

City of Albuquerque

Request for Letters of Interest

Legal Services



November, 2022

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

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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 or other entities serving in the role of petitioner, 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

Funded by the City of Albuquerque, the AOT Program will serve approximately 40 individuals. Referrals for this program will primarily, but not exclusively, 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 Assisted Outpatient Treatment contract award is for a project period from November 1, 2022 to June 30, 2023, 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, or 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, or as scheduled, by the Program Manager.

TERM

Proposals are being considered for Fiscal Year 2023 beginning November 1, 2022 through June 30, 2023. Contracts may be subject to one-year extensions for the time periods of July 1 through June 30, 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, or designee, 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

For Petitioner

There is a maximum allowable compensation of \$6,250.00 per month for a case load of 10-50 clients ordered into the AOT program; \$2,857.00 a month for a case load of 1-9 clients ordered into the AOT program; and \$500 per month for months where there are no assigned clients, for administrative tasks necessary to serve as the petitioner attorney such as, but not limited to, attendance at meetings scheduled for the AOT program by the City or by the Second Judicial District Court, conflict of interest checks on potential new clients, review of documentation related to the AOT program, etc. In the event that only one client is assigned that is in the process of being closed, the administrative fee for that month is \$500. All cases will be distributed by the City. The total amount of compensation paid by the City for legal representation of petitioners under the terms of this Request shall not exceed the total amount budgeted for the program by the City and appropriated by the City's governing body for that purpose. It is the Contractor's responsibility to ensure that the amounts billed do not exceed the total maximum allowable amount of compensation for this Agreement, both monthly and for the term of the Agreement.

- (a) 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.
- (b) The total amount of compensation paid by the City for any month under this Request shall not exceed the sum of \$6,250.00 a month, including any applicable gross receipts taxes, based on the estimated total amount of the contract and estimated number of clients. Subsequent years may have a change in maximum compensation per case or per month, dependent on funding.

For Respondent

There is a maximum allowable compensation of \$4,375.00 per month for a case load of 6-25 clients ordered into the AOT program; \$2,000.00 a month for a case load of 1-5 clients ordered into the

AOT program; and \$500 per month for months where there are no assigned clients to compensate for administrative tasks necessary to serve as the respondent attorney. In the event that only one client is assigned that is in the process of being closed, the administrative fee for that month is \$500. All cases will be distributed 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 total amount budgeted for the program by the City and appropriated by the City's governing body for that purpose. It is the Contractor's responsibility to ensure that the amounts billed do not exceed the total maximum allowable amount of compensation for this Agreement, both monthly and for the term of the Agreement.

(a) The total amount of compensation paid by the City for any month under this Request shall not exceed the sum of \$4,375.00 a month, including any applicable gross receipts taxes, and based on the estimated total amount of the contract and estimated number of clients. Subsequent years may have a change in maximum compensation per month, 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 affected 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:

AnaBell Cadena, Community Outreach Coordinator
Phone: (505) 768-2836; [email: acadena@cabq.gov](mailto:acadena@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 email to acadena@cabq.gov

1.3.1 Separate Proposal: A separate proposal must be submitted for each area of law in 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.

1.3.2 Deadline to Submit Proposals: The Department anticipates the AOT Program to begin December 1, 2022, therefore an earlier submission is preferred and encouraged. We will continue to accept letters on an ongoing basis until a sufficient pool of attorneys is filled.

1.3.3 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.

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

1.3.5 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.

1.4 Award of Contract:

1.4.1 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.

1.4.2 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.

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

1.4.4 Type of Contract: Time and expenses.

1.5 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.

1.6 Insurance:

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.

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

1.6.1.1 Commercial General Liability Insurance. NA

1.6.1.2 Automobile Liability Insurance. NA

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

1.6.1.4 Workers' Compensation Insurance. Workers' Compensation

Contractor's employees when required by, and in accordance with, the provisions of the Workers' Compensation Act of the State of New Mexico ("Act"). The Contractor must have three (3) or more employees to trigger the Act's workers' compensation insurance requirement. Per the Act, this number includes the owner of the business.

1.6.1.5 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.

1.7 Pay Equity Documentation. All Proposals shall include a Pay Equity Reporting Form which can be accessed at <https://www.cabq.gov/gender-pay-equity-initiative> or in the Solicitation Instructions. Offerors who believe they are exempt because they are an out-of-state contractor that has no facilities and no employees working in New Mexico are not required to report data but must check the box verifying their status on the Pay Equity Reporting Form. Any Proposal that does not include a Pay Equity Reporting Form shall be deemed non responsive.

