

City of Albuquerque

Request for Letters of Interest

Legal Services



May 2020

City of Albuquerque
Department of Family and Community Services
Division of Behavioral Health and Wellness

TABLE OF CONTENTS

	Page
Introduction	3
General Requirements	5
Part 1 Instructions to Offerors	7
Part 2 Proposal Format	11
Part 3 Minimum Qualifications and Requirements	13
Overview of the Assisted Outpatient Treatment Program	15
Draft Respondent Agreement	19
Draft Petitioner Agreement	32

INTRODUCTION

PURPOSE

In accordance with the relevant sections of the New Mexico Procurement Code § 13-1-28 through § 13-1-199 NMSA 1978, as amended, the City of Albuquerque's Department of Family and Community Services ("City") invites attorneys ("Offerors") to submit letters of interest/proposals in accordance with the specifications contained in this Request for Letters of Interest ("Request"). The purpose of this Request is to establish a pool of qualified attorneys available to provide cost-effective, competent representation in the Assisted Outpatient Treatment (AOT) Program, as detailed below, in the Second Judicial District consisting of Bernalillo County:

Petitioner Attorneys for the University of New Mexico Psychiatric Center, Kaseman Hospital and other inpatient mental health facilities, for cases arising under the Mental Health Code, specifically, Assisted Outpatient Treatment, § 43-1B-1 through § 43-1B-14 NMSA 1978, as amended. Representation would cover all cases filed or reopened during the contract period, and all review hearings for which Notice was filed during the contract period.

Respondent Attorneys for Adults requesting representation under the Program, who are committed to outpatient treatment under the Mental Health Code, specifically, Assisted Outpatient Treatment, § 43-1B-1 through § 43-1B-14 NMSA 1978, as amended. Representation would cover all cases filed, reopened, or reassigned during the contract period.

The City is seeking attorneys to provide legal representation of Petitioners and Respondents. The City will select a pool of attorneys whose proposals indicate that they meet all of the minimum qualifications and requirements listed herein. All services will be performed in conjunction and in association with the AOT Program. Cases will be assigned to Respondent's counsel following the filing of a petition in the Second Judicial District Court, for those clients requesting representation. Contracts will be made with attorneys on an annual basis. At the time of entering into a contract with a selected Offeror, the City may negotiate an alternative billing method or rates which do not exceed those proposed by the Offeror, nor exceed the total amount allotted per case.

Selection of an Offeror does not ensure that a contract will be entered into with that Offeror or guarantee the assignment of cases or work or the payment of any compensation. The City reserves the right to contract with attorneys who have not submitted proposals pursuant to this process should the need arise.

Proposals submitted pursuant to this Request will be accepted by the City on an ongoing basis until further notice in order to maintain a current listing of pre-qualified attorneys available to perform services for the Assisted Outpatient Treatment Program. The City will endeavor to review each proposal and respond to the Offeror within thirty (30) days of receipt of the proposal. If a proposer meets all of the City's minimum qualification and requirements, it will be added to the pool of attorneys available for the assignment of work.

Each Offeror wishing to provide legal services shall submit a proposal containing the information and organized in the format prescribed herein.

STATEMENT OF WORK

The City was awarded a Grant Number 1H79SM063539-01 from the Substance Abuse and Mental Health Services Administration (“SAMHSA”), an agency with the U.S. Department of Health and Human Services, to implement an Assisted Outpatient Treatment (“AOT”) Program within Bernalillo County.

The Assisted Outpatient Treatment grant award is for a project period from October 1, 2018 to September 30, 2022, for the purpose of establishing a framework for identification and referral of, and the provision of case management to AOT consumers, with the goal of reducing the incidence and duration of psychiatric hospitalization, homelessness, incarcerations, and interactions with the criminal justice system, while improving the consumers’ health and social outcomes. Appendix A provides an overview of the Assisted Outpatient Treatment Program.

The Offeror will provide legal services to clients in a professional and skilled manner in accordance with the relevant portions of the New Mexico Mental Health Code, the Rules of Professional Conduct, applicable case law and rules, and the terms of the contract. The City reserves the right to negotiate additional provisions with a successful Offeror.

Description of Services: Petitioner’s Counsel

Provide legal counsel to Petitioner to ensure the statutory criteria are met, including but not limited to, drafting and filing petitions, motions, and other documents associated with Assisted Outpatient Treatment proceedings.

Represent the Petitioner at all stages of the district court proceedings.

On a case by case basis, as approved by the City, Petitioner’s counsel may represent the Petitioner in the appellate process. Counsel will respond to any calendar notice, prepare briefs in cases which are placed on the general calendar, participate in oral arguments, and if necessary, seek certiorari and represent the client in the New Mexico Supreme Court.

Attend AOT Team meetings monthly as scheduled by the Program Manager.

Description of Services: Respondent’s Counsel

Provide legal counsel to Respondent to ensure due process and civil rights are not infringed upon.

For clients who are hospitalized, accept service on their behalf and meet with clients within twenty-four hours of receipt of service.

Represent the Respondent at all stages of the district court proceedings.

On a case by case basis, as approved by the City, Respondent’s counsel may represent the Respondent in the appellate process. Counsel will respond to any calendar notice, prepare briefs in cases which are placed on the general calendar, participate in oral arguments, and if necessary, seek certiorari and represent the client in the New Mexico Supreme Court.

Attend AOT Team meetings monthly as scheduled by the Program Manager.

TERM

Proposals are being considered for Fiscal Year 2020 beginning June 2020 through September 30, 2020. Contracts may be subject to extensions not to exceed a total of four (4) years.

REJECTION/CANCELLATION/ACCEPTANCE

The City of Albuquerque reserves the right to reject any or all proposals in whole or in part and to cancel this Request at any time when it is in the City's interests to do so. Discussions may be conducted with Offerors who submit proposals determined to be reasonably susceptible of being selected for the award, but proposals may be accepted without such discussions.

PROPOSAL REVIEW AND THE EVALUATION COMMITTEE

All proposals will be reviewed by the Assistant City Attorney and Division Manager of Behavioral Health and Wellness for compliance with the mandatory requirements stated within the Request. Letters of Interest deemed non-responsive will be eliminated from further consideration.

GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing Procurement

Submission of a proposal constitutes acceptance of the evaluation criteria.

2. Incurring Costs

Any cost incurred by the Offeror in preparation, transmittal, or presentation of any proposal or material submitted in response to this Request shall be borne solely by the Offeror.

3. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The City will not merge, collate, or assemble proposal materials.

4. Offeror Right to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative, and addressed to the Division Manager of Behavioral Health and Wellness.

5. No Obligation

This procurement in no manner obligates the City or any of its departments or agencies to the service offered until a valid written contract is approved by the City.

6. Terminations

This Request may be canceled at any time and any and all proposals may be rejected in whole or in part when the City determines such action to be in the best interest of the City.

7. Governing Law

This procurement and any resulting agreement with the Offerors shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.

8. Compensation

- (a) The terms of compensation, including hourly rates and maximum allowable compensation for each case, shall be determined by the City. The total amount of compensation paid by the City for legal representation of respondents under the terms of this Request shall not exceed the amounts budgeted by the City and appropriated by the City's governing body for that purpose.
- (b) The City may agree to the compensation of expert witnesses, other than those witnesses who are employees or contractors of UNMPC or any state or governmental institution or agency which is participating in this AOT Program. The terms of compensation for expert witnesses, including hourly rates and maximum allowable compensation for each case, shall not exceed the total compensation allowable per case.
- (c) The total amount of compensation paid by the City for any case under this Request shall not exceed the sum of \$1,500 for the first year of the grant. Subsequent years may have a change in maximum compensation per case, dependent on funding.

9. Sufficient Appropriation

Any contract awarded as a result of this Request process may be terminated or modified if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The City's decision as to whether sufficient appropriations are available will be accepted by the Contractor as final.

