

AGR15-4194



**INCORPORATED COUNTY OF LOS ALAMOS  
PRICE AGREEMENT for SERVICES**

This **PRICE AGREEMENT** (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Occupational Health Centers of the Southwest, P.A. d/b/a Concentra Medical Centers**, a Texas professional corporation ("Contractor"), to be effective for all purposes July 13, 2015 (the "Effective Date").

**WHEREAS**, the County Purchasing Agent determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 2015-1988 (the "RFP") on January 25, 2015, requesting proposals for Occupational Medicine Services, as described in the RFP; and

**WHEREAS**, Contractor timely responded to the RFP by submitting a proposal dated February 18, 2015; and

**WHEREAS**, based on the evaluation factors set out in the RFP, Contractor was one of the successful offerors for a portion of the services listed in the RFP; and

**WHEREAS**, the aggregate compensation between this Agreement and the other two (2) Agreements, identified below, is not to exceed **TWO HUNDRED THOUSAND DOLLARS** (\$200,000.00), excluding New Mexico gross receipts taxes ("NMGRT"); and

**WHEREAS**, Contractor will provide the Services, as described below, to County.

**NOW, THEREFORE**, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

**SECTION A. SERVICES.** Contractor shall provide:

1. Medical examinations for pre-assignment/pre-employment, post-illness or injury, fitness-for-duty, and termination of assignment for any applicants and/or employees referred by County;
2. Medical surveillance of workers to workplace hazards;
3. Certification or recertification examinations for commercial drivers;
4. Assistance with infectious control programs, including antibody testing, immunizations for blood borne pathogens, post exposure evaluation and treatment;
5. Drug testing collection and/or breath alcohol testing;
6. Toxicological assessment and planning related to workplace hazards;
7. Advice related to the adequacy of personal protective equipment;
8. Advice in relation to job placement, restrictions and accommodations for disabled, pregnant, or other workers with medical conditions of concern;
9. Advice related to enhancing health promotion and wellness programs;



10. Medical review and oversight of County's Automated External Defibrillator ("AED") Program; and
11. Itemized billing showing patient name, date of service, services rendered, and cost. Billing shall occur on a monthly basis.

**DELIVERABLES.** Contractor shall:

1. Maintain records pertaining to Services rendered as required by law;
2. Create, store, maintain, release and transmit personal health information, and medical records in accordance with all applicable state and federal regulations;
3. Create a report of each employee for which Services have been rendered and generate an email notification to the County Human Resources Department and Risk Management. These reports will be issued within 24 hours of the employees visit and contain at a minimum, the employee/patient name, date seen, time checked in, time checked out, service(s) rendered and remarks;
4. Mail results via U.S. Mail of physical examinations, medical services rendered to the requesting County representative in County Human Resources Department or Risk Management within 24 hours of receipt of all information to complete the examination or medical service. Results shall include recommendations and any necessary or recommended referrals, restrictions or follow-up visits; and
5. Provide the Services listed above, Monday through Friday, from 8:00 am to 5:00 pm.

**SECTION B. TERM.** The term of this Agreement shall commence on the Effective Date, and shall continue for four (4) years to May 10, 2019, with an option to extend the Agreement for three (3) additional one (1) year periods upon mutual agreement between the parties thereafter, unless sooner terminated as provided herein.

**SECTION C. COMPENSATION.**

1. **Amount of Compensation.** County shall pay compensation for performance of the Services in accordance with the Compensation Rate Schedule set out as Exhibit "A."
2. Total compensation for life of all Agreements (this Agreement and other multiple source price Agreement Nos. AGR15-4193 and AGR15-4195), including all possible extensions, shall not exceed a combined total of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), excluding New Mexico gross receipts taxes ("NMGR").
3. **Monthly Invoices.** Contractor shall submit itemized invoices to Los Alamos County Human Resources Office, 1000 Central Avenue, Suite 230, Los Alamos, New Mexico 87544 showing amount of compensation due, amount of any NMGR, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

**SECTION D. TAXES.** Contractor shall be responsible for remittance of the NMGR levied on the amounts payable under this Agreement.

**SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL.** This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and will not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position

title on a name plate, business cards, or in any other manner, bearing the County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.

