Santa Fe.

d. Damage and Vandalism - To the extent that Lessee's employees, agents, volunteers, authorized agents and invitees cause damage to the Premises and/or grounds, Lessee shall be responsible for such damage subject to Section 8.b. above (Failure by Lessee to Repair and Maintain).

9. Janitorial: Lessee shall be responsible for janitorial services for the Premises.

10. Utilities and Services; Modification of Utilities: Lessee shall pay, during the Term of this Agreement, for all utilities used by Lessee in connection with its activities or operations on the Premises. The term "utilities" for the purposes of this Agreement shall include, without limitation, gas, electricity, water, sewer, telephone service, and trash and refuse disposal services. Lessee shall not modify any utilities on the Premises without the prior written consent of the County, which may be granted or withheld at the County's sole discretion.

11. Taxes and Assessments: Lessee shall pay all applicable taxes, fees, charges, and assessments levied by any governmental agency upon any interest acquired by Lessee under this Agreement. Lessee is aware that certain possessory interest may be created by entering into this Agreement and that such interests will be subject to the payment of property taxes levied on such interest.

12. Lessee's Furniture, Fixtures and Equipment:

a. In General - Lessee may install its own FF&E in the Premises, at its sole cost. In addition to Lessee's obligations under the Section titled Surrender of Premises, at the expiration or termination of this Agreement, Lessee shall remove its FF&E, and repair any damage to the Premises as a result of removal, at its sole cost.

b. Abandonment of FF&E - Any FF&E belonging to Lessee and left on the Premises longer than 30 days after County gives Lessee written notice to remove such property from the Premises may be treated by County as abandoned. The County may, at Lessee's sole cost, repair any damage to the Premises as a result of removal of FF&E deemed abandoned by Lessee. The costs charged to Lessee may include, without limitation, consideration for the additional time Lessee's FF&E remained on the Premises beyond the termination dated and disallowed County's full utilization of the Premises.

13. Signs: Lessee, at its sole cost, shall have the right to affix and install on the Premises, reasonable signs to identify the Premises, and such signs shall comply with all Applicable Laws, including any County Ordinances, and shall be approved by the County prior to installation. Any damage to the Premises occasioned by the installation and maintenance of any such signs, and the cost of removal or obliteration thereof upon the expiration or termination of this Agreement, shall be paid by Lessee.

14. Damage and Destruction: If the Premises shall be damaged or destroyed by fire or casualty, not the fault of Lessee or any person in or about the Premises with the express or implied consent of the Lessee, the damaged Premises shall be repaired by the County with the use of available insurance proceeds, or Lessee may, at its option, terminate this Agreement. In the event that the County elects to repair the damaged Premises, this Agreement shall continue in full force and effect except that

certain obligations of Lessee may be subject to Force Majeure as provided in the Section titled Force Majeure.

15. **Condemnation**: If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain, this Agreement shall terminate as to the part so taken as of the date of taking, and, in the case of a partial taking, either Party shall have the right to terminate this Agreement as to the balance of the Premises by notice to the other Party within 30 days after such date. However, a condition to the exercise by Lessee of such right to terminate shall be that the portion of the Premises taken shall be of such extent and nature, in Lessee's reasonable judgment, as substantially to handicap, impede or impair Lessee's use of the balance of the Premises. In the event of any taking, whole or partial, 100% of the proceeds shall belong to County.

16. **Right of Inspection**: County shall have the right to enter upon the Premises at all reasonable times to inspect the Premises and Lessee's operations thereon. County reserves all rights in and with respect to the Premises, not inconsistent with Lessee's use of the Premises as provided in the Section titled Purpose, including without limitation the right of County to enter upon the Premises for the purpose of installing, using, maintaining, renewing, and replacing such underground oil, gas, water, sewer, and other pipelines, and such underground or aboveground telephone, telegraph, and electric power conduits or lines as County may deem desirable in connection with the development or use of the Premises. County will compensate Lessee for damage to Lessee's FF&E caused by the exercise of the rights reserved in this Section.