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 resumé or profile of each attorney and legal assistant/paralegal, if applicable.

2.1.6 Contractor Requirements: Contractor will provide 2 professional letters of reference.

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 as follows:

for the Respondent Attorney: there is a maximum allowable compensation of \$4,375.00 per month for a case load of 6-25 clients ordered into the AOT program; \$2,000.00 a month for a case load of 1-5 clients ordered into the AOT program; and \$500 per month for months where there are no assigned clients to compensate for administrative tasks necessary to serve as the attorney. In the event that only one client is assigned that is in the process of being closed, the administrative fee for that month is \$500.

for the Petitioner Attorney: the case rate of \$6,250.00 per month for all services needed for 10-50 clients ordered into the AOT program, \$2,857.00 per month for all services needed for 1-9 clients ordered in the AOT program, and \$500 per month for months where there are no assigned clients, based on the highest number of clients on the case load in the month. In the event that only one client is assigned that is in the process of being closed, the administrative fee for that month is \$500.

- 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 during the two-year period following receipt by the City of the attorney's letter of interest.
- 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 billing which identifies the billing party, the services provided and the billing rate detailed above;
- (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 the City of Albuquerque, the AOT Program will serve approximately 40 individuals. 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 staffing's 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 has determined that it will fund behavioral health treatment for individuals with a serious mental illness to ensure such individuals are provided appropriate services required to maintain a reasonable quality of life; and

WHEREAS, these services enhance the health, wellness, education and public safety of the City of Albuquerque; and

WHEREAS, the City specifically designated funding to support Assisted Outpatient Treatment (AOT), which includes representation for participants as a necessary component of the Albuquerque AOT Project; and

WHEREAS, through a Request for Letters of Intent through the Department of Family and Community Services dated November, 2022, the City obtained bids for representation for respondents; 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.

WHEREAS, there was a delay in the execution of the Agreement, causing a gap between November 1, 2022 and the execution of the Agreement; and

WHEREAS, the City and the Contractor wish to ratify all actions taken by parties consistent with this Agreement, from November 1, 2022 through to the date of execution of this Agreement.

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. Represent the Respondent at all stages of the district court proceedings.
- C. Attend AOT Team meetings monthly as scheduled by the Program Manager.
- D. 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.
- E. 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.
- F. Contractor must agree to comply with the New Mexico Rules of Professional Conduct.
- G. 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.
- H. 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.
- I. Contractor shall attend mandatory trainings scheduled by the City specific to the Assisted Outpatient Treatment Program.
- J. Contractor must ensure that budgeted funds for the program are per client and not per Contractor.
- K. Contractor agrees to provide information needed to the City to evaluate the effectiveness of the AOT Program.

2. **Time of Performance.** Services of the Contractor shall commence on November 1, 2022 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 June 30, 2023. By signing this Agreement, the parties ratify all actions taken consistent with this Agreement, from November 1, 2022 through to the execution of this Agreement. Further, the parties explicitly agree that all of the terms and conditions of this Agreement, including but not limited to insurance requirements and indemnification, are applicable continuously commencing on November 1, 2022.

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 **THIRTY-NINE THOUSAND, THREE HUNDRED SEVENTY-FIVE (\$39,375.00)**, which amount includes any applicable gross receipts taxes and which amount, funded by City general funds, 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. There is a maximum allowable compensation of \$4,375.00 per month for a case load of 6-25 clients ordered into the AOT program; \$2,000.00 a month for a case load of 1-5 clients ordered into the AOT program; and \$500 per month for months where there are no assigned clients to compensate for administrative tasks necessary to serve as the respondent attorney. In the event that only one client is assigned that is in the process of being closed, Contractor will be paid the administrative fee of \$500 for that month. All cases will be distributed 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 total amount budgeted for the program by the City and appropriated by the City's governing body for that purpose. It is the Contractor's responsibility to ensure that the amounts billed do not exceed the total maximum allowable amount of compensation for this Agreement, both monthly and for the term of the Agreement. It is the Contractor's responsibility to bill monthly.

