

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

DATE: *December 21, 2016*

TO: *Board of County Commissioners*

VIA: *Katherine Miller, County Manager*

FROM: *Michael K. Kelley, Public Works Department Director*

ITEM AND ISSUE: *BCC Meeting January 10, 2017*

Approval Of Amendment No. 1 To Lease Agreement No. 2017-0211-HHS-KE Between Santa Fe County And La Familia Medical Center, Inc. As Required Prior To La Familia Medical Center, Inc. Accepting A Federal Grant For Improvements To The County Owned Building At 2145 Caja Del Oro Grant Road (Public Works/Terry Lease)

SUMMARY:

The Public Works Department is requesting approval of Amendment No. 1 to Lease Agreement No. 2017-0211-HHS-KE between Santa Fe County and La Familia Medical Center, Inc. ("La Familia") as required prior to La Familia accepting a federal grant for improvements to the County owned building occupied by La Familia.

BACKGROUND:

The County owns the building and property located at 2145 Caja del Oro Grant Road, Santa Fe, NM 87507, which is currently leased to La Familia to provide medical and dental services to all individuals and families regardless of income or ability to pay. The lease with La Familia has a 25 year term, terminates on December 31, 2024 and can be extended for an additional 25 years.

On May 26, 2015 the Santa Fe County Board of County Commissioners ratified the County Manager's signature on a Landlord's "Conditional" Letter of Consent that allowed La Familia to seek a grant from the Health Resources and Services Administration ("HRSA"), an agency of the U.S. Department of Health and Human Services. On April 26, 2016 HRSA issued a Notice of Award Authorization for Grant No. C8DCS29731 to La Familia for financial assistance in the amount of \$1,000,000.00. The grant provides Federal health infrastructure investment funds for construction/expansion to add an estimated 4,668 square feet of new clinical and patient services space to the existing 7,385 square foot La Familia Medical Center - Southside Clinic. The planned addition will increase the total clinic footprint to approximately 12,053 square feet. The total budget for the project is \$1,222,350.00, consisting of \$1,000,000.00 of Federal funding and \$222,350.00 of non-Federal funding provided by La Familia.

On November 29, 2016 the BCC approved an “unconditional” Landlord’s Letter of Consent. The terms and conditions of the Notice of Award for the grant now require that the County and La Familia amend the current lease agreement to include protective language regarding the grant and for the facility property owner sign and record a Notice of Federal Interest document.

ACTION REQUESTED:

Approval and execution of Amendment No. 1 to Lease Agreement No. 2017-0211-HHS-KE.

**AMENDMENT NO. 1
TO LEASE AND OPERATING AGREEMENT
BETWEEN SANTA FE COUNTY AND
LA FAMILIA MEDICAL CENTER**

This Amendment No. 1 is made and entered into as of this ____ day of _____, 2016 by and between Santa Fe County, a political subdivision of the State of New Mexico ("Lessor") and La Familia Medical Clinic, a non-profit entity acting by and through its duly authorized agents ("Lessee").

WHEREAS, Santa Fe County was awarded a Community Development Block Grant ("CDBG") from the Local Government Division of the New Mexico Department of Finance and Administration ("LGD/DFA") on behalf of La Familia Medical Center for construction of a satellite medical and dental clinic; and

WHEREAS, Lessor constructed an approximate 7,385 square foot satellite medical and dental clinic for use by Lessee; and

WHEREAS, Lessor and Lessee entered into a Lease and Operating Agreement dated August 31, 1999 ("Lease") that provides for Lessee's lease of the satellite medical and dental clinic to provide medical and dental services to all individuals and families regardless of income or ability to pay; and

WHEREAS, according to the terms of the Lease, the Lease may be amended by an instrument in writing executed by the Lessor and Lessee; and

WHEREAS, on April 26, 2016 the Health Resources and Services Administration ("HRSA"), an agency of the U.S. Department of Health and Human Services issued a Notice of Award Authorization for Grant No. C8DCS29731 to Lessee for financial assistance in the amount of \$1,000,000.00 for the construction/expansion to add an estimated 4,668 square feet of new clinical and patient services space to the existing La Familia Medical Center – Southside Clinic Building; and

WHEREAS, HRSA Grant Number C8DCS29731 requires the Lessee, as the grantee of Grant Number C8DCS29731, to obtain from Lessor a signed Landlord's Letter of Consent and a notarized Notice of Federal Interest indicating that the improvements to the La Familia Medical Clinic building are subject to a lien or encumbrance and such interest will be recorded with the Santa Fe County Clerk; and

WHEREAS, by this Amendment Number 1, the Lessor and Lessee wish to incorporate protective language regarding Grant Number C8DCS29731 as required by HRSA, and state the scope of the Notice of Federal Interest.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Paragraph I (Description of Premises), insert as subpart "a") the following:
 - a) Pursuant to HRSA Grant Number C8DCS29731 and a Notice of Federal Interest, the parties acknowledge that a lien or encumbrance will be duly recorded on the improvements completed on the La Familia Medical Clinic building.
2. Paragraph XII (Breach) subparagraphs "a" and "b" are deleted in their entirety and replaced with the following subparagraphs "a" through "f."
 - a) Lessor shall inform HRSA of any default by the Lessee under the Lease.
 - b) HRSA shall have 60 days from the date of receipt of Lessor's notice of default in which to attempt to eliminate the default, and Lessor shall delay exercising remedies until the end of the 60-day period.
 - c) HRSA may intervene to ensure that the default is eliminated by the Lessee or another recipient named by HRSA and approved by Lessor.
 - d) Lessor shall accept payment of money or performance of any other obligation by HRSA's designee, for the Lessee, as if such payment of money or performance had been made by Lessee.
 - e) Failure to remedy any default under this Lease within the 60-day period may result in Lessor declaring this Lease terminated and enter upon the Premises or any part thereof, remove all persons therefrom, either with or without process of law, and repossess said Premises. In such event, Lessor shall retain from any rent, damages or other sums that may be due hereunder any property belonging to Lessee and located on the Premises, and all of Lessee's rights herein and to the Premises shall be forfeited.
 - f) Failure to remedy any default under this Lease within the 60-day period may result in Lessor entering the Premise and may rent the same under such terms as are suitable to Lessor, all without releasing Lessee from liability hereunder. In such event, any monies collected by such leasing shall be applied first to the expense of restoring and placing the Premises in a rentable condition and next to the payment of the rent or any sum due Lessor hereunder, and Lessee shall remain liable for any deficiency.
3. Paragraph XIV (Assignment and Sublease) is deleted in its entirety and replaced with the following subparagraphs "a" and "b."
 - a) Lessee shall not assign its rights under the Lease nor sublet the Premises in whole or in part, without first obtaining the written consent of Lessor and HRSA. If such written consent is obtained from Lessor and HRSA it shall not discharge Lessee, Lessee's heirs, executors, administrators, assigns and successors in interest from liability hereunder and shall not operate as a consent to further assignment or subletting.
 - b) In the event that Lessee defaults, the grant is terminated, or the Lessee vacates the Premises before the end of the Lease term, HRSA shall have the right to designate a

replacement for the Lessee for the balance of the Lease term, subject to approval of Lessor, who's consent shall not be unreasonably withheld.

4. Paragraph XXXIII (Notices) is deleted in its entirety and replaced with the following; All notices, requests or other communications to Lessor, Lessee or HRSA shall be given by certified mail addressed to the following:

a) Santa Fe County, Public Works Dept.
Attn. Real Property
P.O. Box 276
Santa Fe, NM 87504-0276

b) La Familia Medical Center
Attn. Executive Director
1035 Alto Street,
Santa Fe, NM 87502

c) HRSA/OFAM/DGMO/MCHSB
Grant No. C8DCS29731
5600 Fishers Ln
Rockville, MD 20852-1750

5. All other provisions of this Lease not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the last date of signature below.

LESSOR - SANTA FE COUNTY

_____, Chair
Santa Fe Board of County Commissioners

Date _____

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

Date _____

Approved as to form:

Gregory S. Shaffer
Santa Fe County Attorney

Date _____



Marcos P. Trujillo,
Commissioner, District 1

Paul Duran
Commissioner, District 2

Javier M. Gonzales
Commissioner, District 3



Richard D. Anaya
Commissioner, District 4

Joe S. Griné, Jr.
Commissioner, District 5

David Wolf
County Manager

September 2, 1999

Dr. Arturo Gonzales, Executive Director
La Familia Medical Center
1035 Alto Street
Santa Fe New Mexico 87502

Re: La Familia Medical Center Satellite Clinic Project
Lease Agreement

Dear Dr. Gonzales:

Attached please find an executed original Lease Agreement between the County of Santa Fe and La Familia Medical Center. The purpose of this Lease Agreement is to establish the responsibility for the operation and maintenance of the La Familia Medical Center Satellite Clinic. If you have any questions, or require additional information, please contact me at (505) 424-2043.

Sincerely,


David L. Madrid, Project Manager
General Services Department

Cc: Vincent Ojinaga, General Services Department Director

LEASE AND OPERATING AGREEMENT

THIS AGREEMENT is made this 31st day of August, 1999, by and between the County of Santa Fe, hereinafter referred to as "Lessor", and the La Familia Medical Center, a non-profit entity acting by and through its duly authorized agents, hereinafter referred to as "Lessee."

WHEREAS, Santa Fe County has been awarded a Community Development Block Grant (CDBG) from the Local Government Division of the New Mexico Department of Finance and Administration (LGD/DFA) on behalf of La Familia Medical Center for construction of a satellite medical and dental clinic;

WHEREAS, pursuant to LGD/DFA requirements, a Memorandum of Agreement was entered into on April 28, 1998, between Santa Fe County and La Familia Medical Center for the construction of the medical and dental clinic;

WHEREAS, in that Memorandum of Agreement, Santa Fe County recognized the need for a health care facility in the southwestern sector of the County;

NOW THEREFORE, Lessor, for and in consideration of the covenants and agreements herein contained to be kept and performed by Lessee, its heirs, executors, administrators, assigns, and successors in interest, and upon the terms and conditions herein contained, does hereby lease to Lessee the following described premises, together with the improvements thereon, hereinafter called the "Premises", situate in the County of Santa Fe, State of New Mexico, for the term and in accordance with the conditions herein set forth. The rights granted herein are subject to all valid existing rights in the leased Premises. Lessee agrees and understands that by this Lease and Operating Agreement (hereinafter "Lease") it obtains no ownership interest in the Premises or the improvements thereon beyond its leasehold.

RESERVATIONS: Lessor reserves the right to grant rights of way and easements over, upon, or across the Premises.

- I. **DESCRIPTION OF PREMISES.** The Premises are described as follows: A CERTAIN TRACT OF LAND, LYING AND BEING SITUATE WITHIN, AND BEING A PORTION OF SECTION 31, TOWNSHIP 17 NORTH, RANGE 9 EAST, LOT 13, NEW MEXICO PRIME MERIDIAN, LOCATED WITHIN THE AGUA FRIA COMMUNITY PARK, COUNTY OF SANTA FE, STATE OF NEW MEXICO, AND BEING PARTICULARLY DESCRIBED AS FOLLOWS:

The SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 31, T.17N, R.9E, New Mexico Prime Meridian, New Mexico, containing 3 acres, more or less.

The aforementioned tract of land is leased with a building or other improvements as designated on the drawing attached hereto as "Exhibit A" and incorporated herein as though set forth in full, for use by the Lessee exclusively for the operation of a medical and dental clinic.

II. TERM OF LEASE. The term of this Lease shall be for a period of twenty-five (25) years beginning on the first day of January 2000, and ending at midnight on the 31st day of December 2024. By providing written notice to Lessor, Lessee may renew the Lease upon the same terms and conditions of this Lease for an additional 25-year period.

III. RENTAL PAYMENT. Lessee, for and in consideration of the Lease of the Premises by Lessor to Lessee, hereby agrees and covenants with Lessor to pay rent for the Premises, without notice or demand, the sum of One Dollar (\$1.00) per year for the full twenty-five year term and to operate a medical and dental clinic pursuant to Paragraph IV, below.

IV. COMPENSATION FOR OPERATING CLINIC. Lessor, for and in consideration of the operation of the medical and dental clinic by Lessee for Lessor pursuant to the above referenced Memorandum of Agreement and the conditions contained herein, hereby agrees and covenants with Lessee to compensate the Lessee for the operation of the facility in the sum of One Dollar (\$1.00) per year for the full twenty-five year term. It is understood that any profit realized by Lessee shall be used only for improvements at the La Familia Medical Center Satellite Clinic located within the Agua Fria Community Park.

V. USE OF PREMISES.

a) Lessee, for and in consideration of this Lease, does hereby agree and covenant with Lessor to use and occupy the Premises for the purposes of providing medical and dental care pursuant to the Memorandum of Agreement and for no other purpose without first obtaining the written consent of Lessor. Lessee shall obtain and maintain at its sole cost and expense the required license(s) to operate such medical and dental clinic. Lessee agrees that any fees charged to patients who use the clinic shall be in accordance with any and all applicable federal or state laws or regulations.

b) Lessee shall comply with all applicable municipal, county, state and federal ordinances, laws, rules and regulations in using the Premises, and not to use or allow to be used, the Premises in any way so as to create any nuisance or otherwise noxious or objectionable condition. Lessor shall be the sole judge as to whether or not any act done or not done by Lessee on the Premises is or may become an unreasonable nuisance or otherwise noxious or objectionable condition, and Lessee agrees to abide by Lessor's decision and act in accordance with its direction with respect thereto.

