

STATE OF NEW MEXICO

**NEW MEXICO CORRECTIONS DEPARTMENT**

**PROFESSIONAL SERVICES CONTRACT #17-770-1300-0013**

THIS AGREEMENT is made and entered into by and between the State of **NEW MEXICO CORRECTIONS DEPARTMENT**, hereinafter referred to as the "Agency," and **MHM CORRECTIONAL SERVICES, INC.**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration (DFA).

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall perform the following work outlined in the Scope of Work which is hereby incorporated and made part of this Contract as Attachment I.

**2. Compensation.**

A. The Agency shall pay to the Contractor in full payment for services satisfactorily Performed pursuant to the Scope of Work (Attachment I), as outlined in the Budget, which is hereby incorporated and made part of this Contract as Attachment II: Budget, such compensation not to exceed Two Million, Two Hundred Thousand Dollars (\$2,200,000.00) in FY17, Two Million, Two Hundred and Fifty-Five Thousand Dollars (\$2,255,000) in FY18, Two Million, Three Hundred and Eleven Thousand, Three Hundred and Seventy-Five Dollars (\$2,311,375) in FY19, and Two Million, Three Hundred and Sixty-Nine Thousand, One Hundred and Fifty-Nine Dollars (\$2,369,159) in FY20, including gross receipts tax. The New Mexico gross receipts tax levied on this Agreement in shall be paid by the Contractor. **The total amount payable to the Contractor under this Agreement, shall not exceed Two Million, Two Hundred Thousand Dollars (\$2,200,000.00) in FY17, Two Million, Two Hundred and Fifty-Five Thousand Dollars (\$2,255,000) in FY18, Two Million, Three Hundred and Eleven Thousand, Three Hundred and Seventy-Five Dollars (\$2,311,375) in FY19, and Two Million, Three Hundred and Sixty-Nine Thousand, One Hundred and Fifty-Nine Dollars (\$2,369,159) in FY20. Other contract terms regarding the amounts paid in FY18, FY19 and FY20 are contained in Attachment II: Budget.**

B. Payment in FY17, FY18, FY19, and FY20 is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 2, Budget (Attachment II), and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the

Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

**3. Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate on **June 30, 2020** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

**4. Termination.**

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

B. Notice; Agency Opportunity to Cure.

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

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

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

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

D. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in

the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

**5. Appropriations.**

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

**6. Status of Contractor.**

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

**7. Assignment.**

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

**8. Subcontracting.**

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

**9. Release.**

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

**10. Confidentiality.**

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

**11. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**12. Conflict of Interest; Governmental Conduct Act.**

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

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

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

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

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

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

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

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

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

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

**13. Amendment.**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

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

**14. Merger.**

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

**15. Penalties for violation of law.**

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

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these

requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**17. Applicable Law.**

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

**18. Workers Compensation.**

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

**19. Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

**20. Indemnification.**

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

**21. New Mexico Employees Health Coverage.**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a)

accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenewmexico.state.nm.us/>.

**22. Employee Pay Equity Reporting.**

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

**23. Invalid Term or Condition.**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

**24. Enforcement of Agreement.**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

**25. Notices.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency:           New Mexico Corrections Department  
Diane Montoya  
4337 NM Highway 14  
Santa Fe, NM 87508  
(505) 827-8611  
[diane.montoya@state.nm.us](mailto:diane.montoya@state.nm.us)

To the Contractor:       MHM Correctional Services, Inc.  
Steven H. Wheeler  
1593 Spring Hill Rd., Suite 600  
Vienna, VA 22182  
(703) 749-4600  
[swheeler@mhm-services.com](mailto:swheeler@mhm-services.com)