1. The total amount of compensation paid by the City for any month under this Request shall not exceed the sum of \$4,375.00 a month, including any applicable gross receipts taxes, and based on the estimated total amount of the contract and estimated number of clients. Subsequent years may have a change in maximum compensation per month, dependent on funding.
2. Contractor must agree to bill the City according to the monthly rate of \$4,375.00 per month for all services needed for 6-25 clients ordered into the AOT program; \$2,000.00 a month for all services needed for 1-5 clients ordered into the AOT program; and \$500 per month for all services needed for 0 clients, based on the highest number of clients on the case load in the month. In the event that only one client is assigned that is in the process of being closed, Contractor will be paid the administrative fee of \$500.00 for that month. where there are no assigned clients to compensate for administrative tasks necessary to serve as the attorney, 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. In the event that only one client is assigned that is in the process of being closed, Contractor will be paid the administrative fee of \$500 for that month.

B. Method of Payment. Such amount shall be payable at the rate of \$4,375.00 per month for 6-25 clients, \$2,000.00 for 1-5 clients ordered into the AOT program, and \$500 per month for months with no clients, which rate includes any applicable gross receipt taxes. In the event that only one client is assigned that is in the process of being closed, the Contractor will be paid the administrative fee of \$500 for that month. 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 corresponding amount associated with those services utilizing the identified case rate of \$4,375.00 per month for 6-25 clients and \$2,000.00 per month for 1-5 clients, based on the highest number of clients on the case load in the month. For months where there are no assigned clients, a monthly administrative rate of \$500 per month will be paid for administrative tasks necessary to serve as the respondent attorney such as, but not limited to, attendance at meetings scheduled for the AOT program by the City or by the Second Judicial District Court, conflict of interest checks on potential new clients, and review of documentation related to the AOT program. In the event that only one client is assigned that is in the process of being closed, the Contractor will be paid the administrative fee of \$500 for that month.

The following items are unallowable costs:

- i. billing of administrative guidance and coordination of secretaries, legal assistants/paralegals, and associates;
- ii. 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
- iii. 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. **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.

D. **Responsibility to Monitor Contract:** Contractor shall be responsible for ensuring that the Contractor does not bill for Services in an amount that exceeds the total contract amount. With each invoice submitted to the City, the Contractor shall include a ledger report that identifies the total amount the Contractor has billed for Services under this Agreement and any Supplements to this Agreement. If at any time the Contractor determines that payment for Services may or will exceed the total amount provided in this Agreement and any Supplements to this Agreement, the Contractor shall notify the City in writing, as soon as possible after making that determination. If the Contractor's billing exceeds the amount of this Agreement and any Supplements, the City may stop or delay payment, or the Services may be ceased or delayed at the City's request.

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 Contractor's employees when required by, and in accordance with, the provisions of the Workers' Compensation Act of the State of New Mexico ("Act"). The Contractor must have three (3) or more employees to trigger the Act's workers'

compensation insurance requirement. Per the Act, this number includes the owner of the business.

D. Professional Liability Insurance. Professional liability insurance in an amount not less than \$1,000,000.00 combined single limit of liability per occurrence with a general aggregate of \$1,000,000.00.

E. Cyber Liability Coverage: N/A

F. 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 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.

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.

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.

- A. The Contractor understands that utilization of any federally appropriated funds provided to the Contractor by the City pursuant hereto to influence or attempt to influence any member or employee of the Executive or Legislative branches of the federal government with respect to a covered federal action is prohibited. The Contractor further agrees that it shall comply with the certification and disclosure requirements of the applicable regulations. See Administrative Requirements for Contracts Awarded Under the City of Albuquerque, Department of Family and Community Services, Social Services Program, as amended, for certifications and applicable rules.
- B. Accountability in Government: The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. ROA 1994 and Inspector General Ordinance, §2-17-1 et seq. ROA 1994.

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: 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.
- 20. 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. In addition, the Contractor shall comply with the *Administrative Requirements for Contracts Awarded Under the City of Albuquerque, Department of Family and Community Services, Social Services Program*, as amended, and understands that failure to comply with the *Administrative Requirements* shall constitute grounds for termination of this Agreement.
- 21. 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.

22. 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.

23. 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.

24. 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 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.

25. Force Majeure: The City shall not be liable for failure to perform its obligations under this Agreement, for any loss or damage of any kind, or for any consequences resulting from delay or inability to perform, due to causes beyond the reasonable control and without the fault or negligence of the City. Such causes ("Force Majeure Events") include, but are not restricted to: acts of God or the public enemy; acts of State, Federal, or local governments; shortage or inability to obtain materials; breakdowns or delays of carriers, manufacturers, or suppliers; freight embargoes; theft; fire; floods; epidemics or pandemics; quarantine restrictions; strikes; lockouts; unusually severe weather; and defaults of subcontractors due to any of the above. If a Force Majeure Event causes any failure to perform, the City shall promptly inform the Contractor in writing of such event, indicating the expected duration thereof and the period for which suspension in performance is requested. 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 the City 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.