10. Health Insurance Portability and Accountability Act

The Contractor will comply with the Health Insurance Portability and Accountability Act (HIPAA), and § 43-1B-14 NMSA 1978, as amended, sequestration and confidentiality of records, to safeguard the confidentiality of participants' medical records. In addition, if applicable, the Contractor must comply with 42 CFR Part 2, requiring confidentiality of substance use disorder patient treatment records.

PART 1
INSTRUCTIONS TO OFFERORS

The following instructions establish the procedures applicable to the preparation of letters of interest and the requirements for the format and content of proposals:

1.1 City Contact: The sole point of contact for this Request for Letters of Interest is the City of Albuquerque's Department of Family and Community Services. Contact the following individual(s) regarding this Request:

Ellen Braden, Division Manager
Phone: (505) 768-2788 or [E-Mail: ebraden@cabq.gov](mailto:ebraden@cabq.gov)

1.2 Contract Management: The contract(s) resulting from responses to this Request for all outside counsel services will be managed by the Department of Family and Community Services.

1.3 Submission of Offers: The offeror's sealed proposal must be in the format outlined in Part 2 of this Request for Letters of Interest and mailed or hand-delivered pursuant to the following requirements:

1.3.1 Mail or hand-deliver proposals to:

Department of Family and Community Services
City of Albuquerque
Attention: "RFI Legal Services"
PO Box 1293
Albuquerque, New Mexico 87103

Albuquerque/Bernalillo County Governmental Center
Old City Hall, One Civic Plaza NW, 5th Floor, Room 504
Albuquerque, New Mexico 87102

1.3.2 No other methods of delivery: Neither telephone, facsimile, electronic, nor telegraphic offers shall be accepted.

1.3.3 Submit Copies of the Proposal as follows:

Hard Copy - 1 original and 2 copies of your Technical Proposal. Submit 1 original and 2 copies of your Cost Proposal.

1.3.4 Separate Proposal: A separate proposal must be submitted for each party (i.e., Petitioner, Respondent) on behalf of which the Offeror wishes to provide services. Each proposal submitted shall consist of a Technical Proposal and a Cost Proposal as outlined in Part 2.

1.3.5 Deadline to Submit Proposals: The Department will continue to accept letters on an ongoing basis until a sufficient pool of attorneys is filled.

1.4 Draft Agreement: A copy of the Draft Agreement(s) to be entered into is attached as Appendix B for Respondent Draft Agreement and Appendix C for Petitioner Draft Agreement. Please state that you accept the terms and conditions of the Draft Agreement(s), or note exceptions.

1.5 Rejection and Waiver: The City reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

1.6 Insurance Compliance: Acceptance of offer is contingent upon Offeror's ability to comply with the insurance requirements as stated herein. Please include a copy(s) of such certification or statement of compliance in your proposal.

1.7 Award of Contract:

1.7.1 When Award Occurs: Award of contract occurs when a Purchase Order is issued or other evidence of acceptance by the City is provided to the Offeror.

1.7.2 Award: Contract(s) shall be awarded to the responsive and responsible Offeror(s) whose offer(s) conform to the Request for Letters of Interest, and will be the most advantageous to the City as services are needed.

1.7.3 Contract Term: The contract term shall be for periods in conjunction with the Federal fiscal year. The contract term may be extended upon mutual written agreement between the City and the Contractor.

1.7.4 Type of Contract: Time and expenses.

1.8 Negotiations: At the time of entering into a contract with a selected Offeror, the City may negotiate an alternative billing method or rates which do not exceed those proposed by the Offeror.

1.9 INSURANCE:

1.9.1 General Conditions: The City will require that the successful Offeror, referred to as the Contractor, procure and maintain at its expense during the term of the contract resulting from the Request, insurance in the kinds and amounts hereinafter provided, with insurance companies authorized to do business in the State of New Mexico, covering all operations of the Contractor under the contract. Upon execution of the contract and on the renewal of all coverage, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with these insurance requirements. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico, 87103, before a policy is cancelled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies.

With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. Along with the certificate of insurance, a rider or endorsement designating the City as an additional insured will be required. All coverages afforded shall be primary with respect to operations provided.

1.9.2 Coverages Required: The kinds and amounts of insurance required are as follows:

1.9.2.1 Commercial General Liability Insurance. A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000 Per Occurrence
\$1,000,000 Policy Aggregate
\$1,000,000 Products Liability/Completed Operations
\$1,000,000 Personal and Advertising Injury
\$ 50,000 Fire - Legal
\$ 5,000 Medical Payments

Said policy of insurance must include coverage for all operations performed for the City by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

1.9.2.2 Automobile Liability Insurance. An automobile liability policy with liability limits in amounts not less than \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

1.9.2.3 Professional Liability Insurance. Professional liability insurance in an amount not less than \$1,000,000.00 per claim and in the aggregate.

1.9.2.4 Workers' Compensation Insurance. Workers' compensation insurance policy for the Contractor's employees, in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico, (the "Act"). If the Contractor employs fewer than three employees and has determined that it is not subject to the Act, it will certify, in a signed statement, that it is not subject to the Act. The Contractor will notify the City and comply with the Act should it employ three or more persons during the term of the contract resulting from this Request.

1.9.2.5 Increased Limits: During the term of the contract the City may require the Contractor to increase the maximum limits of any insurance required herein. In the event that the Contractor is so required to increase the limits of such insurance, an appropriate adjustment in the contract amount will be made.

1.10 DUNS Number. All Proposals shall include a Dun and Bradstreet Number which can

be applied for at <https://www.dnb.com/duns-number.html>.

**PART 2
PROPOSAL FORMAT**

2.1 Technical Proposal Format, Section One

2.1.1 Offeror Identification: State name and address of the Offeror or your organization, or office and nature of organization (individual, partnership or corporation, private or public, profit or non-profit). Include name and telephone number of person(s) in your organization authorized to execute the Agreement. Submit a statement of agreement of the terms and conditions of the Agreement; state exceptions. Provide a statement or show ability to carry the insurance specified.

2.1.2 Identification of Lawyers; Legal Assistants/Paralegals: List the lawyers and any legal assistants/paralegals, if applicable, who would be assigned to City work in the area of law. Indicate next to each lawyer's name the year in which he or she was licensed to practice, licensed to practice in New Mexico, and the number of years of practice in the area of law.

2.1.3 Management Summary: Provide the name and telephone number of a contact person who would handle the processing of a contract with the City.

2.1.4 Experience: Provide, for each attorney or legal assistant/paralegal listed in the proposal, a separate sheet or sheets containing the following information:

- (a) Name;
- (b) A summary of the attorney's educational background, current practice of law, special training, and awards;
- (c) Current mental health court trial and practice experience and/or related case experience; such as adult guardianship, children's abuse and/or neglect;
- (d) The attorney's experience working with clients with mental illness;
- (e) A summary of the attorney's experience working with community social service or mental health agencies;
- (f) The attorney's office organization and calendaring/docketing system;
- (g) The attorney's ability to meet with clients in various facilities, including the ability to meet within twenty-four hours of accepting a case assignment;
- (h) The attorney's availability on short notice for hearings;
- (i) The attorney's ability to work collaboratively while maintaining zealous advocacy;

(j) The attorney's ability to attend out-of-court meetings; and

(k) The attorney's current standing with the New Mexico State Bar.

2.1.5 Summaries: Please note that summaries of experience should contain elements as listed in Section 2.1.4 rather than a mere list of cases. The information provided should also indicate in detail how item 3 of the Minimum Qualifications, set out in Part 3 of this Request is met. Also provide an updated resume or profile of each attorney and legal assistant/paralegal, if applicable.

2.1.7 Contractor Requirements: Provide statements indicating that the Offeror specifically agrees, or takes exception to, the Contractor Requirements set out below.

2.1.8 Conflicts of Interest: Disclose existing or potential conflicts of interest with the City, including but not limited to all matters handled by the Offeror involving claims against the City, representation of third parties against the City and the pursuit of administrative remedies through the City.

2.1.9 Insurance Certificate(s): Please include a copy(s) of certificate(s) of insurance for coverage which the Offeror currently has in effect or a statement of compliance in your proposal.