17. **Hazardous Materials**: Hazardous materials, as used in the Agreement, shall be defined as stated in **Exhibit B**, attached hereto.

a. **No Hazardous Materials** - Lessee shall not permit any Hazardous Materials to be stored or brought onto the Premises without the prior written consent of the County, which may be granted or withheld in the County's sole discretion. If Lessee spills any Hazardous Materials anywhere on the Premises, Lessee shall cleanup said spill, at its sole cost, and to the sole satisfaction of County.

b. **Clean Up of Hazardous Materials** - If any governmental authority or court, which has jurisdiction, demands that a cleanup plan be prepared and/or that a cleanup be undertaken because of any deposit, spill, discharge, or other release of any Hazardous Materials at, on, or from the Premises at any time during Lessee's occupancy of the Premises, or which arises at any time as a result of any uses or occupancy of the Premises by Lessee, then Lessee shall, at its sole cost, prepare and submit the required plans and all related bonds and other financial assurances and carry out all such cleanup plans in a timely manner.

c. **Failure by Lessee to Clean Up** - Lessee shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Materials that is requested by County. If Lessee fails to fulfill any duty imposed under the Section titled Survival of Indemnification Obligations within a reasonable period of time, County may, but is not required to, perform those duties at Lessee's sole cost. Lessee shall promptly cooperate with County if County undertakes to perform any such duties. No action by County taken pursuant to the Section titled Failure by Lessee to Clean Up shall constitute a waiver of Lessee's obligations under the Section titled Hazardous Materials. Lessee obligations under the Section titled Indemnification shall survive the expiration or termination of this Agreement.

d. **Receipt of Notice of Violation** - If Lessee becomes aware of or receives notice or other communications concerning any actual, alleged, suspected, or threatened violation of

any Environmental Requirements, or liability of Lessee in connection with the Premises or past or present activities of any person thereon, then Lessee shall deliver to County within 10 days of receipt of such notice or communication by Lessee, a written description of said violation, liability, correcting information, or actual or threatened event or condition, together with copies of any documents evidencing same. Receipt of such notice shall not create any obligation on the part of County to defend or otherwise respond to any such notification.

18. Indemnification:

a. In General - Lessee shall indemnify and defend, upon request of the County, County, its governing board, commission, elected and appointed officials, employees, and agents, and each of them (collectively "Indemnified Parties"), against any and all actions, lawsuits, proceedings, losses, costs, expenses, claims, fines, liabilities, fees (including, but not limited to, reasonable attorneys' fees, costs of County staff time, investigation, expert and consultant fees and costs), and damages, including liability for personal injuries or death or property damage, regardless of where located, including property of County, and workers' compensation claims or suits arising from or connected with any services performed under this Agreement on behalf of Lessee by any person or entity ("Claims"), arising out of or in any way connected with the acts or omissions of Lessee, its employees, agents, independent contractors, or invitees ("Lessee Acts"), unless the Claim is due to the sole default, act or failure to act, negligence, or willful misconduct of the Indemnified Parties.

b. Environmental - In addition, Lessee shall indemnify and defend, upon request of County, the Indemnified Parties against any and all Claims arising out of or in any way connected with any deposit, spill, discharge, or other release of any Hazardous Materials at any time during Lessee's occupancy of the Premises, or which arises at any time as a result of any uses at, on, or from the Premises or the occupancy of the Premises by Lessee, or as a result of Lessee's failure to provide any or all information, make any or all of its submissions, and take any or all steps required by any governmental authority or court which has jurisdiction or by any Environmental Requirements. "Environmental Requirements" and "Hazardous Materials," as used in this Agreement shall have the meaning provided in **Exhibit B**.

c. Survival of Indemnification Obligations - Lessee's obligations under this Section (Indemnification) shall survive the expiration or termination of this Agreement.

19. Release and Waiver: Lessee releases County and Indemnified Parties from all Claims, and waives all Claims against County, that it may have as of the Execution Date, or may have in the future, relating to this Agreement and any acts or omissions of County or the Indemnified Parties, unless the Claim is due to the sole default, act or failure to act, negligence, or willful misconduct of County or the Indemnified Parties.

20. Lessee Maintenance of Insurance: In order to protect County and the Indemnified Parties against Claims resulting from Lessee Acts, Lessee shall secure and maintain insurance as described below. Lessee shall not perform any work under this Agreement until Lessee has obtained all insurance required and the required certificates of insurance required by this Agreement, and all required endorsements have been filed with the County's authorized insurance representative. Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of these insurance requirements. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request by County, Lessee shall supply proof that such person is an authorized representative thereof, and is

authorized to bind the named underwriter and company to the coverage, limits, and termination provisions shown thereon. Lessee shall promptly deliver a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term of this Agreement or as otherwise specified herein. Such certificates and endorsements shall be delivered to the County's authorized insurance representative prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Lessee shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Lessee or County as an additional insured.