VI. CONDITION OF PREMISES. Lessee will accept the Premises in their condition offered, noting that the Premises will be in new condition and will not have been previously occupied. Lessee agrees that it will inspect the Premises and all improvements located thereon prior to occupancy and, by occupying the Premises, warrants that it is receiving same in good repair and condition and, at the expiration of the term hereof, Lessee agrees to leave the Premises in as good repair and condition as when entered upon, except for ordinary wear and tear.

VII. MAINTENANCE.

- a) Lessee accepts responsibility for complying with County standards for the maintenance and upkeep of the Premises to ensure that the premises are maintained in the same condition as when this Lease was executed. Lessee agrees to maintain at all times, in a clean and sanitary condition, and at its sole cost and expense, the above described property and improvements; and agrees to irrigate, trim, and maintain trees, shrubbery or grass as necessary on the Premises.
- b) Further, Lessee shall maintain, to its present condition, all plumbing, wiring, glass, heating, air conditioning, and other similar fixtures and equipment located on or in any portion of the above-described property or buildings located on the Premises.
- c) Lessee shall make necessary corrections and adjustments to maintenance practices as inspections reasonably determine are necessary. Lessor shall be the sole judge of the quality of maintenance and, upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance is deemed reasonably necessary. If said maintenance is not undertaken by Lessee within ten (10) days after the date of written notice, sent by Lessor, then Lessor shall have the right to enter upon the Premises and perform the necessary maintenance, the cost of which shall be borne by Lessee.
- d) Lessee may enter into a separate contract with Lessor for the provision of some or all of the maintenance responsibilities listed above.

VIII. FIXTURES, EQUIPMENT, AND IMPROVEMENTS.

- a) Except as otherwise provided herein, Lessee shall have the right to install such fixtures and equipment as may be necessary for the conduct of its business. Upon the termination of this Lease, all fixtures shall remain affixed to the Premises and shall become the property of Lessor, but Lessee shall have the right to remove all equipment purchased by it that can be removed without damage to the Premises, except that any equipment purchased with CDBG funds, County funds, or other government funds shall remain at the Premises.
- b) Lessee shall not make or permit to be made any additions, alterations or improvements whatsoever in or on the Premises without first obtaining the written consent of the Santa Fe County General Services Department Director or his designee, which consent shall not be unreasonably withheld, provided adequate details are provided and, in the event that the consent is given and Lessee makes any additions, alterations, or improvements, such work shall be done in such a manner that no mechanic's lien, materialman's lien or other lien of any kind shall be created against or imposed upon the
- c) Premises or any part thereof. Additions, alterations, and improvements shall become the property of Lessor at the termination of the Lease.

IX. INSURANCE.

- a) **Medical Malpractice:** On or before occupancy of the Premises, Lessee shall obtain and provide satisfactory evidence of a policy of medical and dental malpractice liability insurance issued to Lessee naming the Lessor, as an additional named insured. Said liability insurance policy coverage for Lessor shall provide liability insurance in an amount equal to the maximum exposure to Lessor under the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 et seq., as it may be hereafter amended. Said policy shall remain in full force and effect during the full term of this Agreement and Lessee's occupancy of the Premises.
- b) **Property Insurance:** On or before occupancy of the Premises, Lessee shall obtain and provide satisfactory evidence of a policy for fire, hazard and general liability insurance on the Premises, naming the Lessor as an additional named insured and the loss-payee. Improvements on the Premises shall be insured to at least replacement value. Said liability insurance policy coverage for Lessor shall be in an amount equal to the maximum exposure to Lessor under the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 et seq., as it may be hereafter amended. Said policy shall remain in full force and effect during the full term of this Agreement and Lessee's occupancy of the Premises.

X. DAMAGE OR DESTRUCTION OF PREMISES. If, at any time during the term hereof, any of the buildings upon the Premises described above is damaged or destroyed by fire, the elements or other causes, said building may be repaired and rebuilt and restored by Lessor to a condition as good as it was immediately prior to such damage or destruction, using the insurance funds toward such expense and in accordance with all laws, regulations and ordinances of all governmental authorities having jurisdiction. Lessor may authorize or direct construction of an alternate structure, or may elect to retain insurance proceeds or other funds if it deems reconstruction or construction of a substitute to be impractical or unreasonable. In the event reconstruction or construction of a substitute is deemed impractical or unreasonable by Lessor, this Lease Agreement shall terminate with no further obligation on the part of the Lessor. In the event of any major damage or destruction of the Premises, rent shall be adjusted accordingly.

XI. LIABILITY. As between the parties hereto, each party will be responsible for liability arising from personal injury or damage to persons or property occurring upon, in or about the Premises occasioned by its own agents or employees, subject in all cases to the terms of the New Mexico Tort Claims Act (NMSA 1978, Section 41-4-1 et seq.), as amended. This paragraph is intended only to define the liabilities between Lessee and Lessor and is not intended to modify in any way the parties' liabilities as governed by the common law or the New Mexico Tort Claims Act.

XII. BREACH. Any violation of the terms of this Lease shall be a breach of this Lease. At Lessor's option, a breach shall be handled as follows:

- a) Lessor may declare this Lease terminated and enter upon the Premises or any part thereof, remove all persons therefrom, either with or without process of law, and repossess said Premises. In such event, Lessor shall retain for any

rent, damages or other sums that may be due hereunder any property belonging to Lessee and located on the Premises, and all Lessee's rights herein and to the Premises shall be forfeited.

- b) Lessor may reenter the Premises and may rent same upon such terms as are suitable to Lessor, all without releasing Lessee from liability hereunder. In such event, any monies collected by such leasing shall be applied first to the expense of restoring and placing the Premises in a rentable condition and next to the payment of the rent or any sum due Lessor hereunder, and Lessee shall remain liable for any deficiency.

XIII. INDEMNIFICATION. Lessee shall hold harmless and indemnify Lessor against all claims, damages, losses or expenses arising out of injury to persons or damage to property from any cause whatsoever in or about the Premises. This save harmless and indemnification clause is subject to the immunities, provisions and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq., as may be amended from time to time.

XIV. ASSIGNMENT AND SUBLEASE. Lessee shall not assign its rights under this Agreement nor sublet the Premises in whole or in part, without first obtaining the written consent of Lessor. If such written consent is obtained from Lessor, it shall not discharge Lessee, Lessee's heirs, executors, administrators, assigns and successors in interest from liability hereunder and shall not operate as a consent to further assignment or subletting.

XV. NONDISCRIMINATION PROVISIONS. Lessor, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that no person, on the grounds of race, color, sex, religion, national origin, age or disability, shall be excluded from participation in, denied benefits of, or be otherwise subjected to discrimination in the use of said Premises, or in the construction of any improvements on, over or under such land, and the furnishing of services thereon.

XVI. SUBORDINATE PROVISIONS. This Lease shall be subordinate to the provisions of any existing agreement between Lessor and the United States relative to the planning, development, operation and maintenance of the Premises, execution of which has been or may be required as a condition precedent to the acquisition by Lessor of the Premises or any portion thereof. The Premises are subject to, and this Lease shall be subject and subordinate to, the terms of that certain Patent No. 30-71-0042 from the United States of America to the County of Santa Fe dated 01 April 1971 and filed for record in Book 280, Page 605-607, Office of the County Clerk, Santa Fe County, New Mexico, wherein the Lessor agreed to hold title to said property upon certain terms and conditions which also provide that the United States may regain title after due notice and opportunity for a hearing.

XVII. INSPECTION OF PREMISES. Upon giving reasonable notice to Lessee, Lessor or its agents may enter upon the Premises during Lessee's regular business hours and have access to all buildings located thereon for the purpose of inspecting the condition thereof, or to make any improvements, alterations or additions that Lessor may elect to make, or to place thereon any signs that Lessor may desire, or

to exercise any right or power reserved to Lessor under the terms and provisions of this Lease Agreement.

XXVII. RELINQUISHMENT OF PREMISES. Lessee shall deliver the Premises peaceably and quietly in as good order and condition as the same now are, reasonable use and wear and tear excepted, to Lessor or its heirs, executors, administrators, assigns, successors in interest, agents or attorneys at the expiration of the term of this Lease or any extensions hereof.

XXIX. TAXES AND LICENSES. During the term hereof, Lessee shall pay all taxes, licenses, charges, fees or assessment levied upon personal property, fixtures or equipment placed by Lessee upon the Premises, of whatsoever kind or nature, incident to or arising out of the conduct of Lessee's business. Failure to have an applicable current license or permit is a breach of this Lease.

XX. RE-LEASE. At the expiration of the term of this Lease, Lessee may re-lease the Premises provided Lessor has determined to offer the Premises for the same uses as permitted herein, Lessee is not in default under this Lease, Lessee agrees to the terms offered by Lessor, and Lessee has bettered any offer to lease the Premises made by a third party.

XXI. HOLDING OVER. If Lessee enters upon the Premises after the termination or cancellation of this Lease or any extensions hereof for any purpose, the rent due Lessor for such entry shall be \$20.00 for each day or any part of a day. Nothing contained herein shall be construed as a grant to Lessee of the right to enter the Premises for any purpose after the termination or cancellation of this Lease without the prior written consent of Lessor.

XXII. BANKRUPTCY. Should the original Lessee or any subsequent Lessee or Lessee's heirs, executors, administrators, assigns or successors in interest make an assignment for the benefit of creditors and be adjudged bankrupt, either by voluntary or involuntary proceedings, or if otherwise a receiver should be appointed by any Court of competent jurisdiction for Lessee because of insolvency, the occurrence of any such event shall be deemed a breach of this Lease, and, in such event, Lessor shall have the option forthwith to terminate this Lease and to re-enter the Premises and take possession thereof, remove all persons therefrom, with or without due process of law, and to apply toward any rent, damage or other sums that may be due hereunder any property belonging to Lessee and located on the Premises, whereupon Lessee shall surrender peaceably the Premises to Lessor, and all of Lessee's rights hereunder in and to the Premises shall be deemed forfeited. In no event shall this Lease be deemed an asset of Lessee after adjudication of bankruptcy, the appointment of a receiver, or an assignment for the benefit of creditors.

XXIII. UTILITIES AND FEES. During the term of this Lease, Lessee shall promptly pay all water, garbage, sewage, electrical, gas, telephone and other utility charges incurred in connection with Lessee's use of the Premises and to save harmless Lessor therefrom.

XXIV. LEGAL FEES. Lessee shall pay reasonable costs, attorney's fees and expenses that may be made or incurred by Lessor in enforcing this Lease.

XXV. WAIVER. No employee or agent of Lessor has the power, right or authority to orally waive any of the terms, conditions or covenants hereof and no waiver by Lessor of any of the terms, conditions or covenants hereof shall be effective unless in writing and executed by Lessor. Lessor's waiver of Lessee's breach or default of any of the terms, conditions or covenants hereof shall not constitute or be construed as a waiver of any other or subsequent breach or default by Lessee. The failure of Lessor to enforce at any time any of the terms, conditions or covenants hereof or to exercise any option herein provided, or to require at any time performance by Lessee of any of the terms, conditions or covenants hereof shall not constitute or be construed to be a waiver of such terms, conditions or covenants, nor shall it affect the validity of this Lease or any part hereof, or Lessor's right to thereafter enforce each and every such term, condition and covenant.

XXVI. HAZARDOUS MATERIALS. Lessee shall not cause or permit any Hazardous Material to be brought upon or across, used, kept, stored, generated or disposed of in, under or upon the Premises, except that Lessor understands that medical waste will be generated on the Premises. Such medical waste generated on the Premises, including but not limited to hazardous medical waste, shall be handled, stored, and disposed of in accordance with all applicable federal, state, and local laws, ordinance, and licensing requests. Hazardous Material is hereby defined as any off-site medical or dental waste, oil, petroleum products, flammable explosives, PCBs, asbestos, formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated, or polluting materials, substances or wastes, including without limitation any "hazardous substance," "hazardous material," or "toxic substance" under any federal, state, or local laws, ordinances or regulations.

XXVII. SCOPE OF AGREEMENT. This Lease incorporates all the agreements, covenants and understandings between Lessor and Lessee concerning the subject matter hereof and all such agreements, covenants and understandings are merged into this written Lease. No prior agreement, covenant, or understanding between Lessor and Lessee shall be valid or enforceable unless expressly embodied in this Lease.

XXVIII. SUCCESSORS IN INTEREST. All the terms, conditions and covenants of this Lease and all amendments hereto shall extend to and bind the heirs, successors and assigns of Lessee and Lessor.

XXIX. RENEWAL. This Lease may be renewed by the parties based upon increased rent and other considerations agreed to by the parties. Renewal is not automatic and is subject to negotiation. Lessee may be asked to execute a new lease or an addendum to the Lease then in force.