**26. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

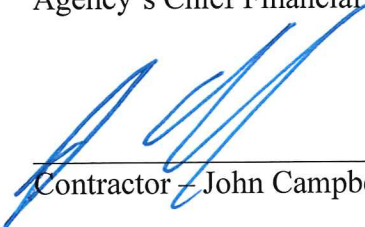


**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.**

By:  Date: 6/22/16  
Agency

By:  Date: 6-23-16  
Agency's Legal Counsel – Certifying legal sufficiency

By:  Date: 6-23-16  
Agency's Chief Financial Officer


By:  Date: 6/22/16  
Contractor – John Campbell, EVP & CFO

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 03-357427-00-8

By:  Date: 6/27/16  
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By:  Date: 08-02-16  
DFA Contracts Review Bureau

EFFECTIVE  
JUL 01 2016  
CONTRACT REVIEW BUREAU

ATTACHMENT I  
SCOPE OF WORK

**I. GENERAL REQUIREMENTS**

**A. INTRODUCTION:**

The goal and requirement of this Agreement is to provide licensed behavioral health providers and services with gender responsive and trauma-informed treatment and programming for female offenders housed at Springer Correctional Facility (SCC), Western New Mexico Correctional Facility (WNMCF) and New Mexico Women's Correctional Facility (NMWCF), hereinafter ("Facilities").

**B. CONTRACTOR'S OBLIGATIONS:**

1. Inmate Behavioral Health Care: Contractor shall provide the following type of evidence based behavioral health services on-site to NMCD female inmates by trained and appropriately licensed staff in accordance with all applicable policies and standards, including NMCD Behavioral Health policies:
  - a. Comprehensive treatment and programming shall address a range of issues, including but not limited to: prison adjustment; substance-related and addictive disorders and co-occurring disorders; trauma and victimization; suicidal/self-harm; violence and intimate partner violence; shame and stigma; interpersonal violence and physical, emotional, and sexual abuse; healthy relationships; life skills; discharge and reintegration issues; and issues related to pregnancy, parenting and family.
  - b. Gender responsive and trauma-informed treatment and programming for women to include psychological, emotional physical, spiritual and socioeconomic and sociopolitical issues.
  - c. Suicide prevention protocols and treatment program.
  - d. Restrictive Housing assessment per NMCD policy and consistent with ACA standards including evaluation by a licensed behavioral health clinician.
  - e. Behavioral Health component of diagnostic evaluations ordered by the courts.
  - f. Clinical supervision program meeting NMCD Behavioral Health Policy.
  - g. Clinical record documentation, including individual treatment plans per NMCD policy, as part of the behavioral health records.

- h. Continuous Quality Assurance Program.
  - i. Behavioral health orientation at the Facilities through the Inmate Handbook.
  - j. Behavioral health screening and assessment upon intake or intra-facility transfer to include screening per ACA standards.
  - k. On-call crisis interventions.
  - l. Psychological evaluations per NMCD Behavioral Health Policy and ACA standards.
  - m. Group psychotherapy and psycho-education.
  - n. Individual psychotherapy.
  - o. Substance-related and addictive disorders treatment including residential treatment program such as RDAP or Therapeutic Community, outpatient treatment such as MATRIX, and DWI programming.
  - p. Assessment and treatment of the severely mentally ill with both acute and chronic mental health issues.
  - q. Assessment and treatment of individuals receiving medical services.
  - r. Assessment and treatment of individuals with personality disorders.
  - s. Discharge planning.
2. Substance-related and Addictive Disorders Services: Contractor shall provide substance-related and addictive disorders treatment services and documentation that proposed services are gender responsive and evidence based.
3. Residential Treatment: Contractor shall provide a residential treatment program, identified by NMCD, such as a Residential Drug Abuse Program (RDAP), Therapeutic Communities or similar program. Contractor shall provide documentation that proposed program is gender responsive and evidence based.
- a. The program shall be for not less than (100) female inmates and shall be staffed and administered in accordance with a program plan that is consistent with NMCD Policy, and approved by NMCD. Such program shall include a minimum of three (3) program staff. NMCD Policy CD 185200, Residential Drug Abuse Programs, specifies that

RDAP is a 500-hour program lasting 9 to 12 months. Therefore, Contractor shall be in compliance with the program participation requirement as long as there are at least (100) female inmates in RDAP at the beginning of the program.