PART 3
MINIMUM QUALIFICATIONS AND REQUIREMENTS

3.1 Minimum Qualifications.

3.1.1 Attorneys must be licensed to practice law in the State of New Mexico.

3.1.2 Attorneys must have been licensed for at least three years or must be in practice with attorneys who have been licensed for three years.

3.1.3 Attorneys must have prior experience in any area of law for which they submit a proposal equal to the following:

(a) three years of trial, teaching, appellate or other non-trial experience as an attorney in the selected area, acquired during the last five years; or

(b) equivalent practical experience as determined by the City Attorney.

3.2 Contractor Requirements.

3.2.1 Attorneys must agree to bill the City in 0.1 hour billing units and at hourly rates of \$75.00/hour, inclusive of gross receipts tax. The hourly rates submitted, which are the maximum rates which may be charged to the City, may remain fixed for a four-year period following the receipt of the Letter of Interest in response to this solicitation.

3.2.2 Attorneys must agree that billings for costs will include gross receipts taxes or outside costs for which such taxes have already been paid.

3.2.3 Attorneys must agree to comply with all laws, ordinances, rules and regulations, resolutions, policies, etc, in effect during the term of any contract with the City.

3.2.4 Attorney must be located in the Greater Albuquerque Metropolitan area, or agree not to bill the City for travel time between its office and Albuquerque, without prior approval.

3.2.5 Attorneys must have or agree to provide at the time of assignment of a case or project, adequate insurance to cover the City's exposure under the New Mexico Tort Claims Act considering the risk involved. The type of insurance and liability limits will be negotiated at the time of assignment. In all instances, professional liability coverage and compliance with the workers' compensation act, must be provided. Commercial general liability and auto liability coverage may also be required.

3.2.6 Attorneys must agree to comply with the New Mexico Rules of Professional Conduct.

3.2.7 Attorneys must agree to provide the City with notice of any client representation which could conflict with the representation of the City.

3.2.8 Attorneys must agree that only those attorneys and legal assistants/paralegals set out in the proposal submitted shall provide services to the City, unless the City approves in writing its request for a change in personnel.

3.2.9 Attorney must agree to the following procedural guidelines:

- (a) no billing of administrative guidance and coordination of secretaries, legal assistants/paralegals, and associates;
- (b) no billing of partner or attorney rates for routine activities of clerical, secretarial or legal assistant paralegal personnel conducting conflict checks, preparing form letters, setting up files, or other overhead activities;
- (c) identifying a contact person to handle billing questions and problems;
- (d) monthly or quarterly billing which identifies the billing party, the service provided and the billing rate of \$75.00/hour;
- (e) obtaining prior approval from the supervising Assistant City Attorney and the Division Manager for hiring expert witnesses, and other extraordinary costs and expenses.

APPENDIX A

Overview of the Assisted Outpatient Treatment Program

Assisted outpatient treatment (AOT) is a civil court ordered program of delivering community-based treatment to adults with serious mental illness who are found by a judge, in consideration of prior incarcerations or hospitalizations, to be unlikely to adhere to prescribed treatment on a voluntary basis. It is a 2-way commitment that requires treatment providers to serve individuals at the same time it commits individuals to adhere to their treatment plans. Through the ritual of court hearings and the symbolic weight of a judge's order, AOT seeks to leverage a "black robe effect," motivating the individual to regard treatment adherence as a legal obligation.

Funded by a four-year grant with the Substance and Mental Health Services Administration (SAMHSA), the City of Albuquerque's AOT Program will serve a maximum of 60 individuals in the first year. Referrals for this program will primarily be from inpatient hospital facilities (Petitioner), such as the University of New Mexico's Psychiatric Center and Kaseman Hospital. This program provides psychiatric and intensive comprehensive case management services, as well as monthly sessions with a judge to individuals with serious mental illness (Respondents) ordered for treatment by the Second Judicial District Court. The AOT case manager monitors the participant's progress and compliance with the treatment plan in accordance with the court order. The AOT case manager reports to the court on the client's condition and attends all court staffings and hearings.

AOT provides a less restrictive opportunity to ensure individuals do not suffer a break in their continuity of care, thereby reducing the incidence and duration of psychiatric hospitalization, homelessness, incarcerations, and interactions with law enforcement and the criminal justice system, while improving the health and social outcomes of individuals living with a serious mental illness.

Criteria: § 43-1B-3 NMSA

AOT is "intended to benefit severely mentally ill [adults] who need ongoing psychiatric care to prevent relapse, rehospitalization, and/or dangerous behavior, and who have difficulty following through with community-based treatment." (Swartz et al. 2001). In most cases, these individuals suffer from schizophrenia, bipolar disorder, major depression with psychotic features, or schizoaffective disorder. Candidates for AOT have also been noncompliant with prescribed medication, have multiple inpatient psychiatric hospitalizations, and/or incarcerations. Court-ordered treatment provides this small group of individuals the opportunity to engage in treatment they might otherwise be unable to access.

A Respondent may be ordered to participate in assisted outpatient treatment if the court finds by clear and convincing evidence that the person:

1. Is eighteen years of age or older and resides in Bernalillo County;
2. Has a serious mental illness;
3. Has a history of treatment non-adherence that has either:

Been a significant factor in their hospitalization and/or incarceration at least twice in the last 4 years; OR

Resulted in one or more acts, attempts or threats of serious and violent behavior toward self or another in the last 4 years; OR

Resulted in incarceration or hospitalization for 6 months or more and the person is to be discharged within the next 30 days or was recently discharged within the past 60 days;

4. Is unwilling or unlikely, as a result of a mental illness, to participate voluntarily in outpatient treatment that would enable the person to live safely in the community;

5. Is in need of AOT as the least restrictive appropriate alternative to prevent a relapse or deterioration likely to result in serious harm to self or others; AND

6. Will likely benefit from AOT and it is in their best interest.

Who Can File a Petition: § 43-1B-4 NMSA

To file a petition for AOT, the party must be:

- Anyone 18 or older with whom the person is living
- A parent, spouse, sibling or child of the person, provided they are 18 or older
- The director of any agency where the person resides and provides mental health services to the person
- The director of a hospital where the person is hospitalized
- A qualified professional who is providing or supervising the person's mental health treatment or has supervised or treated the person within the past 48 months
- A surrogate decision-maker

Any one of the above is a Petitioner.

What Must be Included in the Petition: NMSA 43-1B-4

The petition must state: (1) that the person is present or believed to be present within the county where the petition is filed; (2) all the criteria necessary for placement in AOT; (3) the facts supporting the belief that the person meets all the criteria; and (4) that the subject of the petition has the right to be represented by counsel.

The petition must be accompanied by an affidavit of a licensed mental health treatment provider stating that either:

1) The licensed mental health treatment provider examined the person no more than ten days prior to the submission of the petition, believes that the person meets the criteria for assisted outpatient treatment, recommends assisted outpatient treatment, and is willing to testify at the hearing; or

2) The licensed mental health treatment provider, or his or her designee, made appropriate attempts no more than ten days prior to the filing of the petition to examine the person and the

person refused, has reason to suspect the person meets the criteria assisted outpatient treatment, and is willing to examine the person and testify at the hearing.

The court must fix a date for a hearing on the petition that is no more than seven days (excluding weekends and holidays) after the petition is filed.

Continuances will only be allowed for good cause. Before granting one, the court shall consider the need for an examination by a physician, or the need to provide assisted outpatient treatment expeditiously.

Right to Counsel: § 43-1B-6 NMSA

The person who is subject to the petition has the right to be represented by counsel at all stages of the proceedings. If able to afford it, the person is responsible for the cost of the legal representation on his or her behalf.

Evidentiary Hearing: § 43-1B-6 NMSA

The court will hear testimony and, if advisable, examine the person (in or out of court). The testimony need not be limited to the facts included in the petition.

If the person fails to appear at the hearing and appropriate attempts to elicit attendance have failed, the court may conduct the hearing in the person's absence. However, the court is prohibited from ordering AOT unless a physician who has reviewed the available treatment history of the person and personally examined him or her no more than ten days before the filing of the petition testifies in person at the hearing.