- a. **Workers' Compensation and Employer's Liability Insurance Requirements.**
 - 1) **Workers' Compensation Insurance - Lessee Employees.** If Lessee has employees who may perform any services pursuant to this Agreement, Lessee shall submit written proof that Lessee is insured against liability for workers' compensation.
 - 2) **Employer's Liability Insurance.** Lessee shall also maintain employer's liability insurance with limits of \$1,000,000 for bodily injury or disease.
- b. **Liability Insurance Requirements.**
 - 1) **In General.** Lessee shall maintain in full force and effect, at all times during the Term of this Agreement, the following insurance:
 - (a) **Commercial General Liability Insurance,** including without limitation Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the County), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Lessee's performance of work under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Lessee shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least \$1,000,000 each occurrence and \$2,000,000 aggregate.
 - (b) **Automobile Liability Insurance,** against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired, and non-owned vehicles used in the performance of services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least \$1,000,000 each occurrence and \$2,000,000 aggregate.
 - (c) **Professional Liability (Errors and Omissions) Insurance,** for liability arising out of, or in connection with, the performance of all required services under this Agreement, with coverage equal to the policy limits, which shall not be at least \$1,000,000 each occurrence and \$2,000,000 aggregate.
 - 2) **Additional Insureds.** The Commercial General Liability and Automobile liability Insurance required in Section (Liability Insurance Requirements) shall include an endorsement naming the County and the Indemnified Parties as additional insureds for liability arising out of this Agreement and any operations related thereto.

- 3) **Self-Insurance**. Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to County and must be approved by the County, which may be granted or withheld at the County sole discretion.
- 4) **Claims-Made**. If any of the insurance coverages required under this Agreement is written on a claims-made basis, Lessee, at Lessee's option, shall either (i) maintain said coverage for at least three years following the termination of this Agreement with coverage extending back to the Execution Date; (ii) purchase an extended reporting period of not less than three years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.
- c. **Fire and Casualty Insurance** - The County shall maintain on the building and the Premises that are the subject of this Agreement, in amounts as the County deems appropriate.
- d. **Cancellation of Insurance** - The above-stated insurance coverages required to be maintained by Lessee shall be maintained until the completion of all of Lessee's obligations under this Agreement. Each insurance policy supplied by Lessee must be endorsed to provide that the coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after 10 days written notice in the case of non-payment of premiums, or 30 days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Lessee shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.
- e. **Insurance Company Rating** - All insurance shall be issued by a company or companies admitted to do business in New Mexico and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-VII. Any exception to these requirements must be approved in writing by the County, which may be granted or withheld at the County's sole discretion.
- f. **Lessee Self-Insured** - If Lessee is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Lessee shall provide coverage equivalent to the insurance coverages and endorsements required above. County will not accept such coverage unless the County determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Lessee is equivalent to the above-required coverages.
- g. **Primary Insurance** - All insurance afforded by Lessee pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against County.
- h. **No Limitations by Policy Limits** - Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Lessee for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage, or to preclude County from taking such other actions as are available to it under any other provision of this Agreement or otherwise under Applicable Laws.
- i. **Failure to Maintain Insurance** - Failure by Lessee to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of

this Agreement by Lessee. County, at its sole option, may terminate this Agreement and obtain damages from Lessee resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Lessee, County shall deduct from sums due to Lessee any premiums and associated costs advanced or paid by County for such insurance. If the balance of monies obligated to Lessee pursuant to this Agreement is insufficient to reimburse County for the premiums and any associated costs, Lessee shall reimburse County for the premiums and pay for all costs associated with the purchase of said insurance within 10 days of demand by County. Any failure by County to take this alternative action shall not relieve Lessee of its obligation to obtain and maintain the insurance coverages required by this Agreement.

21. **Liens and Encumbrances:** Lessee shall keep the Premises free from any liens and encumbrances arising out of any work performed, material furnished, or obligations incurred by Lessee, or from any other cause. If a lien or encumbrances is recorded against the Premises, and Lessee fails to remove the lien or encumbrance or post a bond to remove same within 15 days after its filing, County shall give a 15-day notice to Lessee, requiring Lessee to remove or bond around the lien or encumbrance within the 15-day period. If Lessee fails to do so within the 15-day period, County, at its sole discretion after expiration of the 15-day period, may obtain a bond, with all costs of the bond to be reimbursed by Lessee to County.