- b. Substance Abuse Treatment Coordinator (program supervisor and lead counselor) must be licensed by the State as a Licensed Alcohol and Drug Abuse Counselor. The Substance Abuse Counselors must be licensed by the State as a Substance Abuse Associate or Alcohol and Drug Abuse Counselor in accordance with New Mexico State Statute 61-9A-14. Individuals who are appropriately licensed in the State of New Mexico, under the requirements of the Counseling and Therapy Practice Board in accordance with 16.27.4-13 NMAC and 61-9A-4 NMSA 1978, Social Work Board in accordance with 16.63.9-11 NMAC and 61-31-4 NMSA 1978, and/or New Mexico Board of Psychologist Examiners in accordance with 16.22.5 NMAC and 61-9-4.1 NMSA 1978 may also serve as Addiction Treatment Counselors. Awarded Contractor shall submit the credentials of these licensed providers to NMCD for review and approval or rejection. All Supervisors are to be independently licensed.
  - c. The Facilities will conduct a urinalysis program for inmates assigned to the residential treatment program, which will, at a minimum, test 5% of the inmates assigned to the residential treatment program each calendar month.
4. Outpatient Services and Psycho-Education: Outpatient services and Psycho-education shall be available to all female inmates who qualify for DWI and/or outpatient substance-related and addictive disorders programming. Contractor shall provide documentation that proposed services are gender responsive and evidence based.
  5. Compliance with NMCD Standards: All behavioral health care, treatment, and programming will comply with NMCD Policies and Procedures and requirements of the NMCD Behavioral Health Services Bureau.
  6. Trauma-informed Approach: Contractor will implement a trauma-informed approach to be implemented that, at a minimum:
    - a. Realizes the widespread impact of trauma and understands potential paths for recovery;
    - b. Recognizes the signs and symptoms of trauma in inmates with the system;
    - c. Responds by full integrating knowledge about trauma into policies, procedures, and practices; and
    - d. Seeks to actively resist re-traumatization

7. Recreation: Contractor shall provide the activity schedule and programming delivered by technicians trained in gender responsive and therapeutic recreational activities.

C. STAFFING

1. Behavioral Health Staffing: Contractor agrees to provide the minimum behavioral health staff set forth in Attachment III (staffing pattern). Contractor is not deemed to have met its obligations to comply with NMCD's Standards of Care or other provisions of this Agreement merely by providing the minimum number of behavioral health staff or hours of service required. Behavioral health providers must have the education and level of licensure commensurate with the services provided. Behavioral health providers shall be licensed to practice in the State of New Mexico. Contractor shall submit the credentials of these behavioral health providers to NMCD for review and approval or rejection prior to the time the staff begins performing services. All services, programming, treatment, and care of inmates shall be provided in accordance with accepted standards for behavioral health care practice and are to be in compliance with requirements of the New Mexico Counseling and Therapy Practice Board, New Mexico Board of Social Work, and/or New Mexico Board of Psychologist Examiners, New Mexico Corrections Department (NMCD) Policy, American Correctional Association (ACA) Standards, and the Prison Rape Elimination Act (PREA). The Contractor agrees to utilize flex or split shifts or other mechanisms it deems appropriate to ensure that its staff provides behavioral health services to the NMCD's female inmates on a 8:00 a.m. to 8:00 p.m. basis, Monday through Friday.
2. Licensure Requirements: All Behavioral Health providers must be licensed in the State of New Mexico, under the requirements of the Counseling and Therapy Practice Board in accordance with 16.27.4-13 NMAC and §61-9A-4 NMSA 1978, Social Work Board in accordance with 16.63.9-11 NMAC and §61-31-4 NMSA 1978, and/or New Mexico Board of Psychologist Examiners in accordance with 16.22.5 NMAC and §61-9-4.1 NMSA 1978. Contractor shall submit the credentials of these licensed providers to NMCD for review and approval or rejection. All Site/QA Administrators and Supervisors are to be independently licensed.
3. Staff Training: Contractor agrees to include NMCD employees at all Facilities in in-service trainings Contractor performs at those Facilities, including those that provide continuing education and/or credits.
4. Program Development Curriculum: Contractor agrees to share program development materials with NMCD staff to ensure collaboration and program continuity.

