

First Choice Community Healthcare, Inc.
Albuquerque, Los Lunas, Belen, Edgewood

This AGREEMENT by and between [REDACTED] (Contractor), and First Choice Community Healthcare, Inc. (FCCH), with a principal place of business at 2001 N. Centro Familiar SW, Albuquerque NM 87105. In consideration of the premises and of the mutual covenants contained herein, Contractor and FCCH agree as follows:

RECITALS

WHEREAS, FCCH is a Federally Qualified Healthcare Center (FQHC), operating nine health center sites; and

WHEREAS, as an FQHC, FCCH receives grant funding under Section 330 of the Public Health Service Act, must serve an underserved area or population, offer a sliding fee scale, provide comprehensive services, have an ongoing quality assurance program, and have a governing board of directors; and

WHEREAS, ; and

WHEREAS, the Contractor desires to enter into this AGREEMENT with FCCH to perform the work described herein;

NOW THEREFORE, in consideration of the promises contained in this AGREEMENT, the parties agree as follows:

ARTICLE 1. SCOPE OF WORK

The Contractor shall perform the work described in Exhibit A, attached hereto and incorporated by reference into this AGREEMENT.

ARTICLE 2. COMPENSATION

A. FCCH shall pay to the Contractor for services satisfactorily performed the hourly amount of [REDACTED], plus New Mexico gross receipts tax. The total amount payable to the Contractor shall not exceed \$ [REDACTED] inclusive of New Mexico gross receipts tax. **This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor shall equal the amount stated herein.** The parties do not intend for the Contractor to continue to provide services without compensation. Contractor is responsible for notifying FCCH when the services provided under this AGREEMENT reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this AGREEMENT being amended in writing prior to those services being provided.

B. Payment is subject to acceptance by FCCH of the work product and to any negotiations between the parties pursuant to Article 1, Scope of Work. Invoices shall be submitted **based on deliverables provided / monthly / twice-monthly on or about the 1st and 15th of each month**, according to a format provided by FCCH. No invoices will be reimbursed unless submitted within thirty (30) days after the last day of the period in which services were performed. FCCH shall issue payment within 30 (days) of approval of Contractor's invoice.

C. Invoices shall be sent by e-mail, and must contain, at a minimum, dates of service, services provided, NMGRT rate, remit-to address, allowable reimbursable costs pursuant to the Scope of Work, and the signature and date of the Contractor or the Contractor's authorized representative. Invoices not containing sufficient information may be returned to the Contractor for correction prior to approval, subject to the discretion of FCCH. Invoices shall be sent to:

accounts_payable@fch.com

In the event the Contractor cannot e-mail their invoice, invoices shall be sent to the following street address:

First Choice Community Healthcare, Inc.
Attn: Accounts Payable
2001 N. Centro Familiar SW
Albuquerque, NM 87105

D. As an FQHC, FCCH receives significant funds from the United States Department of Health and Human Services, Health Resources Services Administration, Bureau of Primary Healthcare, Section 330 of the Public Health Services Act, as well as the State of New Mexico, Rural Primary Healthcare Act. Both FCCH and the Contractor must adhere to certain regulations, requirements, and performance standards set by federal and state law.

ARTICLE 3. TERM

This AGREEMENT shall be effective [REDACTED] and shall terminate on [REDACTED], or as stated in ARTICLE 4, Termination.

ARTICLE 4. TERMINATION

A. This AGREEMENT may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this AGREEMENT, the sole liability of FCCH upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if FCCH is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this AGREEMENT. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this AGREEMENT may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by FCCH or if, during the term of this AGREEMENT, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of funds. This provision is not exclusive and does not waive other legal rights and remedies available to FCCH caused by the Contractor's default or breach of this AGREEMENT.

B. Should the Contractor commit any material breach or material default in the performance of any obligation under this AGREEMENT, and should the breach or default continue for a period of five (5) business days after FCCH delivers Notice to Contractor reasonably detailing the breach or default, then FCCH may terminate this AGREEMENT, with immediate effect, by giving Notice to the Contractor.