If the person is present at the hearing but has refused and continues to refuse to be examined and the court finds reasonable cause to believe the allegations in the petition to be true, it may order the person be taken into custody and transported to a hospital for examination by a licensed mental health treatment provider.

If after hearing all relevant evidence, the court finds that the person does not meet the criteria for assisted outpatient treatment, the court will dismiss the petition. If the court finds, by clear and convincing evidence, that the person meets the criteria for assisted outpatient treatment and there is no appropriate and feasible less restrictive alternative, the court may order the person to receive assisted outpatient treatment for up to one year.

The Treatment Plan: § 43-1B-7 NMSA

In the assisted outpatient treatment order, the court shall specify the services that the person is to receive. The court shall not require any treatment that is not included in the proposed treatment plan submitted by the examining licensed mental health treatment provider.

Types of AOT Treatment Services:

- Medication management
- Individual or group therapy
- Day or partial day programming activities
- Educational and vocational training activities
- Alcohol and substance abuse treatment and counseling
- Supervision of living arrangements
- Periodic blood or urine tests to determine compliance with medication and/or to screen for illegal drugs and alcohol
- Any other service prescribed to treat a patient's mental illness and to assist the patient in living and functioning in the community, or to attempt to prevent deterioration

Right to Appeal: § 43-1B-9 NMSA

Any person ordered to undergo assisted outpatient treatment may immediately file a notice of appeal.

Renewals: § 43-1B-11 NMSA

If the condition of the person requires an additional period of AOT, the Petitioner may apply to the court prior to the initial order's expiration for an additional period of AOT of no more than one year. The procedures and requirements for obtaining a renewal order are the same as for obtaining an initial order.

APPENDIX B

Respondent Draft Agreement

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the City of Albuquerque, New Mexico, a municipal corporation ("City"), and _____, _____ ("Contractor").

RECITALS

WHEREAS, the City was awarded a Grant Number 1H79SM063539-01 from the Substance Abuse and Mental Health Services Administration ("SAMHSA"), an agency with the U.S. Department of Health and Human Services, to implement an Assisted Outpatient Treatment ("AOT") Program within Bernalillo County; and

WHEREAS, the City Council authorized the acceptance of the award through R-19-116; and

WHEREAS, the City specified in the grant application that the City would engage representation for respondents as a necessary component of the implementation of the Albuquerque AOT Project, and

WHEREAS, through a Request for Letters of Intent through the Department of Family and Community Services dated May 2019 the City obtained bids for representation for petitioners; and

WHEREAS, the Contractor represents that it has the experience, resources and expertise necessary to execute the activities and services desired; and

WHEREAS, the City desires to engage the Contractor to render certain services in connection therewith 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 Services. The Contractor shall perform the following services ("Services") in a satisfactory and proper manner, as determined by the City:

A. Provide legal counsel for Adults requesting representation under the Program ("Respondent"), who are committed to outpatient treatment under the Mental Health Code, specifically, Assisted Outpatient Treatment, § 43-1B-1 through § 43-1B-14 NMSA 1978, as amended. Representation would cover all cases filed, reopened, or reassigned during the contract period, as assigned.

B. Provide legal counsel to Respondent to ensure due process and civil rights are not infringed upon.

C. For clients who are hospitalized, accept service on their behalf and meet with clients within twenty-four hours of receipt of service.

D. Represent the Respondent at all stages of the district court proceedings.

E. On a case by case basis, as approved by the City, Contractor may represent the Respondent in the appellate process. If approved, Contractor will respond to any calendar notice, prepare briefs in cases which are placed on the general calendar, participate in oral arguments, and if necessary, seek certiorari and represent the client in the New Mexico Supreme Court.

F. Attend AOT Team meetings monthly as scheduled by the Program Manager.

G. The Contractor will collaborate with University of New Mexico Institute for Social Research (ISR) to evaluate the implementation, impact and outcomes of the AOT project. Specifically, the Contractor agrees as part of this evaluation to make available to the ISR, identifiable client-level information (i.e. last name, first name, date of birth) and information related to program participation and service utilization for clients who sign a release of information according to an applicable UNM-IRB and federally approved human subject review. The Contractor also agrees to collaborate with the ISR to conduct an outcome study that may include enrolling eligible and consenting clients in a study. The ISR will receive a federally approved human subject review prior to beginning an outcome study.

H. Contractor must agree to comply with all laws, ordinances, rules and regulations, resolutions, policies, etc, in effect during the term of any contract with the City.

I. Contractor must be located in the Greater Albuquerque Metropolitan area, or agree not to bill the City for travel time between its office and Albuquerque, without prior approval.

J. Contractor must agree to comply with the New Mexico Rules of Professional Conduct.

K. Contractor shall provide the City with notice of any client representation which could conflict with the representation of the City during the two-year period following receipt by the City of the attorney's letter of interest.

L. Contractor shall utilize only those attorneys and legal assistants/paralegals set out in the proposal submitted shall provide services to the City, unless the City approves in writing its request for a change in personnel.

M. Contractor shall attend mandatory trainings scheduled by the City specific to the Assisted Outpatient Treatment Program.

2. **Time of Performance.** Services of the Contractor shall commence upon execution of Agreement, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed shall be completed by September 30, 2019, which may be extended upon mutual written agreement between the City and the Contractor.

3. **Compensation and Method of Payment.**

A. **Compensation.** For performing the Services specified in Section 1 hereof, the City agrees to pay the Contractor up to the amount of NINETY THOUSAND AND NO/100 DOLLARS (\$90,000.00), which amount includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing the Services. The Contractor is not guaranteed the assignment of cases or work or the payment of any compensation, unless a case has been assigned and work has been completed. The terms of compensation, including hourly rates and maximum allowable compensation for each case, shall be determined by the City. The total amount of compensation paid by the City for legal representation of respondents under the terms of this Request shall not exceed the amounts budgeted by the City and appropriated by the City's governing body for that purpose.

(1) The City may agree to the compensation of expert witnesses, other than those witnesses who are employees or contractors of UNMPC or any state or governmental institution or agency which is participating in this AOT Program. The terms of compensation for expert witnesses, including hourly rates and maximum allowable compensation for each case, shall not exceed the total compensation allowable per case.

(2) The total amount of compensation paid by the City for any case under this Request shall not exceed the sum of \$1,500 for the first year of the grant. Subsequent years may have a change in maximum compensation per case, dependent on funding.

(3) Contractor must agree to bill the City in 0.1 hour billing units and at hourly rates of \$75.00/hour, inclusive of gross receipts tax. The hourly rates submitted, which are the maximum rates which may be charged to the City, may remain fixed for a four-year period following the receipt of the Letter of Interest in response to this solicitation.

B. **Method of Payment.** Such amount shall be payable at the rate of SEVENTY-FIVE and No/100 Dollars (\$75.00) per hour, which rate includes any applicable gross receipt taxes, billable in 0.1 hour billing units. Payments shall be made to the Contractor monthly for completed Services upon receipt by the City of properly documented requisitions for payment as determined by the budgetary and fiscal guidelines of the City and on the condition that the Contractor has accomplished the Services to the satisfaction of the City. Each requisition for payment must adequately identify and describe services performed within the above-described scope, identify the billing party, and the service provided, and the corresponding amount associated with those services utilizing the identified hourly rate.

The following items are unallowable costs:

- (1) billing of administrative guidance and coordination of secretaries, legal assistants/paralegals, and associates;
- (2) billing of partner or attorney rates for routine activities of clerical, secretarial or legal assistant paralegal personnel conducting conflict checks, preparing form letters, setting up files, or other overhead activities; and
- (3) costs for hiring expert witnesses, and other extraordinary costs and expenses without obtaining prior approval from the supervising Assistant City Attorney and the Division Manager.

C. Appropriations. Notwithstanding any provision in this Agreement to the contrary, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement may be terminated at the end of the City's then current Fiscal Year upon written notice given by the City to the Contractor. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

D. Payment Contingent on Performance. The scope identifies the expectations of performance and deliverables. Should the Contractor fail to comply with these expectations to the City's satisfaction, the City is entitled to withhold payment or a portion of payment until the Contractor has demonstrated full compliance expectations outlined in the Scope.