D. REPORTING

1. Monthly and Quarterly Reporting. Contractor shall provide routine monthly and quarterly reports as well as share with the NMCD any available information from their Management Information System upon request.
2. Timing of Submission. Monthly and/or quarterly reports shall be submitted to the agency no later than the tenth business of each month following the month the report reflects.
3. Contents of Reports. The Behavioral Health Services monthly and/or quarterly reports will include, but will not be limited to:
  - a. Staff Vacancy per institution and position;
  - b. BHS/RDAP monthly report;
  - c. BHS Quality Assurance quarterly audit tool;
  - d. RSAT/RDAP Quarterly report form;
  - e. MHTC Discharge Report; and
  - f. Other reports deemed necessary by NMCD

E. PERFORMANCE MEASURES

1. Overview. NMCD has developed performance criteria to monitor the behavioral services program objectives, to include but not be limited to:
  - a. Adherence to American Correctional Association, National Commission on Correctional Healthcare standards and NMCD policies and procedures (including but not limited to NMCD's behavioral health services policies and procedures);
  - b. BHS Quality Assurance quarterly audit tool; and
  - c. MHTC Discharge Report.
2. Compliance Rates. The minimum acceptable threshold of compliance for each performance monitoring standard is an overall compliance rating of 90%. Contractor staff is required to participate in the NMCD review process by performing the actual reviews at the Facilities. NMCD staff and Contractor will work collaboratively in achieving on-going compliance and joint action plans to address deficiencies. The monitoring criteria will be reviewed annually for content and objectives.
3. Payment Adjustment for Non-Performance
  - a. The NMCD administrative staff may independently perform a performance measure review at the Facilities as deemed necessary. The NMCD staff will use the performance measure tools set forth herein and/or others as mutually developed with Contractor. At the completion of the review, the NMCD staff will complete a report with the results ("Performance Measure Report"). Non-compliance issues identified by NMCD monitoring staff will be identified in the

Performance Monitoring Report in sufficient detail to provide Contractor with the opportunity for correction. If the review does not meet the threshold of 90% or above, the site administrator must prepare and implement a performance improvement plan (“PIP”) within 30 days of receipt of the Performance Measure Report.

- b. Contractor will have thirty (30) working days from the submission of the PIP to cure any deficiencies related to individual performance measures that were scored less than the ninety percent (90%) threshold in the Performance Monitoring Report. Those performance measures that scored below the threshold will be re-audited or monitored by Contractor and/or NMCD staff. Penalties may be assessed on a repeat failure of those measures that remain below the 90% threshold after the cure period has expired as set forth below in subsection 3(e).
- c. In the event Contractor disputes any of the noted deficiencies in the Performance Measure Reports completed by NMCD staff, Contractor shall be required to inform the NMCD of such dispute within fifteen (15) working days of receipt of the Performance Measure Report. Contractor shall describe in writing the basis for the dispute, and provide any necessary back-up documentation to support its position regarding the dispute. The Parties shall work together in good faith to resolve the dispute.
- d. Repeat instances of failure to meet the performance standards compliance or to correct deficiencies outlined in the PIP may result in imposition of penalties as specified in subsection 3(e) below or may be considered by NMCD as a breach of contract.
- e. Performance Penalties.
  - (1) Performance penalties shall be waived for findings made through the first 60 days following completion of transfer of the female inmates to Western New Mexico Correctional Facility and Springer Correctional Center in order to allow Contractor the opportunity to staff and set up the program.
  - (2) After the 60-day waiver period has expired, NMCD will evaluate the imposition of performance penalties on a quarterly basis. If Contractor has made good progress as determined by NMCD toward addressing issues identified in the prior Performance Measure Review as outlined in its responsive PIP, no penalties will be imposed during that quarter’s review. If, at the time of the second, subsequent quarterly review, items from that same Performance Measure Review and responsive PIP are still outstanding and Contractor has not made substantial progress as determined by NMCD in addressing the issue, the NMCD may impose non-performance penalties in the amount of two thousand five hundred dollars (\$2,500.00) per outstanding performance measure falling below the 90% threshold.