22. **Breach by Lessee:** In the event of the breach by Lessee of any term, covenant, or condition, Lessee shall have 30 days after written notice has been given to Lessee by County to cure, except for breach of the nuisance provisions in the Section titled No Nuisance, which allows 72 hours to cure. If Lessee fails to cure within the stated time periods, County may exercise its remedies under the Section below titled Remedies of County.

a. **Remedies of County** - In the event of a breach by Lessee, the County shall have the right to terminate Lessee's right to possession of the Premises, by giving written notice of termination to Lessee, and thereby terminating this Agreement

b. **Remedies Not Exclusive** - No right or remedy herein conferred upon or reserved to County is intended to be exclusive of any other right or remedy herein or by law, provided that each shall be cumulative and in addition to every other right or remedy given herein or now, or hereafter existing at law or in equity or by statute.

c. **County Right to Cure** - In addition to County's remedies upon Lessee's breach, upon 10 days prior written notice to Lessee by County, County may cure any breach by Lessee and, if necessary, may enter upon the Premises for such purpose. In such event, the cost of cure, plus interest at the maximum legal rate from the date due until paid, shall become immediately due and payable by Lessee.

23. **No Waiver of Breach:** The waiver by County of any term, covenant, or condition contained in this Agreement must be in writing and shall not be deemed to be a waiver of any subsequent breach of the Term, covenant or condition contained in this Agreement, and no custom or practice that may arise between the Parties during the course of this Agreement shall be construed to waive or lessen the right of County to the performance by Lessee in strict accordance with the terms of this Agreement.

24. **Force Majeure:**

a. **Definition** - Neither Party shall be held responsible or be deemed to be in default under this Agreement for any delay in performance or failure to perform any of its obligations, if such delay or failure is the result of causes beyond the control and without negligence of the Party. Such causes include, without limitation, acts of nature, strikes, lockouts, riots, insurrections, civil disturbances or uprisings, sabotage, embargoes, blockages, acts of war or terrorism, acts or failure to act by any governmental or regulatory body (whether civil or military, domestic or foreign), governmental regulations superimposed after the fact, communication line failures, power failures, fires, explosions, floods, accidents, epidemics, earthquakes, or other natural or man-made disasters (Force Majeure). Lack of funds shall not be a Force Majeure event.

b. **Consequences** - The Party affected by a Force Majeure event, upon giving prompt notice to the other Party, shall be excused from performance to the extent of such prevention, restriction, or interference, on a day-to-day basis until the Force Majeure event is removed, and the other Party shall likewise be excused from performance of its obligation which relate to the performance so prevented, restricted, or interfered with. The affected Party shall use its best efforts to avoid or remove the causes of nonperformance and to minimize the consequences thereof, and both Parties shall resume performance when the Force Majeure event is removed.

25. **Quiet Possession:** Lessee, in keeping and performing the terms, covenants and conditions herein contained on the part of Lessee to be kept and performed, shall at all times during the Term of this Agreement peaceably and quietly have, hold, and enjoy the Premises.

26. **Assignment and Subletting:**

a. **No Assignment or Subletting** - Lessee shall not sublease, assign, transfer, mortgage, or otherwise convey this Agreement, or any of its rights and interests hereunder, including its leasehold rights and interests granted by this Agreement, without the prior written consent of the County.

b. **Failure to Obtain Consent** - If Lessee shall sublease, assign, transfer, or otherwise convey any interest in this Agreement, or attempt to do so in violation of the foregoing provision, then in addition to any and all other rights and remedies available to it, County may, at its option by written notice to Lessee, either declare such sublease, assignment, transfer, or other conveyance void or terminate this Agreement and all rights and interests of Lessee and all other persons hereunder.

c. **No Waiver or Limitation on Consent** - Any consent to any sublease, assignment, transfer, or conveyance shall not be deemed or construed as consent to any different or subsequent sublease, assignment, transfer, or conveyance. This clause shall not be construed to limit any right or remedy which County may become titled to as a matter of law or become titled to by reason of Lessee's actions or failures to act.

d. **Lessee in Compliance** - As a condition of County's consent to any conveyance of this Agreement, Lessee must be in compliance with all terms, covenants, and conditions of this Agreement, including without limitation the payment of all monies due to County.

27. **Surrender of Premises:** On the last day of the Term, or sooner termination of this Agreement, Lessee shall peaceably and quietly leave, surrender, and yield up to County the Premises in as good a condition and state of repair as it existed on the Execution Date, wear and tear excepted.