E. Compliance with Part 200 Uniform Requirements: The Contractor must comply with all applicable requirements of Part 200 Uniform Requirements, which include, among other things, requirements regarding financial management, internal controls, cost principles, allowable costs, indirect costs, records retention and access, audit requirements, and lower tier subawards and/or procurement contracts. For more information and resources on the Uniform Guidance, please review the following citations from the Code of Federal Regulations (CFRs): 2 CFR Part 200 as codified by HHS at 45 CFR Part 75; and for the funds in support of this contract, see: <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=0ddb69baec587eeea4ab7e6a68c4acb0&mc=true&r=PART&n=pt45.1.75> .

F. Ad Hoc Submissions. Throughout the project period, SAMHSA may determine that the grant requires submission of additional information beyond the standard deliverables. This information may include, but is not limited to, the following: payroll, purchase orders, contract documentation, and proof of project implementation. The Contractor must maintain and provide upon request, all documents and information related to Services and billing, including those described above, in the event of a request by SAMHSA for ad hoc submissions.

G. Non-Supplant. Federal funds must supplement, not replace (supplant) non-federal funds. The Contractor must ensure that federal funds do not supplant funds that have been budgeted for the same purpose through non-federal sources. Applicants or award recipients may be required to demonstrate and document that a reduction in non-federal resources has occurred for reasons other than the receipt of or expected receipt of federal funds.

4. Independent Contractor. Neither the Contractor nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5. Personnel.

A. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the City.

B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. None of the work or the Services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or Services subcontracted hereunder shall be specified by written contract or Agreement and shall be subject to each provision of this Agreement.

6. Indemnity. The Contractor agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from the Services performed by the Contractor under this Agreement or by reason of any asserted act or omission, neglect or misconduct of the Contractor or Contractor's agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7. Insurance. The Contractor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Services and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days' written notice be

given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. Commercial General Liability Insurance. N/A

B. Automobile Liability Insurance. N/A

C. Workers' Compensation Insurance. Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensations Act of the State of New Mexico.

D. Professional Liability Insurance. Professional liability insurance in an amount not less than \$1,000,000.00 per claim and in the aggregate.

E. Increased Limits. If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

8. Discrimination Prohibited.

A. In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans with Disabilities Act of 1990, as now enacted or hereafter amended.

B. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see <http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html>.

C. It is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&lvlid=6>.

D. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, sexual preference, age, national origin or ancestry, physical or mental handicap, disability, or Vietnam era or disabled veteran status. Recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age, and in some circumstances, sex and religion. This includes ensuring programs are

accessible to persons with limited English proficiency.

9. ADA Compliance. In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the 'ADA'), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA. Recipients of FFA have specific legal obligations for serving qualified individuals with disabilities. Please see <http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html>. Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under Federal civil rights laws at [https://www.hhs.gov/civil- rights/index.html](https://www.hhs.gov/civil-rights/index.html) or call 1-800-368-1019 or TDD 1-800-537-7697.

10. Conflict of Interest. No officer, agent or employee of the City will participate in any decision relating to this Agreement which affects that person's financial interest, the financial interest of his or her spouse or minor child or the financial interest of any business in which he or she has a direct or indirect financial interest.

11. Interest of Contractor.

A. The Contractor agrees that it presently does not have, and shall acquire no direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Agreement. The Contractor will not employ any person who has any such conflict of interest to assist the Contractor in performing the Services.

B. The Contractor must establish written policies and procedures to prevent employees, consultants, and others (including family, business, or other ties) involved in grant-supported activities, from involvement in actual or perceived conflicts of interest. The policies and procedures must: 1) address conditions under which outside activities, relationships, or financial interests are proper or improper; 2) provide for advance disclosure of outside activities, relationships, or financial interests to a responsible organizational official; 3) include a process for notification and review by the responsible official of potential or actual violations of the standards; and 4) specify the nature of penalties that may be imposed for violations.

12. Lobbying. The Contractor understands that since this contract is funded in full by federal funds, that no part of those funds shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law ratification, policy, or appropriation.

The Contractor certifies that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. The Contractor will disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award, and forward such disclosures to the City at the time the activity takes place.

13. No Collusion. The Contractor represents that this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud and in good faith. The Contractor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

14. Debarment, Suspension, Ineligibility and Exclusion Compliance. The Contractor certifies that it has not been debarred, suspended or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States. The Contractor agrees that should any notice of debarment, suspension, ineligibility or exclusion be received by the Contractor, the Contractor will notify the City immediately.

15. Reports and Information. All SAMHSA recipients are required to collect and report evaluation data to ensure the effectiveness and efficiency of its programs under the Government Performance and Results (GPRA) Modernization Act of 2010 (P.L. 102-62). Contractor must comply with the performance goals, milestones, and expected outcomes as reflected in this Agreement and the attached Exhibits. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement. Unless otherwise authorized by the City, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City.

16. Open Meetings Requirements. Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of § 2-5-1 et seq., R.O.A. 1994, Public Interest Organizations. The Contractor agrees to comply with all such requirements, if applicable.

17. Establishment and Maintenance of Records. Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

18. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

19. Ownership, Publication, Reproduction and Use of Material. No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

As applicable, Contractor agrees to the requirements for intellectual property, rights in data, access to research data, publications, and sharing research tools, and intangible property and copyrights as described in 45 CFR § 75.322 and the HHS Grants Policy Statement.

Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. SAMHSA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

20. Requirement for System of Award Management. No subaward can be made until the Contractor has provided its unique entity identifier specific to the System of Award Management ("SAM"), to the City. Additional information about registration procedures may be found at the SAM internet site: <http://www.sam.gov>.

The Contractor agrees to provide any information required pursuant to the Federal Financial Accountability and Transparency Act (FFATA), and the requirements of 2 CFR, Appendix A to Part 170. Information may be required as part of the SAM registration process, or by separate inquiry from the City, or both.

21. Acknowledgement of Federal Funding. The Contractor acknowledges that this contract is funded in full by federal funds through HHS. As such, Contractor, must acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds. Recipients are required to state: (1) the percentage and dollar amounts of the total program or project costs financed with Federal funds; and (2) the percentage and dollar amount of the total costs financed by nongovernmental sources.

19. Mandatory Disclosures. Consistent with 45 CFR 75.113, Contractor must disclose, in a timely manner, in writing to the City and the HHS OIG, all information related to

violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Disclosures must be sent in writing to the awarding agency and to the HHS OIG at the following addresses:

SAMHSA

Attention: Office of Financial Advisory Services

5600 Fishers Lane

Rockville, MD 20857 AND

U.S. Department of Health and Human Services Office of Inspector General

ATTN: Mandatory Grant Disclosures, Intake Coordinator

330 Independence Avenue, SW, Cohen Building Room 5527

Washington, DC 20201

Fax: (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line) or

Email: MandatoryGranteeDisclosures@oig.hhs.gov

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 remedies for noncompliance, including suspension or debarment (see 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

20. Drug-Free Workplace. The Contractor agrees to maintain a drug-free workplace and comply with the requirement to notify the City and the Department of Health and Human Services (HHS) if an employee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. Government wide requirements for Drug-Free Workplace for Financial Assistance are found in 2 CFR 182; HHS implementing regulations are set forth in 2 CFR 382.400. All recipients of HHS grant funds, including the Contractor, must comply with the requirements in Subpart B (or Subpart C if the recipient is an individual) of Part 382, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

23. Prohibited Conduct Related to Trafficking in Persons. During the period of time that this award is in effect, the Contractor, and the employees of the Contractor, may not engage in severe forms of trafficking in persons, procure of a commercial sex act, or use forced labor in the performance of the award or subaward under the award. Such described conduct is imputed to the employees of the Contractor pursuant to the standards of due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by HHS at 2 CFR Part 1125. The Contractor must inform HHS and the City promptly, and without delay, of any information the Contractor receives from any source alleging a violation of any prohibited conduct related to trafficking in persons. See <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>.