**SECTION F. STANDARD OF PERFORMANCE.** Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that exceeds the industry standard of care for performance of the Services.

**SECTION G. DELIVERABLES AND USE OF DOCUMENTS.** All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent or other property right and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of the County.

**SECTION H. EMPLOYEES AND SUB-CONTRACTORS.** Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

**SECTION I. INSURANCE.** Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured and provide that County will be notified no less than thirty (30) days in advance of cancellation.

- 1. General Liability Insurance:** \$1,000,000 combined single limit per occurrence.
- 2. Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.

- 3. Automobile Liability Insurance for Contractor and its Employees:** An amount at least equal to the minimum required by state law on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.

**SECTION J. RECORDS/AUDIT.** Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. To the extent permitted by law, Contractor, upon thirty (30) days written notice, shall make available for County review the records, books of account, memoranda, and other documents (excluding any confidential proprietary business data) specific to the services performed to the County under this Agreement at the Contractor's Santa Fe, NM location during normal business hours or as otherwise agreed upon by the parties. The County shall make copies of any such records needed at its own expense.

**SECTION K. APPLICABLE LAW.** Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

**SECTION L. NON-DISCRIMINATION.** During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.

**SECTION M. INDEMNITY.** Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all third party liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation reasonable attorneys' fees, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

**SECTION N. CONFIDENTIAL INFORMATION DISCLOSURE STATEMENT.**

1. The parties recognize and acknowledge that in the course of performing its duties and obligations under this Agreement such parties may have access to the other party's trade secrets and confidential or proprietary information (the "Confidential Information"). Confidential Information shall include, but not be limited to, this Agreement and the terms contained herein. Each party hereby agrees that, except when required by law, it will not disclose, in whole or in part, such Information for its own purposes or for the benefit of any other person, firm, partnership, association, corporation or business organization, entity or enterprise. In connection therewith, each party represents and warrants that any employee or agent of a party that has access to the Information of the other party has executed a written agreement or provided reasonable assurances obligating each individual to adhere to and be subject to the terms of this Section N(a). Both parties shall maintain the confidentiality of medical records generated hereunder in accordance with applicable law and shall protect from disclosure any protected health information, as defined in 45 CFR §164.501.

2. The parties agree that, in the event of a disclosure or threatened disclosure of such Information in a manner inconsistent with the terms of this Agreement, through any means whatsoever, the injured party may terminate this Agreement, as provided herein, and may, in addition to any other remedies to which it may be entitled: (i) demand the return of any and all documents or other tangible items which reflect, reveal, disclose, constitute, compromise, or embody such Information and any or all copies thereof, whereupon the party disclosing, or threatening to disclose, such Information in a manner inconsistent with the terms of this Agreement shall promptly comply with such demand; (ii) be entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof; and (iii) recover damages, losses, and expenses of any nature, including without limitation attorneys' fees if statutorily provided and applicable, arising out of, resulting from or otherwise relating to such disclosure or threatened disclosure as determined by a court of competent jurisdiction. Anything contained in this Section N(b) to the contrary notwithstanding, each of the parties to this Agreement shall not be required to return or deliver any documents or other tangible items relating to such Information, if such return or delivery would directly violate any express provisions of an applicable order of a court of competent jurisdiction. It is the intention of the parties hereto that, in enforcing the provisions of this Section N(b), a court may take into consideration, among other factors, each of the parties' interest in maintaining the confidentiality of such Information. Anything contained in this Section N(b) to the contrary notwithstanding, the provisions of this Section N(b) are not intended to cover information, which is in the public domain or becomes generally known or subject to certain disclosure laws, including but not limited to, the New Mexico Inspection of Public Records Act (1978) NMSA §§14-2-1, et seq. Nothing in this Section N is intended to diminish or expand the application of any applicable disclosure laws to any proprietary or confidential information.

This Section N shall survive the termination of this Agreement.

**SECTION O. FORCE MAJEURE.** Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

**SECTION P. NON-ASSIGNMENT.** Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

**SECTION Q. LICENSES.** Contractor shall maintain all required licenses, including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses, including without limitation all necessary professional and business licenses.