## II. OTHER TERMS AND CONDITIONS

### A. CONTRACTOR PERSONNEL

#### 1. Security Clearances and Background Checks:

- a. Contractor and its employees, subcontractors, or agents agree to cooperate with and abide by any and all rules and regulations set forth by the Agency so as not to interfere with the daily operations of the Agency or to jeopardize the health and safety of any employees, inmates or the general public. The Contractor and its employees, subcontractors, or agents who will have access to NMCD properties and inmates are subject to security clearances and/or background checks.
- b. Any security clearances and/or background checks required by the Agency for the Contractor's employees, subcontractors, or agents must be obtained prior to commencement of the job. Agency reserves the right to deny any employee, or agent of Contractor access to the Agency property should that individual fail the criteria required for the security clearance or be found to be in violation of NMCD policies and procedures.
- c. Agency reserves the right to provide and escort and/or require full time supervision for Contractor, its employees, subcontractors, or agents, during any or all phases of a project should user agency feel it is necessary.
- d. Agency reserves the right to escort any employee, subcontractor or other agent of the Contractor off the Agency property for any inappropriate conduct or actions that jeopardizes the safety, security, or well being of the facility.

2. Cooperation with NMCD Investigations: In addition to the foregoing, the Contractor must furnish all information and reports required by, or pursuant to, the rules, regulations, and policies of the NMCD, and will permit access to, and the interview of, its employees, subcontractors, or other agents as well as the examination and copying of its records, unless such materials are legally privileged, by the NMCD Office of Professional Standards, the Security Threat Intelligence Unit and the Equal Employment Opportunity Officer and the United States Department of Justice, the New Mexico Department of Public Safety, the New Mexico General Services Department, the New Mexico Risk Management Division, and/or the New Mexico Workforce Solutions Department, and will otherwise fully cooperate with any such investigation. Any willful violation of this requirement will be grounds for immediate termination of this Agreement and removal of the Contractor staff from the Facilities.

### B. INSURANCE AND TAXES

The Contractor shall act as an Independent Contractor in the performance of services required by the Agreement. The Contractor shall provide:



1. Worker's Compensation insurance – a certificate of insurance in an amount approved by the Superintendent of Insurance pursuant to the Worker's Compensation Act, Section 52-1-1 to 52-1-69 NMSA 1978.
2. Comprehensive General Liability \$1,000,000 combined single limit per occurrence.
3. Professional Liability – “Occurrence” type, if available; if not “Claims Made” type with an acceptable “tail”; Medicare malpractice covering professional staff - \$1,000,000 limit per occurrence and \$3,000,000 in the aggregate annually. The Contractor should propose what “nose” coverage they will provide in the event there is a gap in coverage resulting from a change of medical Contractor. New Mexico Statute regarding professional liability insurance shall be reviewed.
4. Said Comprehensive General Liability and Professional Liability insurance shall identify NMCD as an “additional insured” with the form of the additional insured endorsement being a standard ISO Form CG 20 10 or other form approved by NMCD.
5. The Contractor is responsible for the payment of applicable Gross Receipts Taxes (GRT) to the State of New Mexico.
6. Contractor shall state its agreement; if awarded the contract, to provide insurance and proof of in insurance as follows: Workers Compensation in an amount approved by the superintendent of insurance pursuant to the Worker's Compensation Act 52-1-1 to 52-1-69 NMSA, 1978; Comprehensive General Liability -\$1,000,000 combined single limit per occurrence; and Professional Liability -"Occurrence" type if available, if not “claims made” type with an acceptable “tail”; medical malpractice covering all professional staff -\$1,000,000 limit per occurrence and \$3,000,000 in aggregate annually. The Contractor shall propose what “nose” coverage they will provide in the event there is a gap in coverage resulting in a change of medical Contractor. Such certificate for comprehensive General Liability and Professional Liability insurance shall identify NMCD as “additional insured” with the form of the additional insured endorsement being standard ISO Form CG 20 10 or other form approved by NMCD.