24. Health Insurance Portability and Accountability Act. The Contractor will comply with the Health Insurance Portability and Accountability Act (HIPAA), and § 43-1B-14 NMSA 1978, as amended, sequestration and confidentiality of records, to safeguard the confidentiality of participants' medical records. In addition, if applicable, the Contractor must

comply with 42 CFR Part 2, requiring confidentiality of substance use disorder patient treatment records.

25. Confidentiality of Alcohol and Drug Abuse Patient Records. The regulations (42 CFR 2) are applicable to any information about alcohol and other drug abuse patients obtained by a "program" (42 CFR 2.11), if the program is Federally assisted in any manner (42 CFR 2.12b). Accordingly, all project patient records are confidential and may be disclosed and used only in accordance with 42 CFR Part 2. The Contractor is responsible for assuring compliance with these regulations and principles, including responsibility for assuring the security and confidentiality of all electronically transmitted patient material.

26. Healthy People 2020. Healthy People 2020 is a national initiative led by HHS that set priorities for all SAMHSA programs. The initiative has two major goals: (1) increase the quality and years of a healthy life; and (2) eliminate our country's health disparities. The program consists of 28 focus areas and 467 objectives. SAMHSA has actively participated in the work groups of all the focus areas and is committed to the achievement of the Healthy People 2020 goals. Healthy People 2010 and the conceptual framework for the forthcoming Healthy People 2020 process can be found online at <http://www.healthypeople.gov/>.

27. Federal Recognition of Same-Sex Spouses/Marriages. The Contractor shall recognize and treat as valid same-sex marriages and same-sex spouses on equal terms with opposite sex-marriages and opposite-sex spouses, regardless of where the couple resides, and shall recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

28. Legislative Mandates. Certain statutory provisions limit the use of funds on SAMHSA grants, cooperative agreements, and contract awards. Such provisions are subject to change annually based on specific appropriation language that restricts the use of grant funds. A list of Appropriation Mandates applicable to each fiscal year can be found at <https://www.samhsa.gov/grants/grants-management/policies-regulations/additional-directives>

29. Promoting Quality and Efficient Health Care in Federal Government Administered or Sponsored Health Care Programs. The Contractor, when electronically exchanging patient level health information to external entities where national standards exist must:

A. Use recognized health information interoperability standards at the time of any HIT system update, acquisition, or implementation, in all relevant information technology systems supported, in whole or in part, through this agreement/contract. Please consult www.healthit.gov for more information, and

B. Use Electronic Health Record systems (EHRs) that are certified by agencies authorized by the Office of the National Coordinator for Health Information Technology (ONC), or that will be certified during the life of the grant.

30. Compliance with Laws. In performing the Services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, state and local governments.

31. Changes. The City may, from time to time, request changes in the Services 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 City and the Contractor, shall be incorporated in written amendments to this Agreement.

32. Assignability. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City thereto.

33. Termination for Cause. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by the Contractor under this Agreement shall, at the option of the City, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

34. Termination for Convenience of City. The City may terminate this Agreement at any time by giving at least fifteen (15) days' notice in writing to the Contractor. If the Contractor is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Services actually performed bear to the total Services of the Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.

35. Force Majeure. Neither the Contractor nor the City shall be liable for failure to perform its obligations under this Agreement due to causes beyond the control and without the fault or negligence of either party which would render such performance impossible or hazardous. Such causes include, but are not restricted to, acts of God or the public enemy, acts of State or Federal governments, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in reasonable time (hereinafter "Force Majeure Event").

The party seeking to rely upon a Force Majeure Event(s) for any failure to perform shall

promptly inform the other in writing of such event, indicating the expected duration thereof and the period for which suspension in performance is requested and the parties shall consult with each other in good faith with respect to modification of this Agreement to reflect such suspension or other changes (if any) desired by either of them as a result thereof.

The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

36. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

37. Enforcement. The Contractor agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

38. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

39. Applicable Law and Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque. The venue for actions arising out of this Agreement is Bernalillo County, New Mexico.

40. Approval Required. This Agreement shall not become binding upon the City until approved by the highest approval authority of the City required under this Agreement.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the date first above written.

CITY OF ALBUQUERQUE

CONTRACTOR:

Approved By:

Sarita Nair, JD, MCRP
Chief Administrative Officer

Date: _____

By: _____

Title: _____

CONTRACTOR NAME

Carol M. Pierce, Director
Department of Family and Community
Services

Date: _____

Date: _____

Jennifer Lee Bradley
Chief Procurement Officer

Date: _____

APPENDIX C

Petitioner Draft Agreement

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the City of Albuquerque, New Mexico, a municipal corporation ("City"), and _____, _____ ("Contractor").

RECITALS

WHEREAS, the City was awarded a Grant Number 1H79SM063539-01 from the Substance Abuse and Mental Health Services Administration ("SAMHSA"), an agency with the U.S. Department of Health and Human Services, to implement an Assisted Outpatient Treatment ("AOT") Program within Bernalillo County; and

WHEREAS, the City Council authorized the acceptance of the award through R-19-116; and

WHEREAS, the City specified in the grant application that the City would engage representation for petitioners as a necessary component of the implementation of the Albuquerque AOT Project, and

WHEREAS, through a Request for Letters of Intent through the Department of Family and Community Services dated March 2019 the City obtained bids for representation for petitioners; and

WHEREAS, the Contractor represents that it has the experience, resources and expertise necessary to execute the activities and services desired; and

WHEREAS, the City desires to engage the Contractor to render certain services in connection therewith 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:

2. Scope of Services. The Contractor shall perform the following services ("Services") in a satisfactory and proper manner, as determined by the City:

N. Provide legal counsel for the University of New Mexico Psychiatric Center, Kaseman Hospital and other inpatient mental health facilities, for cases arising under the Mental Health Code, specifically, Assisted Outpatient Treatment, § 43-1B-1 through § 43-1B-14 NMSA 1978, as amended ("Petitioner"). Representation would cover all cases filed or reopened during the contract period, as assigned, and all review hearings for which Notice was filed during the contract period. The Contractor will represent Petitioner in Petitioner's requirement to ensure the statutory criteria are met, including but not limited to, drafting and filing petitions, motions, and other documents associated with Assisted Outpatient Treatment proceedings.

O. Represent the Petitioner at all stages of the district court proceedings.

P. On a case by case basis, as approved by the City, Contractor may represent the Petitioner in the appellate process. Contractor will respond to any calendar notice, prepare briefs in cases which are placed on the general calendar, participate in oral arguments, and if necessary, seek certiorari and represent the client in the New Mexico Supreme Court.

Q. Attend AOT Team meetings monthly as scheduled by the Program Manager.

R. The Contractor will collaborate with University of New Mexico Institute for Social Research (ISR) to evaluate the implementation, impact and outcomes of the AOT project. Specifically, the Contractor agrees as part of this evaluation to make available to the ISR, identifiable client-level information (i.e. last name, first name, date of birth) and information related to program participation and service utilization for clients who sign a release of information according to an applicable UNM-IRB and federally approved human subject review. The Contractor also agrees to collaborate with the ISR to conduct an outcome study that may include enrolling eligible and consenting clients in a study. The ISR will receive a federally approved human subject review prior to beginning an outcome study.

F. Contractor must agree to comply with all laws, ordinances, rules and regulations, resolutions, policies, etc, in effect during the term of any contract with the City.

G. Contractor must be located in the Greater Albuquerque Metropolitan area, or agree not to bill the City for travel time between its office and Albuquerque, without prior approval.

H. Contractor must agree to comply with the New Mexico Rules of Professional Conduct.

I. Contractor shall provide the City with notice of any client representation which could conflict with the representation of the City during the two-year period following receipt by the City of the attorney's letter of interest.

J. Contractor shall utilize only those attorneys and legal assistants/paralegals set out in the proposal submitted to provide services to the City, unless the City approves in writing its request for a change in personnel.

K. Contractor shall attend mandatory trainings scheduled by the City specific to the Assisted Outpatient Treatment Program.