C. Should this AGREEMENT be funded in whole or in part by grant funding and should that funding be reduced or terminated by the funding source, FCCH reserves the right to suspend all work associated with this AGREEMENT immediately and to terminate this AGREEMENT if, based on the determination by FCCH, sufficient other funds do not exist to support the AGREEMENT. This determination by FCCH shall be final.

ARTICLE 5. TERMINATION MANAGEMENT

A. If this AGREEMENT is terminated pursuant to the provisions of this AGREEMENT, or if the parties mutually agree to discontinue their contractual relationship, or upon expiration of the term of the AGREEMENT, immediately upon receipt by either FCCH or the Contractor of written notice of termination, the Contractor shall:

- i. Comply with all directives issued by FCCH in the notice of termination as to the performance of work under this AGREEMENT; and
- ii. Take such action as FCCH shall direct for the protection, preservation, retention or transfer of all property titled to FCCH and client records generated under this AGREEMENT.

B. Upon termination, the Contractor shall furnish to FCCH a complete detailed inventory of non-expendable FCCH property, if applicable, and a final closing of any financial records and books of accounts which may have been required to be kept by the Contractor under the provision of this AGREEMENT regarding financial records.

ARTICLE 6. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this AGREEMENT or assign any claims for money due or to become due under this AGREEMENT without the prior written approval of FCCH. This AGREEMENT is binding on the Contractor, its successors or transferees.

ARTICLE 7. RECORDS AND FINANCIAL AUDIT

A. In accordance with federal regulations, FCCH shall, during business hours, have access to audit, inspect, examine, excerpt, and copy books, records, memoranda, correspondence, personnel staff records, independent audit work papers, and any other documents and will be allowed to monitor and review such through on-site review visits. Contractor will permit FCCH or their duly authorized representatives to examine or audit any or all of its records related to this AGREEMENT at any reasonable time.

B. The Contractor shall preserve its fiscal records and supporting documentation during the term of this AGREEMENT for a period of three (3) years from the date of termination of this AGREEMENT if an audit to the satisfaction of OMB Circular A-133 has

occurred by that time. If such audit has not occurred, the records must be retained until five (5) years following the end of the performance period to which they pertain or until audit whichever comes first. If any litigation, claim or audit is started before the expiration of the retention period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The records shall be subject to inspection by FCCH and FCCH shall have the right to audit billings both before and after payment. Payment under this AGREEMENT shall not foreclose the right of FCCH to recover excessive or illegal payments.

ARTICLE 8. CONFIDENTIAL INFORMATION

A. The Contractor shall protect the confidentiality of all FCCH information and records and shall not release any FCCH information to any other third party without the express written authorization of FCCH and its designees. Confidential information includes patient information, employee/volunteer/student/contractor information, financial information, other information relating to FCCH and information proprietary to other companies or persons that may be in the possession of FCCH.

B. The Contractor shall comply with the Federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act) and applicable regulations and all other State and Federal rules, regulations and laws protecting the confidentiality of information. If the Contractor may reasonably be expected to have access to Protected Health Information (PHI) and is not a Covered Entity as defined by HIPAA, Contractor shall execute the HIPAA/HITECH Business Associate AGREEMENT as a separately executed mandatory AGREEMENT which is hereby incorporated by reference into and made part of this AGREEMENT. Failure to execute the HIPAA/HITECH Business Associate AGREEMENT when required by FCCH shall constitute grounds for termination of this AGREEMENT in accordance with Article 4 of this AGREEMENT.

ARTICLE 9. RELEASE

The Contractor, upon final payment of the amount due under this AGREEMENT, releases FCCH, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this AGREEMENT. The Contractor agrees not to purport to bind FCCH to obligations not assumed herein by FCCH, unless the Contractor has express written authority to do so, and then only within the strict limitations of that authority.