26. Appropriations: Notwithstanding any other provision in this Agreement, 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, or if the City Council un-appropriates or deauthorizes funds during a fiscal year,

this Agreement may be terminated upon thirty (30) days' written notice given by the City to all other parties to this Agreement. 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 determination as to whether sufficient appropriations are available or have been made shall be accepted by all parties and shall be final.

27. **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.
28. **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.
29. **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.
30. **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.
31. **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.
32. **Electronic Signature:** Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

SIGNATURES ON NEXT PAGE

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 has determined that it will fund behavioral health treatment for individuals with a serious mental illness to ensure such individuals are provided appropriate services required to maintain a reasonable quality of life; and

WHEREAS these services enhance the health, wellness, education and public safety of the City of Albuquerque; and

WHEREAS, the City specifically designated funding to support Assisted Outpatient Treatment (AOT), which includes representation for participants as a necessary component of the Albuquerque AOT Project, and

WHEREAS, through a Request for Letters of Intent through the Department of Family and Community Services dated November, 2022 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.

WHEREAS, there was a delay in the execution of the Agreement, causing a gap between November 1, 2022 and the execution of the Agreement; and

WHEREAS, the City and the Contractor wish to ratify all actions taken by parties consistent with this Agreement, from November 1, 2022 through to the date of execution of this Agreement.

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:

- A. 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.

- B. Represent the Petitioner at all stages of the district court proceedings.
- C. Attend AOT Team meetings monthly as scheduled by the Program Manager.
- D. 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.
- E. 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.
- F. Contractor must agree to comply with the New Mexico Rules of Professional Conduct.
- G. 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.
- H. 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.
- I. Contractor shall attend mandatory trainings scheduled by the City specific to the Assisted Outpatient Treatment Program.
- J. Contractor must ensure that budgeted funds for the program are per client and not per Contractor.
- K. Contractor agrees to provide information needed to the City to evaluate the effectiveness of the AOT 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 shall be completed by June 30, 2023. By signing this Agreement, the parties ratify all actions taken consistent with this Agreement, from November 1, 2022 through to the execution of this Agreement. Further, the parties explicitly agree that all of the terms and conditions of this Agreement, including but not limited to insurance requirements and indemnification, are applicable continuously commencing on November 1, 2022.

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 total amount of **FIFTY SIX THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$56,250.00)**, and which total amount includes any applicable gross receipts taxes, and which total 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. There is a maximum allowable compensation of \$6,250.00 per month for a case load of 10-50 clients ordered into the AOT program; \$2,857.00 a month for a case load of 1-9 clients ordered into the AOT program; and \$500 per month for months where there are no assigned clients, for administrative tasks necessary to serve as the petitioner attorney such as, but not limited to, attendance at meetings scheduled for the AOT program by the City or by the Second Judicial District Court, conflict of interest checks on potential new clients, review of documentation related to the AOT program, etc. All cases will be distributed by the City. In the event that only one client is assigned that is in the process of being closed, the administrative fee for that month is \$500. In the event that only one client is assigned that is in the process of being closed, the administrative fee for that month is \$500. The total amount of compensation paid by the City for legal representation of petitioners under the terms of this Request shall not exceed the total amount budgeted for the program by the City and appropriated by the City's governing body for that purpose. It is the Contractor's responsibility to ensure that the amounts billed do not exceed the total maximum allowable amount of compensation for this Agreement, both monthly and for the term of the Agreement.

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 month under this Request shall not exceed the sum of \$6,250.00 a month, including any applicable gross receipts taxes, based on the estimated total amount of the contract and estimated number of clients. Subsequent years may have a change in maximum compensation per case or per month, dependent on funding.
3. Contractor must agree to bill the City according to the case rate of \$6,250.00 per month for all services needed for 10-50 clients ordered into the AOT program, \$2,857.00 per month for all services needed for 1-9 clients ordered in the AOT program, and \$500 per month for months where there are no assigned clients, based on the highest number of clients on the case load in the month. In the event that only one client is assigned that is in the process of being closed, the administrative fee for that month is \$500. All amounts referenced must include any applicable gross receipts tax as part of the maximum amount.