2. Time of Performance. Services of the Contractor shall commence upon execution of Agreement, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed by September 30, 2019,

which may be extended upon mutual written agreement between the City and the Contractor.

3. Compensation and Method of Payment.

A. Compensation. For performing the Services specified in Section 1 hereof, the City agrees to pay the Contractor up to the amount of NINETY THOUSAND AND NO/100 DOLLARS (**\$90,000.00**), which amount includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing the Services. The Contractor is not guaranteed the assignment of cases or work or the payment of any compensation, unless a case has been assigned and work has been completed. The terms of compensation, including hourly rates and maximum allowable compensation for each case, shall be determined by the City. The total amount of compensation paid by the City for legal representation of respondents under the terms of this Request shall not exceed the amounts budgeted by the City and appropriated by the City's governing body for that purpose.

(4) The City may agree to the compensation of expert witnesses, other than those witnesses who are employees or contractors of UNMPC or any state or governmental institution or agency which is participating in this AOT Program. The terms of compensation for expert witnesses, including hourly rates and maximum allowable compensation for each case, shall not exceed the total compensation allowable per case.

(5) The total amount of compensation paid by the City for any case under this Request shall not exceed the sum of \$1,500 for the first year of the grant. Subsequent years may have a change in maximum compensation per case, dependent on funding.

(6) Contractor must agree to bill the City in 0.1 hour billing units and at hourly rates of \$75.00/hour, inclusive of gross receipts tax. The hourly rates submitted, which are the maximum rates which may be charged to the City, may remain fixed for a four-year period following the receipt of the Letter of Interest in response to this solicitation.

B. Method of Payment. Such amount shall be payable at the rate of SEVENTY-FIVE and No/100 Dollars (\$75.00) per hour, which rate includes any applicable gross receipt taxes, billable in 0.1 hour billing units. Payments shall be made to the Contractor monthly for completed Services upon receipt by the City of properly documented requisitions for payment as determined by the budgetary and fiscal guidelines of the City and on the condition that the Contractor has accomplished the Services to the satisfaction of the City. Each requisition for payment must adequately identify and describe services performed within the above-described scope, identify the billing party, and the service provided, and the corresponding amount associated with those services utilizing the identified hourly rate.

The following item are unallowable costs:

(4) billing of administrative guidance and coordination of secretaries, legal assistants/paralegals, and associates;

(5) billing of partner or attorney rates for routine activities of clerical, secretarial or legal assistant paralegal personnel conducting conflict checks, preparing form letters, setting up files, or other overhead activities; and

(6) costs for hiring expert witnesses, and other extraordinary costs and expenses without obtaining prior approval from the supervising Assistant City Attorney and the Division Manager.

C. Appropriations. Notwithstanding any provision in this Agreement to the contrary, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement may be terminated at the end of the City's then current Fiscal Year upon written notice given by the City to the Contractor. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

D. Payment Contingent on Performance. The scope identifies the expectations of performance and deliverables. Should the Contractor fail to comply with these expectations to the City's satisfaction, the City is entitled to withhold payment or a portion of payment until the Contractor has demonstrated full compliance expectations outlined in the Scope.

E. Compliance with Part 200 Uniform Requirements: The Contractor must comply with all applicable requirements of Part 200 Uniform Requirements, which include, among other things, requirements regarding financial management, internal controls, cost principles, allowable costs, indirect costs, records retention and access, audit requirements, and lower tier subawards and/or procurement contracts. For more information and resources on the Uniform Guidance, please review the following citations from the Code of Federal Regulations (CFRs): 2 CFR Part 200 as codified by HHS at 45 CFR Part 75; and for the funds in support of this contract, see: <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=0ddb69baec587eeea4ab7e6a68c4acb0&mc=true&r=PART&n=pt45.1.75> .

F. Ad Hoc Submissions. Throughout the project period, SAMHSA may determine that the grant requires submission of additional information beyond the standard deliverables. This information may include, but is not limited to, the following: payroll, purchase orders, contract documentation, and proof of project implementation. The Contractor must maintain and provide upon request, all documents and information related to Services and billing, including those described above, in the event of a request by SAMHSA for ad hoc submissions.

G. Non-Supplant. Federal funds must supplement, not replace (supplant) non-federal funds. The Contractor must ensure that federal funds do not supplant funds that have been budgeted for the same purpose through non-federal sources. Applicants or award recipients

may be required to demonstrate and document that a reduction in non-federal resources has occurred for reasons other than the receipt of or expected receipt of federal funds.

4. Independent Contractor. Neither the Contractor nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Contractor is considered as an independent contractor at all times in the performance of the Services described in Section 1. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5. Personnel.

A. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the City.

B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.

C. None of the work or the Services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or Services subcontracted hereunder shall be specified by written contract or Agreement and shall be subject to each provision of this Agreement.

6. Indemnity. The Contractor agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from the Services performed by the Contractor under this Agreement or by reason of any asserted act or omission, neglect or misconduct of the Contractor or Contractor's agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

7. Insurance. The Contractor shall procure and maintain at its expense until final payment by the City for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Services and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days' written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers'

compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. Commercial General Liability Insurance. N/A

B. Automobile Liability Insurance. N/A

C. Workers' Compensation Insurance. Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensations Act of the State of New Mexico.

D. Professional Liability Insurance. Professional liability insurance in an amount not less than \$1,000,000.00 per claim and in the aggregate.

E. Increased Limits. If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

8. Discrimination Prohibited.

A. In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans with Disabilities Act of 1990, as now enacted or hereafter amended.

B. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see <http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html>.

C. It is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&lvlid=6>.

D. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, sexual preference, age, national origin or ancestry, physical or mental handicap, disability, or Vietnam era or disabled veteran status. Recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age, and in some circumstances, sex and religion. This includes ensuring programs are accessible to persons with limited English proficiency.

9. ADA Compliance. In performing the Services required hereunder, the Contractor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, and all

applicable rules and regulations (the 'ADA'), which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of any acts or omissions of the Contractor or its agents in violation of the ADA. Recipients of FFA have specific legal obligations for serving qualified individuals with disabilities. Please see <http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html>. Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under Federal civil rights laws at <https://www.hhs.gov/civil-rights/index.html> or call 1-800-368-1019 or TDD 1-800-537-7697.

10. Conflict of Interest. No officer, agent or employee of the City will participate in any decision relating to this Agreement which affects that person's financial interest, the financial interest of his or her spouse or minor child or the financial interest of any business in which he or she has a direct or indirect financial interest.

11. Interest of Contractor.

A. The Contractor agrees that it presently does not have, and shall acquire no direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Agreement. The Contractor will not employ any person who has any such conflict of interest to assist the Contractor in performing the Services.

B. The Contractor must establish written policies and procedures to prevent employees, consultants, and others (including family, business, or other ties) involved in grant-supported activities, from involvement in actual or perceived conflicts of interest. The policies and procedures must: 1) address conditions under which outside activities, relationships, or financial interests are proper or improper; 2) provide for advance disclosure of outside activities, relationships, or financial interests to a responsible organizational official; 3) include a process for notification and review by the responsible official of potential or actual violations of the standards; and 4) specify the nature of penalties that may be imposed for violations.

12. Lobbying. The Contractor understands that since this contract is funded in full by federal funds, that no part of those funds shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law ratification, policy, or appropriation.

The Contractor certifies that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered

by 31 U.S.C. 1352. The Contractor will disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award, and forward such disclosures to the City at the time the activity takes place.

13. No Collusion. The Contractor represents that this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud and in good faith. The Contractor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

14. Debarment, Suspension, Ineligibility and Exclusion Compliance. The Contractor certifies that it has not been debarred, suspended or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States. The Contractor agrees that should any notice of debarment, suspension, ineligibility or exclusion be received by the Contractor, the Contractor will notify the City immediately.

