

**INTER-GOVERNMENTAL AGREEMENT FOR PROFESSIONAL
SERVICES BETWEEN
NEW MEXICO CORRECTIONS DEPARTMENT
AND OTERO COUNTY, NEW MEXICO**

Amendment 5

THIS AMENDMENT 5 is made and entered into by and between the State of **NEW MEXICO CORRECTIONS DEPARTMENT** (hereinafter referred to as "NMCD") and **OTERO COUNTY**, (hereinafter referred to as the "The County") on the day ____ of ____ 2022. "

IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THE FOLLOWING SECTIONS OF THE ABOVE-REFERENCED INTER-GOVERNMENTAL AGREEMENT (THE "AGREEMENT") ARE HEREBY AMENDED AS FOLLOWS:

A. PURPOSE:

The purpose of this Amendment 5 is to revise the following Sections: **Clause 2.0 - Per Diem Rate; Clause 2.1 - Project Utilization; Clause 4.0 – Term; b; and, Clause 11.0 – Inmate Health Care Services.**

The Parties agree to increase the per diem rate set forth in **Clause 2.0**, as previously amended, by an additional 2%, from the current rate of \$73.45 to a new rate of \$74.92 per day per inmate. The per diem rate increase shall be effective July 1, 2022. The Parties further agree to provide for annual 2% increases to the per diem rate, effective on the first day of July each year, commencing July 1, 2023.

The Parties further agree to amend **Clause 2.1**, as previously amended, to adjust the minimum number of NMCD inmates to 516, to account for the reduced capacity, as determined by the Duran second amended settlement agreement.

Additionally, the Parties agree to revise and amend **Clause 4.0**, to extend the term of the agreement from May 1, 2022, through June 30, 2024, and with the understanding that the parties will allow for subsequent annual renewal of the agreement, with written mutual agreement of the parties, beginning on July 1, 2024.

Additionally, the Parties agree to revise and amended **Clause 11.0**, to require the County to provide medical care and treatment for NMCD inmates with Hepatitis C ("Hep C"), in order that inmates will not be transferred to other NMCD facilities for Hep C treatment. NMCD agrees reimburse the County for the cost all reasonable and related costs associated with Hep C treatment of NMCD inmates housed at the Facility.

B. SECTIONS TO BE AMENDED:

The following clauses are hereby revised to read as follows:

- I. **2.0 Per Diem Rate:** NMCD agrees to pay the County \$74.92 per day for each NMCD inmate housed at the Facility. NMCD will pay the County the per diem rate for any day that any NMCD inmate is housed at the Facility as reflected on the 12:00 midnight count each day. The per diem rate increase shall be effective July 1, 2022.

The per diem rate for NMCD inmates as mutually agreed by the parties, shall be increased by two (2%) percent on July 1st of each year while this amendment remains in effect, through June 30, 2024. These increases are contingent on the conditions of Paragraph 6.0 "Subject to Appropriations" in the Agreement and any changes to the annual percent increase shall be agreed to in writing.

The County will not charge NMCD a per diem rate for any inmate who is out-to-court or otherwise absent from the Facility for an entire day. However, NMCD will pay the County the per diem rate for each day that the County provides off-site security for an NMCD inmate who was otherwise housed at the Facility, but whom the County or NMCD has transferred offsite for medical care.

Total compensation for the term of this Agreement, or any renewal hereof, will not exceed a figure equal to the maximum number of inmates as set forth in Section 2.1 below multiplied by the total number of calendar days in the current contractual term, multiplied by the per diem rate set forth in the Section 2.0 and subject to any subsequent contract term adjustment in the maximum number of NMCD inmates to be housed at the Facility, and/or the per diem rate or both.

- II. **2.1 Project Utilization:** NMCD agrees to pay the County the per diem set out in Section 2.0 of this agreement, as amended, for a minimum guaranteed inmate population of 516 inmates. NMCD will pay the County an additional per diem as set out in Section 2.0 of this agreement, as amended, for each inmate above 516 inmates.

The following clauses are amended and restated as follows:

- III. **4.0 Term:** The term of this agreement shall remain in effect for a period of two years and two months and shall terminate **June 30, 2024**, unless terminated in writing by either party as set forth in Section 8.0. This agreement may thereafter be renewed by written mutual agreement of the parties on an annual basis, always terminating on June 30th of the following year.

Section 11.0 – Inmate Health Care Services is hereby amended to include subcategory 11.4, as follows:

- IV. **11.0 Inmate Health Care:** The County, at their cost, will provide all over-the-counter pharmaceuticals to NMCD inmates housed at the Facility. Inmate-specific pharmaceuticals will be purchased through an MTC vendor, Diamond Pharmacy, and will

be billed separately, by the County, for payment directly by NMCD. All routine medical, dental, and mental health care within the facility will be provided and paid by the County. All NMCD inmates must obtain health care that meets and complies with NMCD policies and community standards and is subject to review by the NMCD Health Services Administrator or designee at any time. Any NMCD inmate that becomes seriously ill but not requiring hospitalization while at the Facility shall be transported to an NMCD Facility. The County agrees to pay charges for all off-site and on-site health care services inmates require with the exception of inpatient hospital admissions, but including medical specialty and sub-specialty services, hospital services not resulting in admission, emergency room visits, medical supplies, radiology services, laboratory services, ambulance services, and any other services deemed medically necessary up to an aggregate facility cap of \$300,000 per fiscal year (July 1st through June 30th in New Mexico).

- V. **11.4 HEP C Medical Care:** The County shall provide medical care to all inmates housed at the Facility and diagnosed with Hep C, in accordance with NMCD policies and procedures relating to the provision Hep C treatment and care. The Hep C medical services provided by the County shall include the provision of all required Hep C related medications and all lab draws in accordance with the treatment plan schedule. The County shall provide a certified phlebotomist to take all required Hep C labs as scheduled. The cost of providing Hep C related medical services is not included in the per diem set forth in Section 2.0, and The County shall separately bill NMCD on a pass-through basis all reasonable costs associated with the provision of all Hep C related medical services as provided below, including but not limited to, the cost of providing all required Hep C medications and the cost associated with obtaining all Hep C required lab, including the cost of providing a certified phlebotomist to take Hep C required labs as scheduled.

NMCD shall reimburse the County the cost of Hep C medications at prevailing 340B pricing based on the 340B program under the New Mexico Department of Health. All Hep C medication purchases require a written pre-approval by the NMCD Health Services Bureau (HSB) and all pre-approved letters must be included by the County in the pass-through invoice packet to NMCD along with other supporting documents. The County shall keep a spreadsheet to track details of Hep C medications (sample spreadsheet shall be provided by the HSB). All reimbursable pass-through lab costs shall not exceed prevailing community pricing with no markup or margin (rates shall not exceed prevailing generally acceptable market price). The hourly rate of the Phlebotomist shall not exceed twenty dollars (\$20). Supporting documents for services provided by the Phlebotomist shall at a minimum contain the following: name of the inmate-patient, Hep C related-lab order(s) drawn, time required to complete draws, and date of service.

Except as expressly modified by this Amendment 5, all other terms and conditions of the Agreement, as previously amended, remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, NMCD and the COUNTY have caused this Agreement Amendment to be executed, said Amendment to become effective when signed by both parties.

NMCD:

By: _____ Date: _____
Alisha Tafoya Lucero
NMCD Cabinet Secretary or Designee

By: _____ Date: _____
NMCD General Counsel or Designee

OTERO COUNTY, NEW MEXICO:

By: _____ Date: _____
Chairman

By: _____ Date: _____
Otero County Attorney