By the expiration or termination date of this Agreement, Lessee shall have paid all utility bills and contacted the appropriate utility companies to have the utility services properly discontinued or transferred. Lessee shall immediately notify the County if Lessee surrenders the Premises and disconnects or transfers utilities before June 28, 2018.

28. **Notices:** All notices herein provided to be given, or which may be given, by either Party to the other shall be deemed to have been fully given when made in writing and deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, and addressed as follows:

To Lessee: Santa Fe Recovery Center, Inc.
Attn: Chief Executive Officer
4100 Lucia Lane
Santa Fe, NM 87507

To County: Santa Fe County
Attn.: DWI Program Manager
P.O. Box 276
Santa Fe, NM 87504

Santa Fe County
Attn: Director
Santa Fe County Community Services Department
102 Grant Avenue
P.O. Box 276
Santa Fe, NM 87504

With a copy to: Santa Fe County
Attn. Public Works, Real Property Specialist
P.O. Box 276
Santa Fe, NM 87504

The address to which the notices shall be mailed to either Party may be changed by written notice given by such Party to the other, but nothing shall preclude the giving of any such notice by personal service.

29. **Miscellaneous Provisions:**

a. **Negation of Partnership** - County shall not become or be deemed a partner or joint venturer with Lessee or associate in any relationship with Lessee. Lessee shall not for any purpose be considered an agent, officer, or employee of County.

b. **Conflict of Interest** - All Parties agree that they are unaware of any financial or economic interest of any public officer or employee of the County or of Lessee relating to this Agreement that would cause or give the appearance of a conflict of interest. It is further understood and agreed that if such a financial interest does exist as of the Execution Date, either Party may immediately terminate this Agreement by giving written notice to the other Party.

c. **Nondiscrimination** -

(i) Lessee, in the use of the Premises and in the activities or operations conducted by Lessee under this Agreement, shall not discriminate or permit discrimination against any person or class of persons by reason of race, color, creed, religion, ancestry, sex, or national origin in any manner prohibited by federal, state, or local laws or policies. Lessee shall not discriminate nor allow discrimination, either directly or indirectly, in hiring or employing persons to work at the Premises.

(ii) Lessee shall include the language in subsection c.(i) above in any agreement by which Lessee assigns or transfers any interest in the Premises or this Agreement, or grants a right or privilege to any person, firm, or corporation to use the Premises or to render services to the public on the Premises.

d. Incorporation of Prior Agreements - This Agreement contains all agreements of the Parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective.

e. Remedies not Exclusive - The use by either Party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive such Party of, or limit the application of, any other remedy provided by law, at equity, or otherwise.

f. Severability - If any part, term, portion, or provision of this Agreement is decided finally to be in conflict with any law of the United States or the State of New Mexico, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the Parties intended to enter into in the first instance.

g. Governing Law; Venue - The Parties agree that the provisions of this Agreement shall be construed pursuant to the laws of the State of New Mexico. If either Lessee or County initiates an action to enforce the terms of this Agreement or declare rights hereunder, including actions on any bonds and/or surety agreements, the venue thereof shall be the state courts of the First Judicial District, Santa Fe County, State of New Mexico, it being understood that this Agreement is entered into, and will be performed, within Santa Fe County.

h. Compliance with Laws - Lessee shall, at its sole cost, promptly comply with all Applicable Laws, including Environmental Requirements, which may in any way apply to the use, operation, repair, maintenance, occupation of, or operations or construction on, the Premises.

i. Successors - Subject to the Section titled Assignment and Subletting, all terms, covenants, and conditions of this Agreement shall extend to, be binding upon, and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties.

j. No Third Party Beneficiaries - This Agreement is made for the sole benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns, and no other persons shall have any right of action hereon.

k. Covenants and Conditions - Each provision of this Agreement performable by Lessee shall be deemed both a covenant and a condition.

l. Modification - This Agreement may be modified or amended only by a written amendment signed by the Parties.

m. Authorization - Each individual executing this Agreement on behalf of either Party represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of that Party, and that this Agreement is binding upon both Parties in accordance with its terms.

n. **Recitals** - Each of the recitals is incorporated in this Agreement by reference as if fully set forth in this Agreement at length, is deemed to be the agreement and a reflection of the intent of the Parties, and is relied upon by the Parties in agreeing to the provisions of this Agreement and in interpreting its provisions.

o. **Captions** - Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement.

p. **Exhibits** - All exhibits attached to this Agreement are incorporated into this Agreement by reference.

q. **Time of Essence** - Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision thereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this Agreement.

r. **Appropriations and Authorizations.** This Lease Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of Santa Fe 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 Lease Agreement shall terminate upon written notice by the County to the Lessee. Such termination shall be without penalty to the County. 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 County. The County'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 Lessee or in any way or forum, including a lawsuit

s. **New Mexico Board of Finance.** This Lease Agreement is not effective until approved by the State Board of Finance.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of the date of last signature by the Parties and signature by the State Board of Finance.