XXX. TERMINATION. Lessor may terminate this Lease due to the non-availability of public funds, availability to be solely determined by the Lessor, by giving Lessee one hundred and eighty (180) days notice prior to the end of any fiscal year.

XXXI. INTERPRETATION OF LEASE AGREEMENT. Nothing in this Lease shall be construed or interpreted as limiting or waiving any rights of ownership enjoyed by Lessor in the Premises; or limiting or waiving Lessor's control over the

management, operation or maintenance of the Premises, except as specifically provided for in this Lease; or impairing the governmental rights and police powers of Lessor.

XXXII. PARAGRAPH HEADINGS. The paragraph headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Lease.

XXXIII. NOTICES.

- a) All notices, requests or other communications to Lessor shall be given by certified mail addressed to the following:

GENERAL SERVICES DEPARTMENT
VINCENT "CORKY" OJINAGA, DIRECTOR
SANTA FE COUNTY
P.O. BOX 276
SANTA FE, NEW MEXICO 87504-0276

- b) All notices, requests or other communications to Lessee shall be given by certified mail addressed to the following:

EXECUTIVE DIRECTOR
LA FAMILIA MEDICAL CENTER
1035 ALTO STREET
SANTA FE, NEW MEXICO 87502

XXXIV. GOVERNING LAW. This Lease shall be governed by New Mexico law. Any suit brought regarding this Lease or breach hereof shall be brought in the district court of Santa Fe County.

XXXV. LEASE AMENDMENT. This Lease may be amended only in writing after approval of the Lessee and the governing body of Lessor.

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

De Anza N. [Signature]
Executive Director
La Familia Medical Center - Date

8-18-99

[Signature] 8/31/99
Commission Chairperson - Date

85-0220875
Contractor Federal Tax Identification No.

Katherine Miller 8/19/99
Finance Director - Date

ATTEST:

Rebecca Buntline 8/31/99
County Clerk - Date

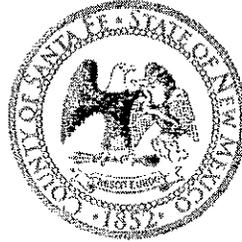
Approved as to legal form:

Dencia Brown 8/18/99
County Attorney - Date

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *December 23, 2016*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Procurement Manager*

VIA: *Katherine Miller, County Manager*
Rachel O'Connor, Community Services Department Director
Jeff Trujillo, Administration Services Department Director

ITEM AND ISSUE: *BCC Meeting January 10, 2017*

Approval of Amendment No. 2 to the Professional Service Agreement No. 2015-0188-CSD/MM Between Santa Fe County and Presbyterian Medical Services, Extending the Term of the Agreement an Additional Year and Increasing the Compensation an Additional \$100,000, Inclusive of NM GRT for a Total Agreement Amount of \$450,000, For The Operation of the Mobile Crisis Response Team, Granting the County Manager Authorization to Sign the Purchase Order. (Purchasing/Bill Taylor/Community Services/Patricia Boies).

ISSUE

Approval is requested for Amendment No. 2 to the Professional Service Agreement No. 2015-0188-CSD/MM between Santa Fe County and Presbyterian Medical Services for the operation of the Mobile Crisis Response Team, to extend the term, amend the scope of work and deliverables, and increase the amount of compensation an additional \$100,000 for a total contract amount of \$450,000, inclusive of NMGRT.

BACKGROUND

The Mobile Crisis Response Team is a significant project undertaken by the Community Services Department in furtherance of the *Santa Fe County Health Action Plan's* priority to reduce suicides, along with other behavioral health priorities of reducing alcohol abuse and drug abuse. The Mobile Crisis Response Team is dedicated to assisting first responders with people in behavioral health crisis and providing follow-up case management to connect them with appropriate resources.

Santa Fe County and Presbyterian Medical Services entered into Professional Service Agreement No. 2015-0188-CSD/MM to provide a Mobile Crisis Response Team, for a term beginning April 28, 2015 and ending April 28, 2016, for \$350,000, with the provision that the agreement may be extended for three additional years. Amendment No. 1 to the Professional Service Agreement extended the term to April 28, 2017. Amendment No. 2 extends the term to June 30, 2017.

The proposed Amendment No. 2 to the Professional Service Agreement amends the scope of work and increases the deliverables to require screening for social determinants of health, including housing, transportation, and food security; to develop policies and navigate people to appropriate services; and to increase the percentage of clients engaging in services during the six-month period following the crisis intervention. Of the total compensation of \$450,000 for this second amendment, \$350,000 will derive from Health Care Assistance Program funds and \$100,000 will derive from Health Administration funding.

In the near future, we would like to have Presbyterian Medical Services provide the Board of County Commissioners with a presentation of their work and the effectiveness of the Mobile Crisis Response Team.

RECOMMENDATION

Approval of Amendment No. 2 to the Professional Service Agreement No. 2015-0188-CSD/MM Between Santa Fe County and Presbyterian Medical Services, Extending the Term of the Agreement an Additional Year and Increasing the Compensation an Additional \$100,000, Inclusive of NM GRT for a Total Agreement Amount of \$450,000, For The Operation of the Mobile Crisis Response Team, Granting the County Manager Authorization to Sign the Purchase Order.

**AMENDMENT NO.2
TO PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND PRESBYTERIAN MEDICAL SERVICES**

THIS AMENDMENT is entered into this 1st day of December 2016, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision of the state of New Mexico, and **Presbyterian Medical Services**, PO Box 2267, Santa Fe, New Mexico 87501-2267 (hereinafter referred to as the "Contractor").

WHEREAS, the County and the Contractor entered into Agreement No. 2015-0188-CSD/MM (Agreement) dated April 28, 2015, to provide for the Contractor's implementation and operation of Mobile Crisis Response Team in Santa Fe County; and

WHEREAS, according to Article 15 (No Oral Modifications, Written Amendments Required) of the Agreement, amendments to the Agreement are required to be in writing and signed by the parties; and

WHEREAS, by Amendment No. 1 the Agreement was amended to extend the term to April 28, 2017 and increase the compensation payable to the Contractor by \$350,000.00 for a not-to-exceed sum of \$700,000.00; and

WHEREAS, by this Amendment No.2 the parties wish to amend the Agreement to increase the Contractor's the Scope of Services, extend the term of the Agreement to June 30, 2017 to align the term with the County's fiscal year, and increase by \$100,000.00 the compensation payable to the Contractor.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto mutually agree as follows:

I. Articles 1 (Scope of Work), 2. (Compensation and Invoicing), and 4. (Effective Date and Term) of the Agreement are deleted in their entirety and replaced with the following:

I. SCOPE OF WORK

The Contractor shall:

- A. Deliver immediate relief of distress in crisis situations and/or timely and accessible aid to people in crisis. Provide immediate stability to persons and assist them to return to their pre-crisis level of functioning.
- B. Link to a 24/7 toll-free hotline that provides general information, screening, referral and consultation to members of the community who call the 24/7 hotline.
- C. Provide adults and adolescents crisis services including assessment, intervention and stabilization by telephone or in person.

- D. Assist clients with increasing and maintaining their community tenure and their ability to recognize and deal with situations that may otherwise result in crises. Provide awareness to increase or improve their network of community and support, as well as their use of these support resources for crisis prevention.
- E. Provide a referral to, or arrange for, any additional mental health or substance abuse services which may be needed. Provide follow up services with other community programs for ongoing services ensuring that a beneficial linkage is made.
- F. Document in the quarterly status report, the process and outcome for each intervention and follow-up, including navigating the client into the behavioral health system and linking the client with a medical home for co-occurring health issues.
- G. Collaborate and communicate with all law enforcement, 911 dispatch, courts, Office of the Public Defender, behavioral health staff, hospitals and other community agencies. Establish system for sharing information and provide training and coordination with law enforcement, first responders and 911 dispatches.
- H. Provide community awareness of the Mobile Crisis service, with implementation of a county wide public awareness campaign, to include bilingual information, conventional print and magnets as well as social medial, radio, advertising the availability of thee crisis hotline 24/7, as well as the availability of a two member team of trained mobile behavioral health professionals to travel immediately to the person in crisis for assessment and on-site assistance.
- I. Provide experienced, qualified and trained staff that will meet the New Mexico Interagency Behavioral Health Service Requirements and Utilization Guidelines (HCPCS H2011 Appendix B).
- J. Provide services in accordance with the U.S. Department of Health and Human Services Practice Guidelines: Core Elements in responding to Mental Health Crisis (Appendix A), New Mexico Interagency Behavioral Health Service Requirements and Utilization Guidelines (Appendix B), and Santa Fe County Resolution No. 2014-47 (Appendix C).
- K. Collect and analyze data on the mobile crisis response team to document outcomes achieved, including but not limited to: response time to calls; percentage of suicide deaths averted; percentage of callers diverted from the emergency department; percentage of callers diverted from detention facilities; referrals made; compliance with referrals

Measurable Outcomes:

1. Achieving a 10% reduction in repeat callers to the first responders in the first year of the program following the baseline year fiscal year 2015 and an additional 5% reduction each year thereafter.
2. Successfully engaging in at 30% percent of the clients in service during the six month period since crisis intervention.
3. Reducing emergency room visits to CHRISTUS St. Vincent Regional Medical Center by 20% over a four-year period.
4. Decreasing EMT contacts by clients served in the first year of the project by 5% in the second year and an additional 5% thereafter.
5. Reducing the use of emergency services, health care costs and law enforcement cost by channeling people directly into appropriate and effective mental health and substance abuse treatment services. Comparing the cost of mobile crisis services to the cost of regular law enforcement response to a comparable mental health emergency to demonstrate cost savings.
6. Increasing the number of persons receiving crisis assessment and acute crisis stabilization services in non-hospital, non-jail settings.
7. Increasing the number of person receiving detoxification and temporary shelter services.
8. Increasing the number of person receiving outpatient treatment services in the local community regardless of ability to pay.
9. Increasing the number of person receiving post-crisis coordinated community services.
10. Decreasing the frequency of repeated incidents of acute mental illness crisis.
11. Increasing the number of persons receiving post-crisis appropriate substance abuse and mental health services while being held in jail for protective custody or mental health hold.

Deliverables:

1. A monthly detailed status report for all activities of the mobile crisis team described in Article 3. A. 1) (Compensation and Invoicing).
2. An annual report based on the above Nos. 1 through 11 (Measurable Outcomes) within 30 days of the expiration of the term of this Agreement.

2. COMPENSATION AND INVOICING

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) For services provided from April 28, 2015 to April 28, 2016, the Contractor will invoice the County monthly for a sum not-to-exceed \$29,166.66. The monthly invoices shall include a detailed status report for all activities of the mobile crisis response team include the following:
 - the number of calls served by the hotline;
 - the number of calls routed to the mobile crisis team from 911;
 - the number of clients who received crisis intervention on site;
 - the number of clients referred to appropriate behavioral health services;
 - the names of the behavioral health providers to which clients were referred, including the number referred to each provider;
 - the number of clients who met the definition of indigent in Santa Fe County served by Contractor;
 - the estimated number of clients who met the definition of indigent in Santa Fe County and served by other providers;
 - the source of payment, if any, by the clients served;
 - any and all training provided for first responders, 911 staff, and community agencies and groups, describing the type of training and the number and affiliation of people trained;
 - a detailed description of operational costs, including for hotline services and training.
- 2) The total compensation payable to the Contractor for the term of April 29, 2015 to April 29, 2016 shall not exceed \$350,000.00, inclusive of NM GRT.
 - a. Of the \$350,000.00, a sum not-to-exceed \$250,000.00 shall be available to reimburse Contractor for services provided to clients who met the eligibility criteria of the Health Care Assistance Program authorized by Santa Fe County Resolution 2014-47. Of the \$350,000.00 a sum not-to-exceed \$100,000.00 may be available to reimburse Contractor for services provided to client who do not meet the eligibility criteria for the Health Care Assistance Program.
- 3) By Amendment No. 1 extending the term of this Agreement from April 28, 2016 to April 28, 2017, the total compensation payable to the Contractor for this term shall not exceed \$350,000.00, inclusive of NM GRT. Of the \$350,000.00, a sum not-to-exceed \$250,000.00 is available to reimburse the Contractor for the services provided to clients who meet the criteria of the Health Care Assistance Program authorized by Santa Fe County Resolution 2014-47. A sum not-to-exceed \$100,000.00 may be available to reimburse the Contractor for services provided to clients who do not meet the eligibility criteria for the Santa Fe County Health Care Assistance Program. The total amount payable to the Contractor

under the term of this Agreement shall not exceed \$700,000.00, inclusive of NM GRT.

- 4) Pursuant to Amendment No. 2, for services provided from January 10, 2017 to June 30, 2017, Contractor will invoice the County quarterly for a sum not-to-exceed \$112,500.00. The quarterly invoices shall include a detailed status report for all activities listed in Article 1 (Scope of Work, Measureable Outcomes, and Deliverables) above, and shall include the following **Additional Services and Additional Deliverables**:

Additional Scope of Work

- a) Partner with Santa Fe County to identify gaps in health and social services and to align with other health and social service providers via standardized screening, tracking, and referral processes.
- b) Screen at-risk clients and navigate them to behavioral health and services and other resources including those that resolve the social determinants of health such as barriers to housing, transportation, home energy needs, food security, and freedom from interpersonal violence.
- c) Participate in County-led efforts to plan, identify and adopt shared information technology solutions for more effective and standardized patient navigation.
- d) Develop policies designed to assist clients resolve behavioral health risks exacerbated by the social determinants of health. Upon review and approval of these policies by the Community Services Department, a portion of this funding may be used for transportation, housing, food and behavioral health services.
- e) Participate with the Santa Fe County Community Services Department in exploring long-term, sustainable services for people with Behavioral Health needs, including Medicaid-reimbursement for services not currently reimbursed.