**SECTION R. PROHIBITED INTERESTS.** Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it will not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official in County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

**SECTION S. TERMINATION.**

- 1. Generally.** Either party may terminate this Agreement with or without cause upon ninety (90) days prior written notice to other party. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination and shall turn over to County originals of all materials prepared pursuant to this Agreement. The Contractor shall not charge the County for these services. Costs for duplication of reports or records, as needed, shall be the responsibility of the County.
- 2. Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by the County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

**SECTION T. NOTICE.** Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given up hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three days after deposit in the United States Mail:

County:

Risk Manager  
Incorporated County of Los Alamos  
101 Camino Entrada Bldg. 5  
Los Alamos, New Mexico 87544

Contractor:

Occupational Health Centers of the  
Southwest, P.A.  
5080 Spectrum Drive, Suite 1200W  
Addison, Texas 75001  
Attn: Legal - Contracting

**SECTION U. INVALIDITY OF PRIOR AGREEMENTS.** This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both County and Contractor.

**SECTION V. WAIVER.** The failure of either party to exercise or enforce any right conferred upon it hereunder shall not be deemed to be a waiver of any such right, nor operate to bar the exercise or performance thereof at any time or times thereafter, nor shall its waiver of any right hereunder at any given time, including rights to any payment, be deemed a waiver thereof for any other time.

**SECTION W. SEVERABILITY.** Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the illegal, invalid, or unenforceable provision as possible. The remaining portion of the Agreement not declared illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

**SECTION X. LEGISLATIVE MODIFICATION.** Notwithstanding any other provision to the contrary: (a) in the event that any federal, state, or local law, rule, regulation, or interpretation thereof at any time during the term of this Agreement prohibits, restricts, or in any way materially

changes the method or amount of reimbursement or payment for services under this Agreement, then this Agreement shall, in good faith, be amended by the parties to provide for payment of compensation in a manner consistent with any such prohibition, restriction, or limitation; and (b) with respect to any law, rule, regulation, or interpretation thereof which results in a material increase in the cost of services provided by Concentra hereunder, Concentra shall have the right to increase its fees to reach that level of prices at which it is willing to provide services hereunder. With respect to any other prohibition, restriction, or change that causes this Agreement to be impermissible or materially different in its effect than contemplated herein, the parties hereto will, in good faith, negotiate and amend this Agreement to cause their relationship to be as consistent as possible with that which is created herein; if this Agreement is not so amended in writing prior to the Effective Date of said prohibition, restriction, or change, either party may terminate this Agreement upon written notice to the other party as provided herein.

**SECTION Y. PUBLICITY.** Each party shall submit to the other in advance any advertising, written sales promotions, press releases and other publicity matters relating to this Agreement or in which the other party's name is mentioned and shall not publish or use such advertising, sales promotion, press releases, or publicity matters without prior written approval of the other party. However, either party may, without prior written approval of the other party, include the other party's name and a factual description of the work performed under this Agreement in its lists of references and in the experience section of proposals to third parties, in internal business planning documents, in its annual report to shareholders, and whenever required for legal, accounting or regulatory purposes.

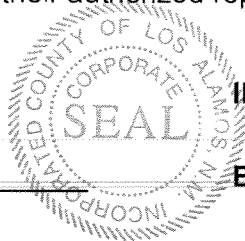
**SECTION U. CAMPAIGN CONTRIBUTION DISCLOSURE FORM.** A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

**ATTEST**

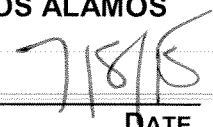


**SHARON STOVER  
COUNTY CLERK**



**INCORPORATED COUNTY OF LOS ALAMOS**

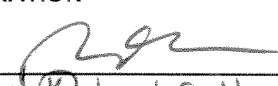
BY:   
**HARRY BURGESS  
COUNTY MANAGER**

  
**DATE**

**Approved as to form:**

  
**REBECCA W. EHLER  
COUNTY ATTORNEY**

**OCCUPATIONAL HEALTH CENTERS OF THE  
SOUTHWEST, P.A. D/B/A CONCENTRA  
MEDICAL CENTERS, A TEXAS PROFESSIONAL  
CORPORATION**

BY:   
NAME: Robert G. Hassett, D.O., MPH DATE 8/15/15  
TITLE: President, Secretary & Treasurer