B. **Method of Payment.** Such amount shall be payable at the rate of \$6,250.00 per month for 10-50 clients and \$2,857.00 for 1-9 clients, ordered into the AOT program, which rate includes any applicable

gross receipts taxes. 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, the service provided, and the corresponding amount associated with those services utilizing the identified case rate of \$6,250.00 per month for 10-50 clients and \$2,857.00 per month for 1-9 clients, based on the highest number of clients on the case load in the month. For months where there are no assigned clients, a monthly administrative rate of \$500 per month will be paid for administrative tasks necessary to serve as the petitioner attorney such as, but not limited to, attendance at meetings scheduled for the AOT program by the City or by the Second Judicial District Court, conflict of interest checks on potential new clients, review of documentation related to the AOT program. In the event that only one client is assigned that is in the process of being closed, the administrative fee for that month is \$500.

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. **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.

D. **Responsibility to Monitor Contract:** Contractor shall be responsible for ensuring that the Contractor does not bill for Services in an amount that exceeds the total contract amount. With each invoice submitted to the City, the Contractor shall include a ledger report that identifies the total amount the Contractor has billed for Services under this Agreement and any Supplements to this Agreement. If at any time the Contractor determines that payment for Services may or will exceed the total amount provided in this Agreement and any Supplements to this Agreement, the Contractor shall notify the City in writing, as soon as possible after making that determination. If the Contractor's billing exceeds the amount of this Agreement and any Supplements, the City may stop or delay payment, or the Services may be ceased or delayed at the City's request.

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.

- A. **Commercial General Liability Insurance.** N/A
- B. **Automobile Liability Insurance.** N/A
- C. **Workers' Compensation Insurance:** Workers' Compensation Insurance for the Contractor's employees when required by, and in accordance with, the provisions of the Workers' Compensation Act of the State of New Mexico ("Act"). The Contractor must have three (3) or more employees to trigger the Act's workers' compensation insurance requirement. Per the Act, this number includes the owner of the business.
- D. **Professional Liability Insurance.** Professional liability insurance in an amount not less than \$1,000,000.00 combined single limit of liability per occurrence with a general aggregate of \$1,000,000.00.
- 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 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.

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

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.

- A. The Contractor understands that utilization of any federally appropriated funds provided to the Contractor by the City pursuant hereto to influence or attempt to influence any member or employee of the Executive or Legislative branches of the federal government with respect to a covered federal action is prohibited. The Contractor further agrees that it shall comply with the certification and disclosure requirements of the applicable regulations. See Administrative Requirements for Contracts Awarded Under the City of Albuquerque, Department of Family and Community Services, Social Services Program, as amended, for certifications and applicable rules.
- B. Accountability in Government: The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 et seq. ROA 1994 and Inspector General Ordinance, §2-17-1 et seq. ROA 1994.

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.** 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. ROA 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.
- 20. 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. In addition, the Contractor shall comply with the *Administrative Requirements for Contracts Awarded Under the City of Albuquerque, Department of Family and Community Services, Social Services Program*, as amended, and understands that failure to comply with the *Administrative Requirements* shall constitute grounds for termination of this Agreement.

21. 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.

22. 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.

23. 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.

24. 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.

25. Force Majeure: The City shall not be liable for failure to perform its obligations under this Agreement, for any loss or damage of any kind, or for any consequences resulting from delay or inability to perform, due to causes beyond the reasonable control and without the fault or negligence of the City. Such causes ("Force Majeure Events") include, but are not restricted to: acts of God or the public enemy; acts of State, Federal, or local governments; shortage or inability to obtain materials; breakdowns or delays of carriers, manufacturers, or suppliers; freight embargoes; theft; fire; floods; epidemics or pandemics; quarantine restrictions; strikes; lockouts; unusually severe weather; and defaults of subcontractors due to any of the above. If a Force Majeure Event causes any failure to perform, the City shall promptly inform the Contractor in writing of such event, indicating the expected duration thereof and the period for which suspension in performance is requested. 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 the City 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.

26. Appropriations: Notwithstanding any other provision in this Agreement, 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, or if the City Council un-appropriates or deauthorizes funds during a fiscal year, this Agreement may be terminated upon thirty (30) days' written notice given by the City to all other parties to this Agreement. 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 determination as to whether sufficient appropriations are available or have been made shall be accepted by all parties and shall be final.

27. **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.
28. **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.
29. **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.
30. **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.
31. **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.
32. **Electronic Signatures:** Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on the Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

SIGNATURES ON NEXT PAGE