Additional Deliverables

- a) Participation with the County and other health and social service providers, in a County-led data collection process to help track and address social determinants of health and the outcomes of navigation services and activities. Continue the collaborative engagement with the County to address social determinants of health and specifically to help reduce the overall rate of suicide in Santa Fe County.
- b) Engagement of at least 300 at-risk residents in services designed to prevent suicide.
- c) Follow-up on referrals for at least three months to assure individuals have received or are receiving necessary services or if not, why not.

- d) In collaboration with the County and other Santa Fe County providers and practitioners, reduce the overall rate of suicide in Santa Fe County.
 - e) An annual report including a year-end summary of all the activities listed in Article 2.A.1) (Compensation and Invoicing) to be submitted within 30 days of the expiration of the term of this Agreement.
5. Pursuant to Amendment No. 2 that extends the term of this Agreement to June 30, 2017, the total compensation payable on a reimbursement basis to the Contractor for the performance of all Scope of Services and Deliverables provided during the term of January 10, 2017 to June 30, 2017 shall not exceed \$212,475.00, inclusive of NM GRT. No reimbursement will be made to Contractor for any services provided to clients who do not meet the eligibility criteria of the Healthcare Assistance Program.
 6. Of the \$262,500.00 sum, the Contractor may invoice up to \$100,000 for reimbursement of Contractor for providing resources to mitigate risks, and otherwise non-reimbursable social services for medically indigent Santa Fe County residents without which their social determinants of health would not be met, or services provided would not be effective; in all cases, *no funds shall be issued directly to Contractor's clients* and County funds paid pursuant to this Agreement may only be utilized by the Contractor after all other sources of revenue have been sought and exhausted.
 7. Value-Based Purchasing. A sum not-to-exceed \$45,000.00 shall be available to Contractor as a value-based purchasing incentive. The Contractor must show that by working in collaboration with the County and other Santa Fe County health providers and practitioners contributing to the reduction of the overall rate of suicide in Santa Fe County. This measurement will be performed on a yearly basis using the most current quarterly data provided by the New Mexico Death Data, Bureau of Vital Records and Health Statistics (BVRHS), of the New Mexico Department of Health. The determination of the value-based purchasing will take into consideration data showing a reduction or decrease in the age-adjusted suicide rate for Santa Fe County.
 8. The sum of \$800,000.00 for the term of this Agreement is a maximum and not a guarantee that the services to be provided by the Contractor under this Agreement will equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without reimbursement when the not-to-exceed sum is reached. The County will notify the Contractor when the payable reimbursements to the Contractor reach the not to exceed sum. In no event will the in excess of the not to exceed sum without this Agreement being amended.
 - B. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.
 - C. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

II. Article 4 (Effective Date and Term) is deleted in its entirety and replaced with the following:

4. EFFECTIVE DATE AND TERM

This Agreement is effective upon the last date of signature by the parties and the initial term shall be one year from such date, unless terminated pursuant to Article 5 (Termination) or Article 6 (Appropriations and Authorizations). Pursuant to Amendment No. 1 the term is extended from April 28, 2016, to April 28, 2017. By Amendment No. 2, the term of this Agreement is extended from April 28, 2016 to June 30, 2017. The County has the option to extend the term of this Agreement for a period not-to-exceed April 28, 2019. The County may exercise this option by providing written notice to the Contractor at least 60 days prior to the expiration of the term of the Agreement.

III. All other provisions of the Agreement not specifically amended or modified by Amendment No.1 and this Amendment No. 2, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment to the Agreement as of the date of last signature below.

SANTA FE COUNTY

_____, Chair
Board of County Commissioners of Santa Fe County

ATTESTATION:

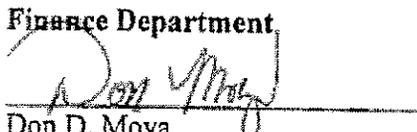
Geraldine Salazar
Santa Fe County Clerk

Approved as to form:



Gregory S. Shaffer
Santa Fe County Attorney

12-8-16
Date

Finance Department


Don D. Moya
Interim Finance Director

12-9-16
Date

CONTRACTOR:

(Signature)

Date

(Print Name)

(Print Title)

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

April 21, 2016

Larry Martinez, North Central Region Director
Presbyterian Medical Services
1409 Second Street
Santa Fe, New Mexico 87505

Re: Request to extend Professional Service Agreement No. 2015-0188-CSD/MM for 30 days

As you may be aware the current agreement between Santa Fe County and Presbyterian Medical Services to provide mobile crisis team response services for adults and adolescents expires on April 28, 2016.

Santa Fe County would like to request to extend Professional Services Agreement No. 2015-0188-CSD/MM for an additional 30 days on the same terms and conditions. In the meantime, Santa Fe County will prepare a formal Amendment to present to the Board of County Commissioners to extend the term of the Agreement for an additional year.

If this is an acceptable arrangement, kindly sign and date on the signature line below.

Thank you for your flexibility and your partnership!

Respectfully,

See Katherine Miller

Presbyterian Medical Services Approval Signature:

STEVEN C. HANSEN
PRESIDENT & CEO

**AMENDMENT NO. 1
TO AGREEMENT BETWEEN SANTA FE COUNTY
AND PRESBYTERIAN MEDICAL SERVICES**

THIS AMENDMENT is made and entered into as of this 10th day of May 2016, by and between **Santa Fe County**, hereinafter referred to as the "County," and **Presbyterian Medical Services**, hereinafter referred to as the "Contractor."

WHEREAS, the County and Contractor entered into Agreement No. 2015-0188-CSD/MM (Agreement) on April 28, 2015, to provide for Contractor's implementation of mobile crisis team response services for adults and adolescents; and

WHEREAS, Article 15 of the Agreement allows the Agreement to be amended by an instrument in writing signed by the parties; and

WHEREAS, the term of the Agreement is due to expire April 28, 2016; and has been extended for 30 days until this Amendment No. 1 is approved thereby extending the term for a full year from May 28, 2016 to April 28, 2017; and

WHEREAS, the County wishes to continue to benefit from the Contractor's services and wishes to extend the term of the Agreement from May 28, 2016 to April 28, 2017.

NOW THEREFORE, the parties agree to amend the Agreement as follows:

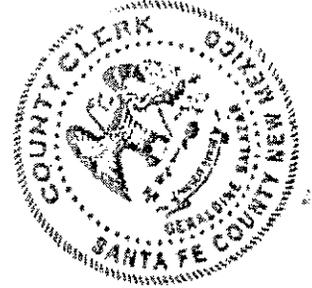
1. Article 3.A.2) (Compensation, Invoicing and Set-Off), is amended by inserting a subparagraph "b" to read:
 - b. By Amendment No. 1 the term of this Agreement is extended from May 28, 2016 to April 28, 2017. For the term of April 28, 2016 to April 28, 2017, the compensation payable to the Contractor is increased by three hundred fifty thousand dollars (\$350,000). Of the \$350,000 in compensation, two hundred fifty thousand dollars (\$250,000) shall be available to reimburse Contractor for services provided to clients **who meet** the criteria of the Santa Fe County Health Care Assistance Program (County Resolution 2014-47). Of the \$350,000 in compensation, a sum not to exceed one hundred thousand dollars (\$100,000) shall be available to reimburse Contractor for services provided to clients **who do not** meet the eligibility criteria for the Health Care Assistance Program. The total amount payable to the Contractor under this Agreement as amended, shall not exceed seven hundred thousand dollars (\$700,000), inclusive of New Mexico gross receipts tax.
2. Article 4 (Effective Date and Term) is amended by inserting a subparagraph "A" to read:
 - A. By Amendment No. 1 the term of this Agreement is extended from May 28, 2016 to April 28, 2017.

3. All provisions of the Agreement not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of last date of signature by the parties.

SANTA FE COUNTY

Miguel M. Chavez
Miguel M. Chavez
Santa Fe County Board of County Commissioners



ATTESTATION:

Geraldine Salazar
Geraldine Salazar
Santa Fe County Clerk

Approved as to form

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

4/25/16
Date

Finance Department

Carole H. Jaramillo
Carole H. Jaramillo
Santa Fe County Finance Director

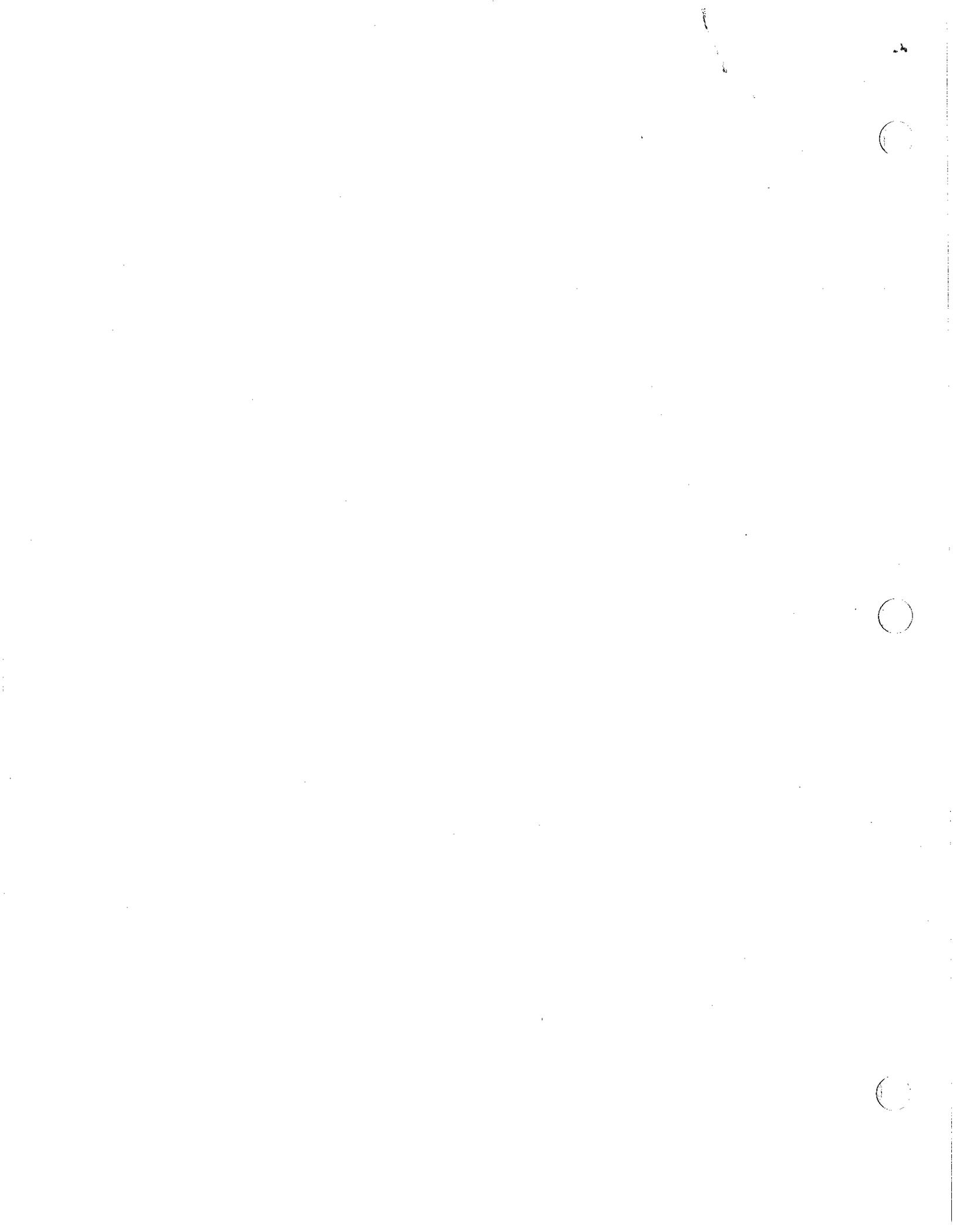
4/26/16
Date

CONTRACTOR:

Steven C. Hansen
Signature

5-2-16
Date

Steven C. Hansen CEO/President
Print name & title



**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND PRESBYTERIAN MEDICAL SERVICES
TO PROVIDE MOBILE CRISIS TEAM RESPONSE SERVICES
FOR ADULTS AND ADOLESCENTS**

THIS AGREEMENT is made and entered into this 28th day of April 2015, by and between **Santa Fe County**, hereinafter referred to as the "County" and **Presbyterian Medical Services**, whose principal place of business is located at PO Box 2267, Santa Fe, New Mexico 87504, hereinafter referred to as the "Contractor".