15. Reports and Information. All SAMHSA recipients are required to collect and report evaluation data to ensure the effectiveness and efficiency of its programs under the Government Performance and Results (GPRA) Modernization Act of 2010 (P.L. 102-62). Contractor must comply with the performance goals, milestones, and expected outcomes as reflected in this Agreement and the attached Exhibits. At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information, as the City may request pertaining to matters covered by this Agreement. Unless otherwise authorized by the City, the Contractor will not release any information concerning the work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City.

16. Open Meetings Requirements. Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of § 2-5-1 et seq., R.O.A. 1994, Public Interest Organizations. The Contractor agrees to comply with all such requirements, if applicable.

17. Establishment and Maintenance of Records. Records shall be maintained by the Contractor in accordance with applicable law and requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

18. Audits and Inspections. At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to

make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for the City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

19. Ownership, Publication, Reproduction and Use of Material. No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

As applicable, Contractor agrees to the requirements for intellectual property, rights in data, access to research data, publications, and sharing research tools, and intangible property and copyrights as described in 45 CFR § 75.322 and the HHS Grants Policy Statement.

Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. SAMHSA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

20. Requirement for System of Award Management. No subaward can be made until the Contractor has provided its unique entity identifier specific to the System of Award Management ("SAM"), to the City. Additional information about registration procedures may be found at the SAM internet site: <http://www.sam.gov>.

The Contractor agrees to provide any information required pursuant to the Federal Financial Accountability and Transparency Act (FFATA), and the requirements of 2 CFR, Appendix A to Part 170. Information may be required as part of the SAM registration process, or by separate inquiry from the City, or both.

21. Acknowledgement of Federal Funding. The Contractor acknowledges that this contract is funded in full by federal funds through HHS. As such, Contractor, must acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds. Recipients are required to state: (1) the percentage and dollar amounts of the total program or project costs financed with Federal funds; and (2) the percentage and dollar amount of the total costs financed by nongovernmental sources.

21. Mandatory Disclosures. Consistent with 45 CFR 75.113, Contractor must disclose, in a timely manner, in writing to the City and the HHS OIG, all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Disclosures must be sent in writing to the awarding agency and to the HHS OIG at the following addresses:

SAMHSA

Attention: Office of Financial Advisory Services

5600 Fishers Lane

Rockville, MD 20857 AND

U.S. Department of Health and Human Services Office of Inspector General

ATTN: Mandatory Grant Disclosures, Intake Coordinator

330 Independence Avenue, SW, Cohen Building Room 5527

Washington, DC 20201

Fax: (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line) or

Email: MandatoryGranteeDisclosures@oig.hhs.gov

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 remedies for noncompliance, including suspension or debarment (see 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

22. Drug-Free Workplace. The Contractor agrees to maintain a drug-free workplace and comply with the requirement to notify the City and the Department of Health and Human Services (HHS) if an employee is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. Government wide requirements for Drug-Free Workplace for Financial Assistance are found in 2 CFR 182; HHS implementing regulations are set forth in 2 CFR 382.400. All recipients of HHS grant funds, including the Contractor, must comply with the requirements in Subpart B (or Subpart C if the recipient is an individual) of Part 382, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

23. Prohibited Conduct Related to Trafficking in Persons. During the period of time that this award is in effect, the Contractor, and the employees of the Contractor, may not engage in severe forms of trafficking in persons, procure of a commercial sex act, or use forced labor in the performance of the award or subaward under the award. Such described conduct is imputed to the employees of the Contractor pursuant to the standards of due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by HHS at 2 CFR Part 1125. The Contractor must inform HHS and the City promptly, and without delay, of any information the Contractor receives from any source alleging a violation of any prohibited conduct related to trafficking in persons. See <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>.

24. Health Insurance Portability and Accountability Act. The Contractor will comply with the Health Insurance Portability and Accountability Act (HIPAA), and § 43-1B-14 NMSA 1978, as amended, sequestration and confidentiality of records, to safeguard the confidentiality of participants' medical records. In addition, if applicable, the Contractor must comply with 42 CFR Part 2, requiring confidentiality of substance use disorder patient treatment records.

25. Confidentiality of Alcohol and Drug Abuse Patient Records. The regulations (42 CFR 2) are applicable to any information about alcohol and other drug abuse patients

obtained by a "program" (42 CFR 2.11), if the program is Federally assisted in any manner (42 CFR 2.12b). Accordingly, all project patient records are confidential and may be disclosed and used only in accordance with 42 CFR Part 2. The Contractor is responsible for assuring compliance with these regulations and principles, including responsibility for assuring the security and confidentiality of all electronically transmitted patient material.

26. **Healthy People 2020.** Healthy People 2020 is a national initiative led by HHS that set priorities for all SAMHSA programs. The initiative has two major goals: (1) increase the quality and years of a healthy life; and (2) eliminate our country's health disparities. The program consists of 28 focus areas and 467 objectives. SAMHSA has actively participated in the work groups of all the focus areas and is committed to the achievement of the Healthy People 2020 goals. Healthy People 2010 and the conceptual framework for the forthcoming Healthy People 2020 process can be found online at <http://www.healthypeople.gov/>.

27. **Federal Recognition of Same-Sex Spouses/Marriages.** The Contractor shall recognize and treat as valid same-sex marriages and same-sex spouses on equal terms with opposite sex-marriages and opposite-sex spouses, regardless of where the couple resides, and shall recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

28. **Legislative Mandates.** Certain statutory provisions limit the use of funds on SAMHSA grants, cooperative agreements, and contract awards. Such provisions are subject to change annually based on specific appropriation language that restricts the use of grant funds. A list of Appropriation Mandates applicable to each fiscal year can be found at <https://www.samhsa.gov/grants/grants-management/policies-regulations/additional-directives>

29. **Promoting Quality and Efficient Health Care in Federal Government Administered or Sponsored Health Care Programs.** The Contractor, when electronically exchanging patient level health information to external entities where national standards exist must:

A. Use recognized health information interoperability standards at the time of any HIT system update, acquisition, or implementation, in all relevant information technology systems supported, in whole or in part, through this agreement/contract. Please consult www.healthit.gov for more information, and

B. Use Electronic Health Record systems (EHRs) that are certified by agencies authorized by the Office of the National Coordinator for Health Information Technology (ONC), or that will be certified during the life of the grant.

30. **Compliance with Laws.** In performing the Services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, state and local governments.

31. **Changes.** The City may, from time to time, request changes in the Services 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 City and the Contractor, shall be incorporated in written amendments to this Agreement.

32. Assignability. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation), without the prior written consent of the City thereto.

33. Termination for Cause. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by the Contractor under this Agreement shall, at the option of the City, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

34. Termination for Convenience of City. The City may terminate this Agreement at any time by giving at least fifteen (15) days' notice in writing to the Contractor. If the Contractor is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Services actually performed bear to the total Services of the Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.

35. Force Majeure. Neither the Contractor nor the City shall be liable for failure to perform its obligations under this Agreement due to causes beyond the control and without the fault or negligence of either party which would render such performance impossible or hazardous. Such causes include, but are not restricted to, acts of God or the public enemy, acts of State or Federal governments, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in reasonable time (hereinafter "Force Majeure Event").

The party seeking to rely upon a Force Majeure Event(s) for any failure to perform shall promptly inform the other in writing of such event, indicating the expected duration thereof and the period for which suspension in performance is requested and the parties shall consult with each other in good faith with respect to modification of this Agreement to reflect such suspension or other changes (if any) desired by either of them as a result thereof.

The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

36. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

37. Enforcement. The Contractor agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

38. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

39. Applicable Law and Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque. The venue for actions arising out of this Agreement is Bernalillo County, New Mexico.

40. Approval Required. This Agreement shall not become binding upon the City until approved by the highest approval authority of the City required under this Agreement.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the date first above written.

CITY OF ALBUQUERQUE

CONTRACTOR:

Approved By:

Sarita Nair, JD, MCRP
Chief Administrative Officer

Date: _____

By: _____

Title: _____

CONTRACTOR NAME

Carol M. Pierce, Director
Department of Family and Community
Services

Date: _____

Date: _____

Jennifer Lee Bradley
Chief Procurement Officer

Date: _____