C. CHANGE IN SCOPE OF SERVICES.

The Parties agree that should there be any change to the Scope of Services as delineated herein, that results in material costs to Contractor and the costs related to such changes or modifications are not covered in this Agreement, then Contractor will require that the Agency increase its compensation in an amount equal to the actual, direct increased cost incurred by Contractor. Conversely, should there be any change to the Scope of Services that results in material costs savings to the Contractor, then the Agency will require the Contractor to decrease its compensation in an amount equal to the actual, direct decreased costs incurred by the Contractor. Any such adjustments shall be fully documented and attached to this Agreement in the form of an amendment.

D. NO THIRD-PARTY BENEFICIARIES.

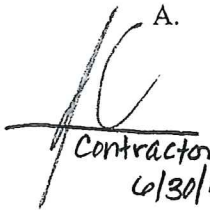
The Parties do not intend to create in any other individual or entity, including but not limited to any inmate or patient, the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement and shall inure solely to the benefit of such Parties. The provisions of this Agreement are intended only to assist the Parties in determining and performing their obligations hereunder. The Parties intend and expressly agree that only Parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of or for damages or relief under this Agreement.

ATTACHMENT II  
BUDGET

COMPENSATION:

I. YEAR ONE

- A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of Two Million, Two Hundred Thousand Dollars (\$2,200,000) for the first year of this Agreement, inclusive of gross receipts tax and paid on a semi-monthly basis.

  
Contractor  
6/30/16

  
Agency 6/30/16

II. YEARS TWO THROUGH FOUR

- A. For the period of July 1, 2017 through June 30, 2018 for the second year of this Agreement, the annual compensation shall be Two Million, Two Hundred and Fifty-Five Thousand Dollars (\$2,255,000) paid on a semi-monthly basis. However, said increase in compensation in the second year of this Agreement is contingent on the NMCD having imposed no non-performance penalties against the Contractor in the first year of the Agreement.
- B. For the period of July 1, 2018 through June 30, 2019 for the third year of this Agreement, the annual compensation shall be Two Million, Three Hundred and Eleven Thousand, Three Hundred and Seventy-Five Dollars (\$2,311,375) paid on a semi-monthly basis. However, said increase in compensation in the third year of this Agreement is contingent on the NMCD having imposed no non-performance penalties against the Contractor in the second year of the Agreement.
- C. For the period of July 1, 2019 through June 30, 2020 for the fourth year of this Agreement, the annual compensation shall be Two Million, Three Hundred and Sixty-Nine Thousand, One Hundred and Fifty-Nine Dollars (\$2,369,159) paid on a semi-monthly basis. However, said increase in compensation in the fourth year of this Agreement is contingent on the NMCD having imposed no non-performance penalties against the Contractor in the third year of the Agreement.

ATTACHMENT III

STAFFING PATTERN

<u>Service Area</u>	<u>NM Position</u>	<u>Springer</u>	<u>WNMCF</u>	<u>Total</u>
MHTC and BHTU	Activities Therapist	-	1.00	1.00
	Addiction Treatment			
Substance Abuse	Coordinator	0.50	0.50	1.00
Substance Abuse	BH/SA Therapist	1.00	2.00	3.00
MHTC	BH Therapist	-	1.00	1.00
D & E	BH Therapist		0.50	0.50
RDC/Outpatient	BH Therapist	4.00	5.00	9.00
Other	Clerk (Admin Asst/Test Proctor)	-	1.00	1.00
Other	Clerks	1.00	1.00	2.00
	Clinical Supervisor	-	0.50	0.50
	BH Manager	-	1.00	1.00
Total		6.50	13.50	20.00