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited via a formal request for proposals, RFP No. 2015-0188-CSD/MM to provide Mobile Crisis Response Team Services for Adults and Adolescents; and

WHEREAS, based upon the evaluation criteria established within the request for proposals for the purposes of selecting the most qualified offeror, the County has determined the Contractor as the most responsive Offeror; and

WHEREAS, the County requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW, THEREFORE, it is agreed between the parties:

I. SCOPE OF WORK

The Mobile Crisis Response Team will target adults and adolescents throughout Santa Fe County who are experiencing a behavioral health crisis.

The Contractor shall:

- A. Deliver immediate relief of distress in crisis situations and/or timely and accessible aid to people in crisis. Provide immediate stability to persons and assist them to return to their pre-crisis level of functioning.
- B. Link to a 24/7 countywide toll free hotline that provides general information, screening, referral and consultation to members of the community who call the 24/7 hotline.
- C. Provide adults and adolescents crisis services to include assessment, intervention and stabilization by telephone or in person.
- D. Assist clients with increasing and maintaining their community tenure and their ability to recognize and deal with situations that may otherwise result in crises. Provide awareness to increase or improve their network of community and support, as well as their use of these support resources for crisis prevention.

- E. Provide a referral to or arrange for any additional mental health or substance abuse services which may be needed. Provide follow up services with other community programs for ongoing services, ensuring that a beneficial linkage is made.
- F. Document for the monthly status report the process and outcome for each intervention and follow-up, including navigating the client into the behavioral health system and linking the client with a medical home for co-occurring health issues.
- G. Collaborate and communicate with all law enforcement, 911 dispatch, courts, Office of the Public Defender, behavioral health staff, hospitals and other community agencies. Establish system for sharing information and provide training and coordination with law enforcement, first responders and 911 dispatches.
- H. Provide community awareness of the Mobile Crisis service, with implementation of a countywide public awareness campaign, to include bilingual information, conventional print and magnets as well as social media, radio; advertising the availability of the crisis hotline 24 hours a day, seven days a week, as well as the availability of a two-member team of trained mobile behavioral health professionals to travel immediately to the person in crisis for assessment and on-site assistance.
- I. Provide experienced, qualified and trained staff that will meet the New Mexico Interagency Behavioral Health Service Requirements and Utilization Guidelines (HCPCS H2011 Appendix B).
- J. Provide services in accordance with the U.S. Department of Health and Human Services Practice Guidelines: Core Elements in responding to Mental Health Crisis (Appendix A), New Mexico Interagency Behavioral Health Service Requirements and Utilization Guidelines (Appendix B), and Santa Fe County Resolution No. 2014-47 (Appendix C).
- K. Collect and analyze data on the mobile crisis response team to document outcomes achieved, including but not limited to: response time to calls; percentage of suicide deaths averted; percentage of callers diverted from the emergency department; percentage of callers diverted from detention facilities; referrals made; compliance with referrals.

Measureable Outcomes:

1. Achieving a ten percent reduction in repeat callers to the first responders in the first year of the program following the baseline year Fiscal Year 2015 and an additional five percent reduction each following year if the contract is renewed.
2. Successfully engaging at least 30 percent of clients in services during the six-month period since crisis intervention.

3. Reducing emergency room visits to CHRISTUS St Vincent Regional Medical Center by 20 percent over a four-year period, if the contract is renewed for that period.
4. Decreasing EMT contacts by clients served in the first year of the project by five percent in the second year and an additional five percent each subsequent year.
5. Reducing the use of emergency services, health care costs and law enforcement costs by channeling people directly into appropriate and effective mental health and substance abuse treatment services. Comparing the cost of mobile crisis services to the costs of regular law enforcement response to a comparable mental health emergency to demonstrate cost savings.
6. Increasing the number of persons receiving crisis assessment and acute crisis stabilization services in non-hospital, non-jail settings.
7. Increasing the number of persons receiving detoxification and temporary shelter services.
8. Increasing the number of persons receiving outpatient treatment services in the local community regardless of ability to pay.
9. Increasing the number of persons receiving post-crisis coordinated community services.
10. Decreasing the frequency of repeated incidents of acute mental illness crisis.
11. Increasing the number of persons receiving appropriate substance abuse and mental health services while being held in jail for protective custody or mental health hold.

Deliverables:

1. A monthly detailed status report for all activity of the mobile crisis team as indicated in Section 3. Compensation and Invoicing, paragraph A, subparagraph 1).
2. An annual report based on the above 1-11 Measurable Outcomes within (30) thirty days of the contract term.

2. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Work), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards stated herein and for the amount set forth in Section 3 (Compensation, Invoicing and Set-off), of this Agreement, and for no other cost, amount, fee or expense.

B. The County may from time to time request changes in the scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the

Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

3. COMPENSATION AND INVOICING

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) For services provided in conformity with this Agreement, Contractor will invoice the County monthly for a sum not to exceed **twenty nine thousand one hundred sixty-six dollars and sixty-six cents (\$29,166.66)** over a twelve (12) month period (a 1/12th drawdown over the term of this Agreement). Invoices shall include a monthly detailed status report for all activity of the mobile crisis team to include the following:
 - the number of clients served by the hotline;
 - the number of calls routed to the mobile crisis from 911;
 - the number of clients who received crisis intervention on site;
 - the number of clients referred to appropriate behavioral health services;
 - the names of the behavioral health providers to which clients were referred, including the number referred to each provider;
 - the number of clients who met the definition of indigent in Santa Fe County served by Contractor;
 - the estimated number of clients who met the definition of indigent in Santa Fe County and served by other providers;
 - the source of payment, if any, by the clients served;
 - any and all training provided for law enforcement, 911 staff, and first responders, describing the type of training and the number and affiliation of people trained; and
 - a detailed description of operational costs, including for hotline services and training.

- 2) The total amount of compensation payable to the Contractor over the initial term of this Agreement shall not exceed **three hundred fifty thousand dollars (\$350,000)**, inclusive of NM GRT.
 - a. Of the total compensation, a sum not to exceed **two hundred and fifty thousand dollars (\$250,000)** shall be

available to reimburse Contractor for services provided to clients who met the criteria of the Health Care Assistance Program authorized by Santa Fe County Resolution 2014-47. A sum not to exceed **one hundred thousand dollars (\$100,000)** may be available to reimburse Contractor for services provided to clients who do not meet the eligibility criteria for the Santa Fe County Healthcare Assistance Program.

- 3) The sum of three hundred fifty thousand dollars (\$350,000) for the initial term of this Agreement is a maximum and not a guarantee that the services to be provided by the Contractor under this Agreement will equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without reimbursement when the not to exceed sum is reached. The County will notify the Contractor when the payable reimbursements to the Contractor reach the not to exceed sum. In no event will the Contractor be reimbursed or compensated for services provided in excess of the not to exceed sum without this Agreement being amended.

B. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

C. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. EFFECTIVE DATE AND TERM

This Agreement shall become effective on the date first written above and shall terminate one (1) year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to renew on the same terms and conditions for an additional three (3) years. In no event shall this Agreement exceed a term of four (4) years.

5. 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 County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, 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 performed after the effective date of termination.

6. 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 County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. 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 Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. 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 advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor 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 County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

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

12. 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 County.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

14. CONFLICT OF INTEREST

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

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

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 or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NOTICE OF PENALTIES

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

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations, including any applicable provisions of the Health Insurance Portability and Accountability Act.

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this

Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. 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.

23. 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 County: Santa Fe County
 Office of the County Attorney
 102 Grant Avenue
 Santa Fe, New Mexico 87501

To the Contractor: Presbyterian Medical Services
PO Box 2267
Santa Fe, NM 87504-2267

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and is properly licensed by the New Mexico State to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

27. INSURANCE

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

B. General Liability Insurance, Including Automobile. The Contractor 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 County by the Contractor; 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 County of Santa Fe shall be a named additional insured on the policy.

C. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

28. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

29. NEW MEXICO TORT CLAIMS ACT

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

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

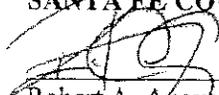
The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

31. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

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

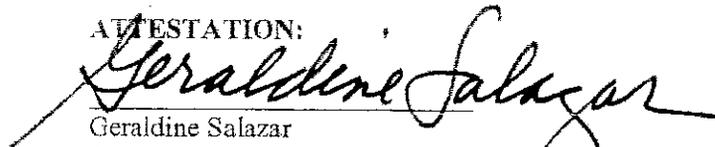
SANTA FE COUNTY:



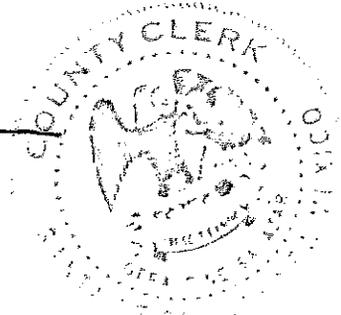
Robert A. Anaya, Chair
Santa Fe County Board of County Commissioners

4/28/15
Date

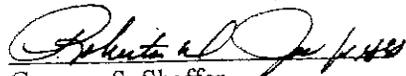
ATTESTATION:



Geraldine Salazar
Santa Fe County Clerk
4-28-2015

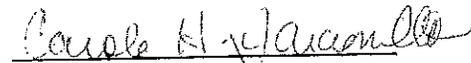


APPROVED AS TO FORM


Gregory S. Shaffer
Santa Fe County Attorney

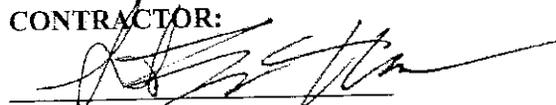
4/10/15
Date

FINANCE DEPARTMENT APPROVAL


Carole H. Jaramillo
Santa Fe County Finance Director

4/14/15
Date

CONTRACTOR:


(Signature)

4-24-15
Date

Steven C. Hansen CEO & President
(Print Name & Title)

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *December 23, 2016*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Purchasing Manager*

VIA: *Katherine Miller, County Manager*
Jeff Trujillo, Director of Legal and Administration
Pablo Sedillo III, Director of Public Safety

ITEM AND ISSUE: *BCC Meeting January 10, 2017*

REQUEST APPROVAL OF AMENDMENT NO. 2 TO AGREEMENT NO. 2015-0063-CORR/IC WITH KEEFE GROUP FOR COMMISSARY SERVICES AT THE ADULT DETENTION FACILITY AND THE YOUTH DEVELOPMENT PROGRAM.

SUMMARY:

The Purchasing Division requests approval of Amendment No. 2 to Agreement No. 2015-0063-CORR/IC with Keefe Group to provide commissary services to the inmates and residents at the Santa Fe County Adult Detention Facility (ADF) and Youth Development Program (YDP). Amendment No. extends the term of the Agreement from February 24, 2017 to February 24, 2018.

BACKGROUND:

Santa Fe County Corrections Department requires commissary services to operate and manage a comprehensive commissary program for the inmates and residents at the Adult Detention Facility and Youth Development Program. The Purchasing Division issued Request for Proposals (RFP) No. 2015-0063-CORR/IC "Commissary Services for the Adult Detention Facility and Youth Development Program" September 20, 2014. This solicitation was advertised in the Santa Fe New Mexican, the Albuquerque Journal and posted on the County's Website. Although all of the proponents were qualified firms the evaluation committee made its determination in the best interest of the County resulting in Keefe Group being selected for a contract award. The initial term of the

Agreement was for 2 years with the option for the County to extend the term on a year to year basis thereafter. Amendment No. 1 revised the Agreement to include New Mexico gross receipts tax on all sales (non-consumable and consumable items). Amendment No. 2 will extend the term of the Agreement an additional year to February 24, 2018.

ACTION REQUESTED:

The Purchasing Division requests approval of Amendment No. 2 to Agreement No. 2015-0063-CORR/IC with Keefe Group to extend the term of the Agreement from February 24, 2017 to February 24, 2018.

**AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT
WITH KEEFE GROUP TO
PROVIDE COMMISSARY SERVICES FOR THE
ADULT DETENTION FACILITY AND YOUTH DEVELOPMENT PROGRAM**

THIS AMENDMENT is made and entered into this _____ day of _____, 2017 by and between **Santa Fe County** (hereinafter "County"), a political subdivision of the State of New Mexico, and **Keefe Group**, whose business address is 13870 Corporate Woods Trail, Bridgeton, MO, 63044, hereinafter referred to as the "Contractor."

WHEREAS, by Agreement No. 2015-0063-CORR/IC dated February 24, 2015, the County and the Contractor entered into agreement for Contractor to provide commissary services for the County's ADF and YDP facilities; and

WHEREAS, the term of the Agreement is due to expire February 24, 2017 and the County wishes to extend the term for a one year term; and

WHEREAS, according to Section 14 (No Oral Modification; Written Amendments Required), all amendments and modifications to the Agreement are required to be in writing and signed by the parties; and

WHEREAS, Amendment No. 1 revised the Agreement to include New Mexico gross receipts tax on all sales (Non-Consumable and Consumable items); and

WHEREAS, by this Amendment No. 2, the County wishes to extend the term of the Agreement from February 24, 2017 to February 24, 2018.

NOW THEREFORE in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows.