SANTA FE COUNTY

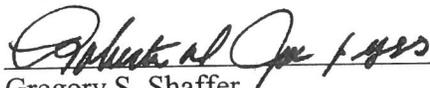
Henry P. Roybal, Chair
Santa Fe County Board of County Commissioners

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

Date

Approved as to form:

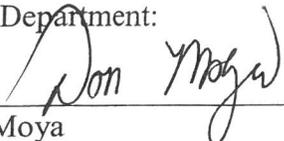


Gregory S. Shaffer
Santa Fe County Attorney

9/26/17

Date

Finance Department:



Don D. Moya
Finance Director

9-27-17
Date

LESSEE - Santa Fe Recovery Center, Inc.



Sylvia Barela, CEO

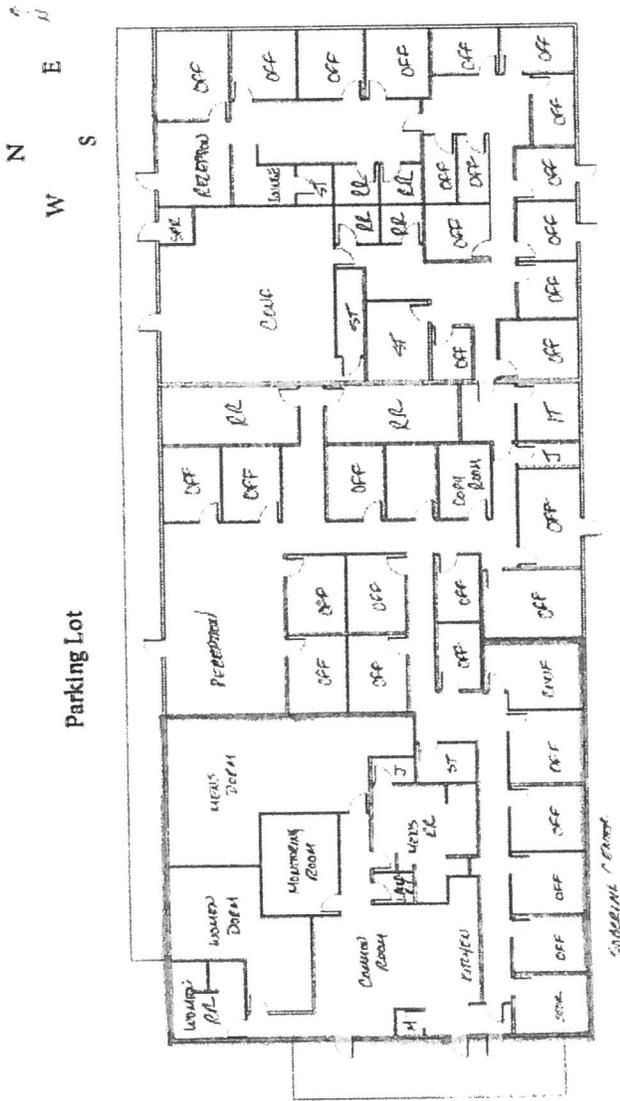
9/27/17
Date

Approved:

State Board of Finance

Date

EXHIBIT A - Premises



South-Facing Rearward Entry

Submarine Entry

EXHIBIT B - Environmental terms

Definition of Environmental Terms

For the purpose of this Agreement, the following terms and words shall have the meaning given below:

1. **Environmental Requirements.** All applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, and similar items of any governmental agency, department, commission, board, bureau, or instrumentality of the United States of America, State of New Mexico, or its political or municipal subdivisions including Santa Fe County, and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human life or the environment.

2. **Hazardous Materials.** All flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous waste, toxic substances or related materials, petroleum products, and any substances declared to be hazardous or toxic under any present or future Environmental Requirements or which requires investigation or remediation under any present or future federal, state, or local law, statute, regulation, environmental requirement, order, or rule.