**EXHIBIT A  
AGR15-4193  
COMPENSATION RATE SCHEDULE**

Cost Category	SMP	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
<b>Physical Examinations:</b>								
Pre-Assignment/Pre-Employment Type 1	297.00	\$265.50	265.50	\$273.50	\$273.50	\$281.50	\$281.50	\$290.00
Pre-Academy Law Enforcement Type 3	901.00	\$806.50	\$806.50	\$830.50	\$830.50	\$855.50	\$855.50	\$881.00
Post-Illness or Injury/Return to Work/Fit for Duty Level 5	205.50	W/C Fee schedule/ \$205.50	W/C Fee Schedule/ \$205.50	W/C Fee Schedule/ \$211.50	W/C Fee Schedule/ \$211.50	W/C Fee Schedule/ \$218.00	W/C Fee Schedule/ \$218.00	W/C Fee Schedule/ \$224.50
Termination of Assignment	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Commercial Driver Medical Exam Certification Pre Place Type 2/Recert	232.50/ 77.50	\$199.50/ 58.50	199.50/ 58.50	\$205.50/ 58.00	\$205.50/ 58.00	\$211.50/ 59.50	\$207.50/ 59.50	\$214.00/ 61.00
<b>Medical Services:</b>								
Audiogram	37.50	\$32.50	\$32.50	\$33.50	\$33.50	\$34.50	\$34.50	\$35.50
Respirator Questionnaire & Exam	40.50/ 70.50	\$29.50/ 62.50	\$29.50/ 62.50	\$30.50/ 64.50	\$30.50/ 64.50	\$31.50/ 66.50	\$31.50/ 66.50	\$32.50/ 68.50
Respirator Fit Test Qualitative	47.50	\$42.50	\$42.50	\$44.00	\$44.00	\$45.50	\$45.50	\$47.00
Infectious Agent Immunization/Testing:								
Hepatitis A Vaccine	112.50	\$98.00	\$98.00	\$101.00	\$101.00	\$104.00	\$104.00	\$107.00
Hepatitis B Vaccine	96.50	\$88.00	\$88.00	\$90.50	\$90.50	\$93.00	\$93.00	\$96.00
Rabies	348.00	\$348.00	\$348.00	\$358.50	\$358.50	\$369.00	\$369.00	\$380.00
Tetanus/Tdap	81.50	\$81.50	\$81.50	\$84.00	\$84.00	\$86.50	\$86.50	\$89.00
HBV Antibody Testing	91.50	\$86.50	\$86.50	\$89.00	\$89.00	\$91.50	\$91.50	\$94.00
Infectious Agent Post-Exposure evaluation, treatment and Counseling		WorkComp Fee Sched.	WorkComp Fee Sched.	WorkComp Fee Sched.	WorkComp Fee Sched.	WorkComp Fee Sched.	WorkComp Fee Sched.	WorkComp Fee Sched.
Urine Drug Screen Collection	40.00	\$39.00	\$39.00	\$40.00	\$40.00	\$41.00	\$41.00	\$42.00
Breath Alcohol Testing	36.50	\$36.50	\$36.50	\$37.50	\$37.50	\$38.50	\$38.50	\$40.00
AED Program Medical Direction		\$501.00	\$501.00	\$518.00	\$518.00	\$531.50	\$531.50	\$547.50
<b>Medical Advise:</b>								
Assist in Development of Programs		Codeveloped & included as part of our relationship	Codeveloped & included as part of our relationship	Codeveloped & included as part of our relationship	Codeveloped & included as part of our relationship	Codeveloped & included as part of our relationship	Codeveloped & included as part of our relationship	Codeveloped & included as part of our relationship
Advise County on questions related to job placement, restrictions, accommodations with medical conditions of concern		Included as part of our relationship \$	Included as part of our relationship	Included as part of our relationship	Included as part of our relationship	Included as part of our relationship	Included as part of our relationship	Included as part of our relationship \$
Adequacy or personal Protective Equipment		Advice part of our relationship/ testing of equipment fee for service	\$same	\$same	\$same	\$same	\$same	\$
Workplace Wellness Promotion		Included as part of our relationship \$	\$same	\$same	\$same	\$same	\$same	\$
<b>Total</b>	NA	\$NA	\$	\$	\$	\$	\$	\$