1. Article 2. (Effective Date and Term) a new subparagraph (a) is inserted to read as follows:

a) By Amendment No. 2, the County notifies Contractor and exercised the County's option to extend the term of this Agreement for a one year term from February 24, 2017 to February 24, 2018, on the same terms and conditions as stated herein.

2. All other provisions of Agreement No. 2015-0063-CORR/IC not specifically amended or modified by Amendment No. or this Amendment No. 2, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 2 as of the date first written above.

SANTA FE COUNTY

Chair
Santa Fe County Board of County Commissioners

Date

ATTESTATION:

Geraldine Salazar,
Santa Fe County Clerk

Date

Approved as to form:

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

12-16-16
Date

Finance Department Approval:

Don D. Moya
Don D. Moya
Santa Fe County Finance Director

12/20/16
Date

CONTRACTOR:

Date

By: _____
(Print Name)

Its: _____
(Print Title)

**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT
WITH KEEFE GROUP TO
PROVIDE COMMISSARY SERVICES FOR THE
ADULT DETENTION FACILITY AND YOUTH DEVELOPMENT PROGRAM**

THIS AMENDMENT is made and entered into this 19 day of MAY, 2015 by and between **Santa Fe County** (hereinafter "County"), a political subdivision of the State of New Mexico, and **Keefe Group**, whose business address is 13870 Corporate Woods Trail, Bridgeton, MO, 63044, hereinafter referred to as the "Contractor."

WHEREAS, by Agreement No. 2015-0063-CORR/IC dated February 25, 2015, the County and the Contractor entered into agreement for Contractor to provide commissary services for the County's ADF and YDP facilities; and

WHEREAS, according to Section 14 (No Oral Modification; Written Amendments Required), all amendments and modifications to the Agreement are required to be in writing and signed by the parties; and

WHEREAS, the parties wish to amend Agreement No. 2015-0063-CORR/IC to revise the Agreement to include New Mexico gross receipts tax on all sales (Non-Consumable and Consumable items).

NOW THEREFORE in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows.

1. Section 3 (Compensation, Invoicing, and Payment) subpart B.1) is amended by deleting the subpart in its entirety and replace with:

1) Gross Commissary Sales (per SFC JM software)

LESS Phone Card Sales

LESS Postage Sales

LESS Gross Receipts Tax (currently 8.1875% within Santa Fe City limits and 6.8750% for the remainder of the County) on non-consumable and consumable sales.

NET commissary sales to which 20% rebate is applied

2. All other provisions of Agreement No. 2015-0063-CORR/IC not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment No. 1 as of the date first written above.

SANTA FE COUNTY

Katherine Miller
Katherine Miller
Santa Fe County Manager

Date 5-19-15

Approved as to form

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

Date 5-11-15

Finance Department

Carole H. Jaragallo
Carole H. Jaragallo
Santa Fe County Finance Director

Date 3/17/15

CONTRACTOR

[Signature]
Signature

Date 7/28/15

BAZ P/SM
Title

**SERVICES AGREEMENT BETWEEN SANTA FE COUNTY
AND KEEFE GROUP
TO PROVIDE COMMISSARY SERVICES FOR THE ADULT DETENTION FACILITY
AND YOUTH DEVELOPMENT PROGRAM**

THIS AGREEMENT is made and entered into as of this 24 day of February 2015, by and between Santa Fe County, hereinafter referred to as "County", a political subdivision of the State of New Mexico and Keefe Group located at 13870 Corporate Woods Trail, MO 63004-1267 hereinafter referred to as "Contractor".

WHEREAS, Santa Fe County's Corrections Department requires the services of an experienced and qualified firm to operate and manage a comprehensive commissary service program in an institutionalized setting, using personnel with experience providing commissary services in detention facilities for the Adult Detention Facility (ADF) and the Youth Development Program (YDP), located in Santa Fe County;

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, the County issued Request of Proposal No. 2015-0063-CORR/IC, for these services; and

WHEREAS, based on the evaluation criteria established within the request for proposals for determining the most qualified Offeror, the County has determined Contractor as the most responsive and highest rated Offeror; and

WHEREAS, the County desires to engage the Contractor to provide commissary services for Santa Fe County's ADF and YDP facilities, and the Contractor is willing to provide such services.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF WORK

- a. The Contractor shall manage the Santa Fe County Detention Center's Commissary Operations in a professional manner.
- b. The Contractor shall comply with all federal, state and local laws and regulations governing the management of a commissary in an institutional setting.
- c. The Contractor shall hire an on-site Commissary Director necessary for the performance of this Agreement. The Contractor agrees that no employees of the County will be hired by the Contractor without permission of the County for a period of six months after the termination of their employment with the County. The Contractor, in performing work required by this Agreement shall not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin or age, in violation of the federal state and local laws.
- d. Commissary orders will be delivered at least once per week. Contractor's personnel will deliver bagged orders to each inmate per an agreed upon schedule and in accordance with County's security requirements.

- e. Commissary products must be approved by the Facility Administrator or his designee. Products will include small food items, supplies, personal care items, and pre-paid phone cards. Glass and/or metal containers are not permitted.
 - f. Pre-paid phone cards shall be purchased by Contractor directly from the best available source with the approval of the Facility Administrator. Units are sold to inmates at face value plus an agreed upon handling fee.
 - g. Commissary items will be available for purchase by inmates housed at both the ADF and the YDP. Orders for YDP residents will be placed by YDP administrative staff directly with Contractor. Contractor will process the order, enter it into the Juvenile Detention Commissary account in the SFC Jail Management software and deliver it to YDP administrative staff. Contractor will provide YDP with the total dollar amount of the processed order. YDP staff will verify the accuracy of items received, and reconcile any discrepancies in the order with Contractor. Commissary items may be purchased for the benefit of ADF and YDP residents only.
 - h. Product prices (inmate prices) must be approved by the Facility Administrator or his designee, prior to the inclusion in the Jail Management (JM) inventory system. The Contractor will provide an initial price listing of the commissary items to be offered to inmates, to the Facility Administrator. The listing should detail the Contractor's cost of each item, inclusive of GRT, and the sales markup on each item. Inmate prices will be comparable with prices charged at other detention centers and correctional institutions operating in New Mexico. Any item additions, or changes to inmate prices, must also be approved, as above. Proposed price changes, or additions of new items to the initial inventory, shall be documented by the Contractor, per the Facility Administrator's specification, when submitted for approval. Documentation of the approved price change, or item addition, shall be forwarded to designated Santa Fe County Finance staff to be used for auditing purposes. Inmate price changes, and item additions, shall only be entered into the JM inventory software on the 1st of any month, prior to processing of any inmate orders on that day. If, for any reason, a change or addition is processed on a day other than the 1st of the month, SFC Finance staff will be notified.
 - i. All food products must be properly labeled. Only fresh and legal products may be sold. Items found to be defective or not meeting specifications will be picked up and replaced by the Contractor.
 - j. The County provides the Contractor with the necessary space at the Adult Detention Facility for the operation of the Commissary and reasonable security for the Contractor's personnel at no cost to the Contractor.
 - k. Inmate accounts, against which commissary purchases are charged, are maintained by the Facility in its Jail Management software. The Contractor will be required to use this computer software to record inmate commissary purchases. Contractor's staff will be trained in the proper use of the Jail Management software for entering of commissary orders. Contractor's staff will be given access to, and training in, the production of system reports related to commissary functions.
- All security policies and procedures established for the ADF will be strictly followed.

The County reserves the right to enforce existing security policies or establish new policies as necessary to maintain the safe operation of the ADF. Current security policies include a requirement that the County Sheriff's Office must conduct background checks on all commissary personnel prior to granting them access to the County's detention facilities.

m. OPTIONAL SERVICES

Kiosks

The Contractor will provide a pricing option to install kiosk devices that are compatible or can interface with the Jail Management software. The pricing option should contain the price of the contract with and without the Kiosk so the Corrections director can make a decision based upon financial viability. The Kiosk should provide the following:

Kiosks will be installed in the following locations at the ADF:

- Building A – all four units
- Building B – all four units
- Building C – all four units
- Building D – all four units
- Main lobby entrance
- Booking
- Medical

Kiosks must interface with the Jail Management software.

If additional cabling is required the installation and cost shall be the sole responsibility of the Contractor.

Kiosks must have the capability to display to the user all facility Inmate Rules and Regulations.

All hardware, software, maintenance and replacement of any and all parts of the Kiosk system will be the sole responsibility of the Contractor (at no cost to Santa Fe County).

Inmates must be able to place Commissary orders and check account balances on the Kiosk system.

Any damage to the kiosks, whether inmate or public caused, intentional or unintentional, will be repaired in a timely manner by the Contractor at no cost to Santa Fe County.

On-Line Commissary

Any web-based Commissary program shall be capable of selling all approved products for the Santa Fe County Detention Center.

All items available for purchase through the on-line system must be approved by the

Santa Fe County Facility Administrator.

Contractor will absorb all fees associated with on-line payment via credit or debit cards.

All on-line transactions are solely between the Contractor and the outside consumer. Santa Fe County, nor its Jail Management software will be involved in any on-line transactions. All proceeds from on-line sales are to be remitted directly to Contractor. On-line sales are not subject to the rebate of and should not be included in commissary sales invoiced to Santa Fe County.

n. SECURITY REQUIREMENTS

The Contractor shall abide by all security requirements as specified in the SECURITY REQUIREMENTS attached hereto as Exhibit "A".

2. EFFECTIVE DATE; DATE OF COMMENCEMENT AND COMPLETION; TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate two (2) years later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for a period of two (2) additional years, on a year-to-year basis. The County may exercise this option by submitting a written notice to Contractor that the Agreement will be extended an additional year. The notice must be submitted to Contractor at least sixty (60) days prior to expiration of the term.

3. COMPENSATION; INVOICING AND PAYMENT

A. In no event shall the total compensation paid to Contractor by County under this Agreement exceed One Million Two Hundred Thousand Dollars (\$1,200,000.00) exclusive of New Mexico gross receipts tax.

B. Contractor will provide the County a Twenty percent (20%) rebate, based on total monthly commissary sales. This rebate will be disbursed from Inmate Trust funds to the SFC Inmate Welfare Fund where it may be used for the benefit of inmates. The rebate will reduce the amount paid to the Contractor for services, and will be computed as follows:

1) Gross Commissary Sales (per SFC JM software)

LESS Phone Card Sales

LESS Postage Sales

LESS Gross Receipts Tax (currently 8.1875% within Santa Fe city limits and 6.8750% for the remainder of the County) on Non-consumable Sales

NET Commissary Sales to which 20 % Rebate is applied

C. Contractor will submit an itemized invoice monthly, on paper or electronically, to designated SFC staff (Finance), which clearly shows the computation of the SFC rebate and the net amount payable to the Contractor for commissary services. The invoice should be computed as follows:

1) Gross Commissary Sales (per SFC JM software)

- 2) LESS SFC Rebate (as computed above)
 - 3) Amount Payable to Contractor (invoice amount)
- D. Contractor's invoices will be audited for accuracy of sales information, and computations, by Santa Fe County Finance Department. The audit will include a comparison between (a) total charges to inmate accounts for commissary purchases, and (b) total sales from inventory (by item) per reports generated from the JM software. Any adjustments made to the invoice as a result of this audit will be communicated to the Contractor's designated staff by the County. In no case, will the total of (a) the invoice payment to the Contractor, and (b) the "rebate" to the SFC Inmate Welfare Fund, exceed total inmate account charges for commissary purchases.
- E. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought.
- F. Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. The County shall issue payment of all undisputed amounts within twenty-one (21) days after the County receives an undisputed request for payment from the Contractor. In the event the County fails to tender payment within twenty (21) days after receipt of an undisputed request for payment, the County shall pay interest to the Contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent (1.5%) of the undisputed amount per month or fraction of a month until the payment is issued.
- G. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. ADDITIONAL SERVICES

- A. The parties agree that all work and services set forth in Section 1 (Scope of Work) of this Agreement, shall be completed in full, to the satisfaction of the County
- B. The County may from time-to-time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in a written amendment to this Agreement.

5. 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 ten (10) 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 County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than thirty (30) days from the Contractor's receipt of the notice.

6. 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 County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. 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 Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents are independent contractors and not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. 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 advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

- A. Contractor shall be wholly responsible for the entire performance of the work whether or not subcontractors are used. The County will make payments directly to the Contractor. Contractor is wholly responsible for making any and all payments to its subcontractors in conformity with the Prompt Payment Act, NMSA 1978, § 57-28-5.
- B. Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted

subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. CONTRACTOR AND CONTRACTOR'S PERSONNEL OR SUBCONTRACTORS

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. The Contractor 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 County and (ii) shall be fully licensed and qualified to perform such work or services.
- C. Contractor shall not employ any employees, personnel, or subcontractors who have not completed a County-approved security clearance or background check for the completion of the work under this Agreement. Any such employees, personnel or subcontractors that Contractor may employ after the effective date of this Agreement shall not begin any work until the County provides clearance or a background check is completed for that employee or subcontractor.

11. RELEASE

Upon the County's issuance of the final payment to Contractor or any termination that may occur earlier than the termination date of this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. 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 County.

13. CONFLICT OF INTEREST

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

14. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

15. ENTIRE AGREEMENT; INTEGRATION

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 or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

16. NOTICE OF PENALTIES

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

17. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

- A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

18. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.
- B. Contractor shall comply with the requirements of Santa Fe County Ordinance No. 2014-1 (Establishing a Living Wage).
- C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the state district court of New Mexico, located in Santa Fe County.

19. RECORDS AND INSPECTIONS

- A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of three (3) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

- B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of three (3) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

20. INDEMNIFICATION

- A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.
- B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.
- C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

21. 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.

22. 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 County: Santa Fe County Manager
102 Grant Ave.
Santa Fe, NM 87504

To the Contractor: Keefe Group
13370 Corporate Woods Trail

Bridgeton, MO 63044-1267

23. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

- A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.
- B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.
- C. Contractor is legally registered and licensed to operate as a business in New Mexico to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

24. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

25. LIMITATION OF LIABILITY

In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

26. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

27. INSURANCE

- 1. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- 2. General Liability Insurance, Including Automobile. The Contractor 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 \$1,050,000.00 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 County by the Contractor; 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 County of Santa Fe shall be a named additional insured on the policy.
- 3. Workers' Compensation Insurance. The Contractor shall comply with the provisions of

the Workers' Compensation Act.

28. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

29. NEW MEXICO TORT CLAIMS ACT

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

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

31. SURVIVAL

The provisions of following Sections shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; LIMITATION OF LIABILITY; NEW MEXICO TORT CLAIMS ACT; NO THIRD-PARTY BENEFICIARIES; AND SURVIVAL.

32. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS, if applicable

The Contractor hereby irrevocably appoints CT Corporation System, located at 123 East Marcy, Santa Fe, New Mexico 87501, a New Mexico company as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the State of New Mexico.

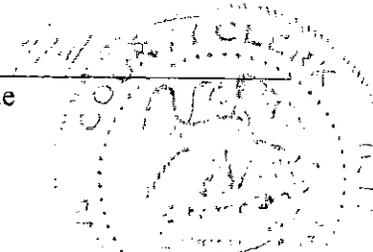
IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

SANTA FE COUNTY

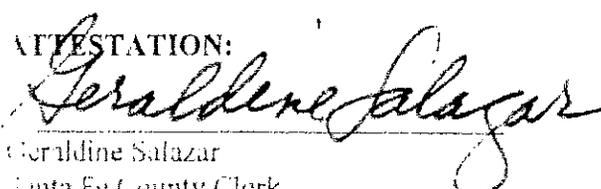


Robért A. Anaya, Chair
Santa Fe County Board of Commissioners

Date



ATTESTATION:



Geraldine Salazar
Santa Fe County Clerk

Date

2-24-2015

APPROVED AS TO FORM:

Gregory S. Shaffer
Gregory S. Shaffer
County Attorney

2-10-15
Date

FINANCE DEPARTMENT:

Teresa C. Martinez
Teresa C. Martinez
Finance Director

2/10/2015
Date

CONTRACTOR:

Kevin Pucibelli
Signature
KEVIN PUCIBELLI
Print Name

2/17/15
Date
EXEL VP/EM
Print Title

EXHIBIT A

SECURITY REQUIREMENTS

A. SECURITY

All employees of the Contractor shall be obligated to adhere to the policies and procedures of the Santa Fe County Adult Detention Facility and Youth Development Program. The Contractor shall provide to the facility Chief of Security a complete copy of the Contractor's policies and procedures regarding SFCADF and SFCYDP and general operation. These policies and procedures shall be submitted within thirty (30) days from assuming commissary operations.

1. Search of the Contractor's Vehicles and Staff

The Contractor will be performing work in a detention facility and shall therefore be subject to the rules, regulations, directives and bulletins of the facility. Under certain circumstances, the Contractor's staff and vehicles may be subject to search while on the premises. The Contractor shall be responsible for informing the Contractor's staff on the possibility of such searches, and shall inform staff of the consequences of trafficking in contraband, drugs or other illegal activities while on the premises.

2. Access To and From Facility, Inmate/Resident Contact

The Contractor and staff shall utilize designated exits and entries into any part of the premises and shall be required to sign in and out and shall be required to wear such identification badges and uniforms as Santa Fe County deems necessary while on the premises.

The Contractor's employees may not bring visitors into the premises. No visitors will be allowed without the permission from the Facility Administrator of the premises or the County Corrections Department Director.

Santa Fe County reserves the right to restrict access to the premises or require immediate removal of any person(s) without prior notification.

The Contractor's employees shall restrict social contact with inmate/residents or inmates'/residents' families while on the premises or in the community.

B. ACCESS TO KEYS

1. Key Control

The Contractor is responsible for control of keys obtained from Santa Fe County and its facility. The Contractor is also responsible for the security of those areas for which and when the Contractor's representatives use keys.

The Contractor shall be responsible for immediately reporting to the Facility Administrator of the premises all the facts relating to losses incurred as a result of

break-ins, vandalism, for any other similar occurrences to areas of the Santa Fe County facility that Contractor has been given access to.

A full set of all keys used by Contractor for any keyed lock installed in the Santa Fe County facility by the Contractor will be provided to the Facility Administrator of the premises or the Corrections Department Director.

2. Replacement of Keys and Lock Cylinders

The Contractor shall be responsible for replacement of lost keys and the cost of re-keying and replacement of lock cylinders required as a result of loss of keys by the Contractor or its employees.

C. RESIDENT LABOR

1. In General

Each facility shall provide resident laborers to assist in commissary sales service, and other activities. The Contractor shall determine what can be appropriately handled by resident laborers, except during lockdown, strikes or other emergencies or situations deemed inappropriate by the Administrator of the premises. All inmates utilized by the Contractor shall receive a minimum of two (2) hours training and certification in food handling prior to being assigned any work in the commissary. Additionally, at no time will resident labor be allowed to have sole responsibility in the preparation of meals, however, resident labor can assist in its preparation. The Contractor shall be responsible for documenting on specified forms and notifying security personnel of any rule violations by residents working in the food service facility. The security personnel shall be responsible for taking the necessary steps for disciplinary action, where appropriate. The Contractor shall have the right to request the facility's shift supervisor to remove resident laborers from assignment to food service for reasonable cause. The number of resident laborers utilized shall be reasonable and mutually agreed upon by Santa Fe County and the Contractor.

The Contractor agrees that in the event it is unsuccessful in using resident labor, the Contractor may not assert any inability to perform the contract on the basis, nor may the Contractor allege breach against Santa Fe County for Contractor's failure in that regard. The County makes no guarantee concerning the qualifications and/or abilities or the number of residents to be provided to the Contractor.

2. Training and Orientation of Employees

The Contractor shall ensure that all Contractor staff is trained regarding the policies and procedures, rules and regulations of the premises of Santa Fe County.

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *December 23, 2016*

TO: *Board of County Commissioners*

FROM: *Bill Taylor, Purchasing Manager*

VIA: *Katherine Miller, County Manager*
Pablo Sedillo, Director of Public Safety

ITEM AND ISSUE: *BCC Meeting January 10, 2017*

Request approval of Amendment No. 2 to Agreement No. 2015-0353-CORR/TRV between Santa Fe County and Diamond Pharmacy Services to increase compensation in the amount of \$165,000 (inclusive of GRT) for Pharmaceutical Supplies and Services for the Corrections Department and authorizing the County Manager to sign the purchase order. (Bill Taylor, Purchasing Division)

SUMMARY:

The Purchasing Division requests approval of Amendment No. 2 to Agreement No. 2015-0353-CORR/TRV with Diamond Pharmacy Services to increase compensation to the Contractor by \$165,000 for a not to exceed amount of \$415,000.00 inclusive of GRT for pharmaceutical supplies and services.

BACKGROUND:

Santa Fe County Corrections Department is committed to providing quality and professional services to its prisoners and employees and seeks to improve public safety by management of both male and female prisoners by providing medical care and opportunities for correctional rehabilitation within a supervised and secure setting, while assuring the safety of the public, the staff and the prisoners

The Purchasing Division issued Request for Proposals (RFP) No. 2015-0353-CORR/TRV "Pharmaceutical Supplies and Services" August 7, 2015. In December, 2015 the County entered

into an Agreement with Diamond Pharmacy Services. The contract was originally signed by the County Manager because the total amount budgeted for this contract by the Corrections Department was below her signature authority. Amendment No. 1 extended the term of the Agreement an additional year and increased compensation for a not to exceed amount of \$250,000 inclusive of GRT. The Corrections Department would like to increase the total compensation by \$165,000 for a not to exceed amount of \$415,000.00 inclusive of GRT.

ACTION REQUESTED:

The Purchasing Division requests approval of Amendment No. 2 to Agreement No. 2015-0353-CORR/TRV with Diamond Pharmacy Services to increase compensation payable to the Contractor for a not to exceed amount of \$415,000.00 inclusive of GRT. The Purchasing Division also requests signature authority for the County Manager to execute the purchase order.

**AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT
WITH DIAMOND PHARMACY SERVICES**

THIS AMENDMENT is made and entered into this _____ day of _____, 2017 by and between **Santa Fe County** (hereinafter "County"), a political subdivision of the State of New Mexico, and **Diamond Drugs Inc. dba Diamond Pharmacy Services**, whose principal address is 645 Kolter Drive, Indiana, PA 15701-3570 hereinafter referred to as the "Contractor."

WHEREAS, the County and the Contractor entered into Agreement No. 2015-0353-CORR/TRV dated December 3, 2015, to provide for Contractor's provision of pharmaceutical supplies and services for the Santa Fe County Corrections Department; and

WHEREAS, according to Section 15 (No Oral Modification; Written Amendments Required), all amendments and modifications to the Agreement are required to be in writing and signed by the parties; and

WHEREAS, by Amendment No. 1 the Agreement was amended to extend the term from December 3, 2016 to December 3, 2017 and increased compensation payable to the Contractor by \$25,000.00 for a not to exceed amount of \$250,000.00; and

WHEREAS, the parties wish to amend Agreement No. 2015-0353-CORR/TRV to increase compensation payable to the Contractor by \$165,000.00 for a not to exceed amount of \$415,000.00 inclusive of New Mexico gross receipts tax.

NOW THEREFORE in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. Section 3 (Compensation, Invoicing and Set-Off), subparagraph A.2. a new subparagraph b. is inserted to read as follows:
 - b. Pursuant to Amendment No. 1 to this Agreement, the total amount payable to the Contractor under this Agreement shall not exceed \$415,000.00, inclusive of NM GRT.
2. All other provisions of Agreement No. 2015-0353-CORR/TRV not specifically amended or modified by Amendment No. 1 or this Amendment No. 2 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 2 as of the date of the last signature below.

SANTA FE COUNTY:

Santa Fe County Board of County Commissioners

Date

ATTESTATION:

Geraldine Salazar,
Santa Fe County Clerk

Date

Approved as to form:

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

12-7-14

Date

Finance Department Approval:

Don D. Moya
Don D. Moya
Santa Fe County Finance Director

12-9-16

Date

CONTRACTOR:

Date

By: _____
(Print Name)

Its: _____
(Print Title)

**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT
WITH DIAMOND PHARMACY SERVICES**

THIS AMENDMENT is made and entered into this 1st day of December, 2016 by and between **Santa Fe County** (hereinafter "County"), a political subdivision of the State of New Mexico, and **Diamond Drugs Inc. dba Diamond Pharmacy Services**, whose principal address is 645 Kolter Drive, Indiana, PA 15701-3570 hereinafter referred to as the "Contractor."

WHEREAS, the County and Contractor entered into Agreement No. 2015-0353-CORR/TRV (the Agreement), dated December 3, 2015, to provide for the Contractor's provision of pharmaceutical supplies and services for the Santa Fe County Corrections Department; and

WHEREAS, the term of the Agreement is due to expire December 3, 2016 and the County wishes to benefit from Contractor's services for another year and the Contractor is willing to render such services; and

WHEREAS, according to Section 15 (No Oral Modification; Written Amendments Required), all amendments and modifications to the Agreement are required to be in writing and signed by the parties; and

WHEREAS, the parties wish to amend the Agreement to extend the term of the Agreement through December 3, 2017 and increase compensation payable to the Contractor by a sum of \$25,000.00, for a contract sum of \$250,000.00, inclusive of New Mexico gross receipts tax.

NOW THEREFORE in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree to amend the Agreement as follows:

1. Section 3 (Compensation, Invoicing and Set-Off), subparagraph 3), insert a new subpart "(a)" to read:
 - a. By Amendment No. 1 to this Agreement extending the term to December 3, 2017, the compensation payable to the Contractor is increased by \$25,000.00. The total amount payable to the Contractor for the term of this Agreement shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00), inclusive of New Mexico Gross Receipts Tax.
2. Section 4 (Effective Date and Term) is amended by inserting a subparagraph "A" to read as follows:
 - A. By Amendment No. 1 to this Agreement, the term of this Agreement is extended from December 3, 2016 to December 3, 2017.

3. All other provisions of the Agreement not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 as of the date of the last signature below.

SANTA FE COUNTY

[Signature]
Katherine Miller
Santa Fe County Manager

Date 1/1/16

Approved as to form

[Signature]
Gregory S. Shaffar
Santa Fe County Attorney

Date 11-28-16

Finance Department

[Signature]
Don D. Moya
Interim Finance Director

Date 12-1-2016

CONTRACTOR

Date _____

Signature _____

Title _____

3. All other provisions of the Agreement not specifically amended or modified by this Amendment No. 1 shall remain in full force and effect.

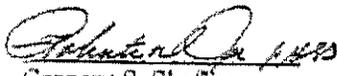
IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 as of the date of the last signature below.

SANTA FE COUNTY

Katherine Miller
Santa Fe County Manager

Date _____

Approved as to form



Gregory S. Shaffer
Santa Fe County Attorney

Date 11-23-16

Finance Department

Don D. Moya
Interim Finance Director

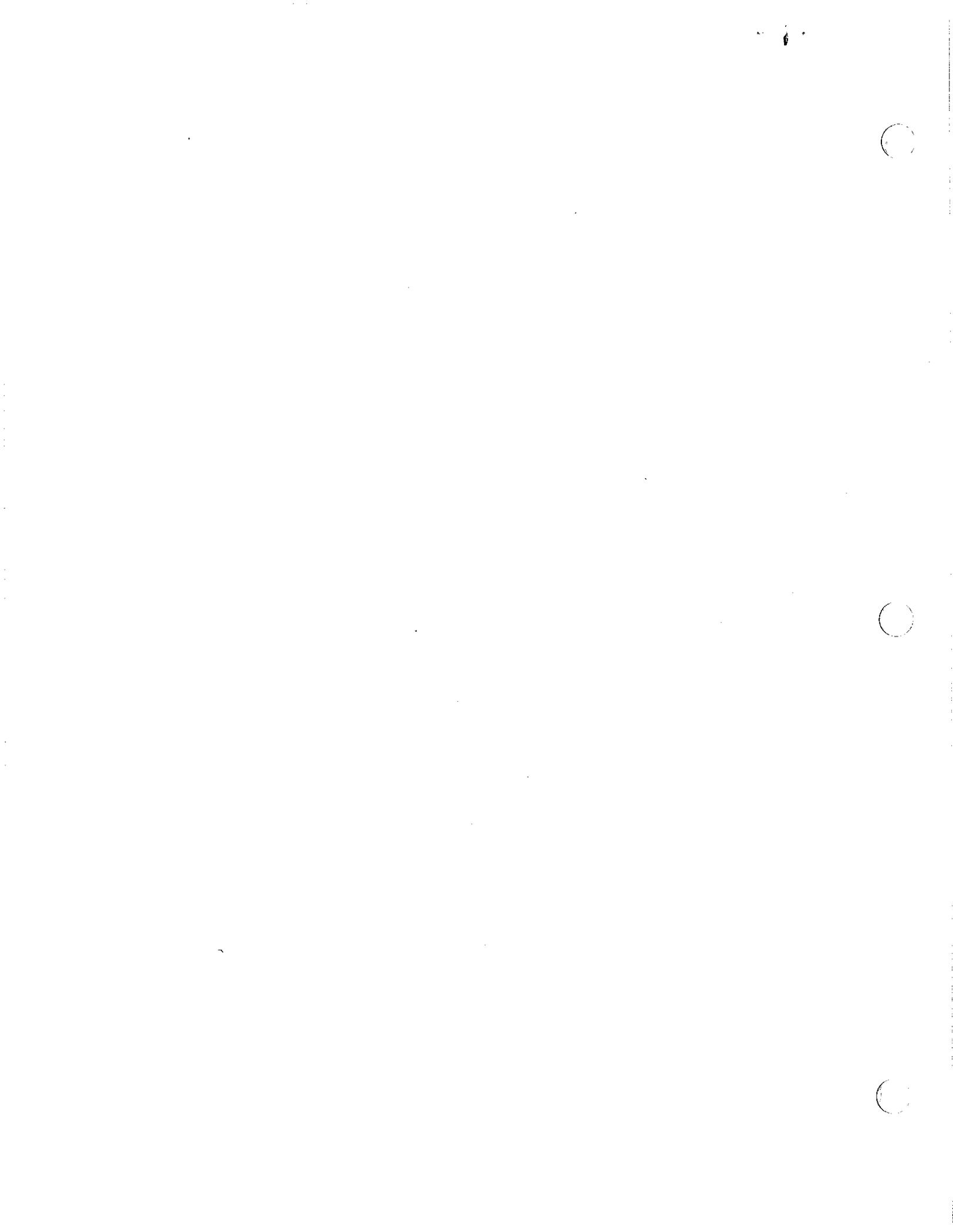
Date _____

CONTRACTOR



Signature
Chief Operating Officer
Title

Date 12/1/2016



**PROFESSIONAL SERVICE AGREEMENT
BETWEEN SANTA FE COUNTY AND
DIAMOND PHARMACY SERVICES**

THIS AGREEMENT is made and entered into this 3 day of December 2015, by and between **SANTA FE COUNTY**, hereinafter referred to as the "County" and **DIAMOND DRUGS INC. dba DIAMOND PHARMACY SERVICES**, whose principal address is **645 Kolter Drive Indiana, PA 15701-3570** hereinafter referred to as the "Contractor".

WHEREAS, the Santa Fe County Corrections Department is committed to providing quality and professional services to its prisoners and employees and seeks to improve public safety by management of both male and female prisoners by providing medical care and opportunities for correctional rehabilitation within a supervised and secure setting, while assuring the safety of the public, the staff and the prisoners; and

WHEREAS, the Contractor is a licensed and accredited institutional pharmaceutical supply and services organization as required by the RFP that can provide cost-effective services custom made for the Santa Fe County Corrections Department; and

WHEREAS, the County requires the services of the Contractor, and the Contractor is willing to provide these services and both parties wish to enter into this Agreement; and

WHEREAS, pursuant to Section 13-1-112 NMSA 1978, the County issued Request for Proposal (RFP) No. 2015-0353-CORR/TRV for these services; and

WHEREAS, the County requires the services of the Contractor and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW, THEREFORE, it is agreed between the parties:

1. SCOPE OF WORK

The Contractor shall provide, without limitation, the following services.

The Santa Fe County Corrections Department is committed to providing quality and professional services to its prisoners, residents and employees and seeks to improve public safety by management of both male and female prisoners by providing medical care and opportunities for correctional rehabilitation within a supervised and secure setting, while assuring the safety of the public, the staff and the prisoners.

- A. Fill and deliver prescriptions. The Contractor will fill all medications daily, Monday through Saturday. All orders faxed to the Contractor by 3:00 PM (Mountain Time) Monday through Friday will be filled and delivered the next day. All orders faxed before 10:00 AM (Mountain Time) on Saturday will be filled and delivered Monday. Therefore, delivery will be available six (6) days per week to the County Corrections Facilities.

- B. Holidays. The Contractor will be closed on New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving and Christmas Day. The Contractor will provide written notice to the County seven (7) days in advance of any changes in the schedule for ordering or delivery due to these holidays.
- C. Emergency Service/Release Medications. The Contractor will contract with a local pharmacy to provide emergency/release medications that cannot be received by the normal delivery process and will pay the pharmacy monthly. The cost of the emergency/release pharmacy bill will be added to the monthly statement of drug costs. The Contractor will bill the County the same amount as billed by the local pharmacy.
- D. Dispensing System. The Contractor will dispense most medications utilizing a "blister card" medication packaging system. The Contractor shall dispense oral tablets and capsule medications in quantities requested by the County depending on the frequency of the dosing and the needs of the County Correction Facilities.
- E. Controlled Substances. The Contractor agrees to provide all prescribed controlled substances in blister cards of 30 doses or as otherwise ordered for easy accountability.
- F. Intravenous Fluids. The Contractor will provide all requested intravenous solutions and related administration sets.
- G. Medical Carts. The Contractor shall provide, maintain and replace, as necessary, medical carts as determined by the County. Upon termination or completion of the contract the medical carts will be returned to the Contractor.
- H. Generic Medications. The Contractor shall dispense all Medications generically unless there is no generic substitute. All generic medications will be A or AB rated by the FDA.
- I. The Contractor shall provide (loan) a fax machine at each County Correction Facility for the transmission of physician's orders to the pharmacy. The Contractor shall make available an "800" number to each County Correction Facility for toll-free fax and telephone communications; and/or provide on-line opportunities for on-line medication ordering and communication.
- J. Reports. The Contractor will provide the County with monthly reports on pharmaceutical usage. The County will work with the Contractor to develop acceptable format and content for these reports.
- K. Medication Administration Records (MAR's). The Contractor will provide the County with electronic order entry, electronic allergy/drug interactions and must be able to interface into an electronic health record of the County's choice.

- L. The Contractor shall provide annual credentialing information to include current compliance with all state, federal, and local pharmaceutical licensing requirements including individual pharmacist licensing and certification. This licensing compliance shall continue in full force and effect during the term of this Agreement.
- M. Credit is issued on full or partial blister cards at 100% of the purchase price paid by the County. Credit is issued on returned, non-controlled tablets or capsules remaining in the original 30 dose blister card which contained a single dose per bubble, provided they are returned prior to three (3) months of expiration, not originally labeled as keep on person (KOP), have not released to the inmate population and are permitted for return by the State Board of Pharmacy and the Federal Drug Agency (FDA).
- N. Control medications and open partial stock medications cannot be credited per federal regulations.
- O. Upon termination of this agreement, credit will be applied to medications returned to Contractor within thirty (30) days of the termination date.

2. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Section 1 (Scope of Work), of this Agreement shall be completed in full, to the satisfaction of the County, in accordance with professional standards and for the amount set forth in Section 3 (Compensation, Invoicing and Set-off), of this Agreement, and for no other cost, amount, fee or expense.

B. The County may from time to time request changes in the scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in a written amendment to this Agreement.

3. COMPENSATION, INVOICING AND SET-OFF

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed.
- 2) The County shall pay in full to the Contractor invoice acquisition costs plus a dispensing fee of Three Dollars and Thirty-Eight Cents (\$3.38) for each County medical order satisfactorily dispensed and delivered by the Contractor. The total amount payable to the Contractor under this Agreement, shall not exceed **Two Hundred Twenty Five Thousand Dollars**

and No Cents (\$225,000.00), per year, *inclusive* of New Mexico Gross Receipts Tax.

- 3) Compounded IV medications, specialized vaccines, chemotherapy, blood products, special compounds, dropped shipped items and certain specialty items, etc. are billed at Average Wholesale Price (AWP) plus \$4.00 per piece. Compound TPN medications will be billed at the actual cost of each ingredient plus a \$78.00 dispensing fee per bag.
- 4) 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. The County will notify the Contractor 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.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the deliverables for which payment is sought.

- 1) The County's representative for certification of acceptance or rejection of contractual items and services shall be Santa Fe County Corrections Department, or such other individual as may be designated in the absence of the office representative.
- 2) The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual services or deliverables.
- 3) Within thirty (30) days of the issuance of a written certification accepting the services or deliverables, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one (1) year later, with the option to renew the agreement with up to three (3), one (1) year extensions, consecutively. In no event shall this agreement exceed four (4) years in total unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations).

5. 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 County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, 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 performed after the effective date of termination.

6. 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 County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. 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 Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County

vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. 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 advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor 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 County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

C. Background Clearances –The Contractor will be performing work in a detention facility and shall therefore be subject to the rules, regulations, directives and bulletins of the facility. Contractor will also be subject to and must clear a background check.

11. RELEASE

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

12. 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 County.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright. The Contractor shall retain full ability to use in its website any and all information, photos, and digital media that may be gathered through completion of work pursuant to this Agreement.

14. CONFLICT OF INTEREST

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

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of Work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

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 or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NOTICE OF PENALTIES

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

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor

specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's

performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. 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.

23. 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 County: Santa Fe County
 Office of the County Attorney
 102 Grant Avenue
 Santa Fe, New Mexico 87501

To the Contractor: Diamond Pharmacy Services
 Mark J Zilner
 645 Kolter Drive
 Indiana, PA 15701-3570

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with

Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.

C. Contractor is legally registered and is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

27. INSURANCE

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

B. General Liability Insurance, Including Automobile. The Contractor 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 County by the Contractor: 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. Santa Fe County shall be a named additional insured on the policy.

C. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

28. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

29. NEW MEXICO TORT CLAIMS ACT

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

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS,

The Contractor hereby irrevocably appoints "Corp Service Company", located at 125 Lincoln Ave., Suite 223, Santa Fe, NM 87501, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

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

SANTA FE COUNTY

Katherine Miller
Katherine Miller
Santa Fe County Manager

Date 12-3-2015

APPROVED AS TO FORM

Gregory S. Shaffer
Gregory S. Shaffer
Santa Fe County Attorney

Date 12/1/15

FINANCE DEPARTMENT

Carole H. Jaramillo 12/11/15
Carole H. Jaramillo Date
Santa Fe County Finance Director

CONTRACTOR: DIAMOND DRUGS, INC. dba DIAMOND PHARMACY SERVICES

Mark J. Zilner 11/25/2015
(Signature) Date

Mark J. Zilner
(Print Name)

Chief Operating Officer
(Print Title)