ARTICLE 10. MUTUAL LIABILITY

Except for obligations outlined herein, each party will be responsible for claims or damages arising from personal injury or damage to persons or tangible property to the extent they result from negligence of its employees. In the event the Contractor is a New Mexico governmental entity, such liability shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et seq., NMSA 1978, as amended.

ARTICLE 11. INSURANCE

A. The parties to this AGREEMENT shall maintain professional or general liability insurance, as applicable, for all services provided under this AGREEMENT. The Contractor shall supply evidence of such coverage upon the request of FCCH.

B. Contractor shall maintain Workers' Compensation insurance coverage pursuant to New Mexico law, health insurance coverage pursuant to federal law and professional insurance appropriate to the services it shall be providing under the terms of this AGREEMENT. Proof of such coverage(s) may be required prior to Contractor beginning any work under this AGREEMENT or at any time during the term of this AGREEMENT.

C. If Contractor has, or grows, to six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this AGREEMENT, Contractor certifies, by signing this AGREEMENT, to have in place, and agree to maintain for the term of the AGREEMENT, health insurance for those employees and offer that health insurance to those employees; or to advise all employees of the availability of publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

ARTICLE 12. STATUS OF CONTRACTOR

The Contractor, its agents and employees, are independent contractors performing professional services for FCCH and are not employees of FCCH. The Contractor, and its agents and employees, shall not be deemed employees for any purpose within the meaning or application of any federal or state unemployment or insurance laws or workers' compensation laws or otherwise. Contractor, its agents and employees shall not be entitled to any of the benefits afforded employees of FCCH including but not limited to accruing leave, retirement, insurance, bonding, use of FCCH property or vehicles, or any consideration not specified in this AGREEMENT. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

ARTICLE 13. SUBCONTRACTING

The Contractor shall not subcontract any portion of the services to be performed under this AGREEMENT without the prior written approval of FCCH. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this AGREEMENT, nor shall any subcontract obligate direct payment from FCCH. Any Subcontractor shall be bound by the same Terms and Conditions and Assurances and Certifications contained in this AGREEMENT as the Contractor.

ARTICLE 14. NOTICES

Any notice required to be given by this AGREEMENT will be in writing and will be delivered in person, by electronic facsimile, by courier service or by US mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To FCCH: First Choice Community Healthcare, Inc.
Contracts Office
2001 N. Centro Familiar SW
Albuquerque NM 87105

with a copy to:
[Redacted]

who shall serve as the FCCH Contract Manager for this specific AGREEMENT.

To the Contractor: [Redacted]

ARTICLE 15. CONFLICT OF INTEREST

The Contractor warrants 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 services required under this AGREEMENT.

ARTICLE 16. CODE OF CONDUCT

Contractor acknowledges that FCCH has adopted a Code of Conduct, which sets forth the ethical values and compliance standards by which FCCH will conduct its affairs and operations. Contractor agrees that in signing this AGREEMENT, it is acknowledging such Code of Conduct, that the individual employees of Contractor responsible for performing and/or administering this AGREEMENT on behalf of Contractor will in carrying out the terms of this AGREEMENT do so in manner that is not inconsistent with such Code of Conduct. This Code of Conduct may be found at <http://www.fcch.com/uploads/PDF/LD%20102%20Code%20of%20Conduct%2011-20-18.pdf>.

ARTICLE 17. ELIGIBILITY TO PARTICIPATE IN GOVERNMENT PROGRAMS.

Each party represents that neither it, nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under this AGREEMENT, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that it, its employees, and independent contractors are not otherwise ineligible for participation in federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors. Each party shall notify the other party immediately upon becoming aware of any pending or final action in any of these areas.

ARTICLE 18. THIRD PARTIES.

Nothing in this AGREEMENT, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this AGREEMENT.

ARTICLE 19. AMENDMENT

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

ARTICLE 20. OWNERSHIP OF INTELLECTUAL PROPERTY/ACKNOWLEDGEMENT OF FUNDING

A. All intellectual property resulting from work pertaining to this AGREEMENT, including designs, drawings, graphics, reports, summaries, analyses and professional papers derived from data owned or otherwise controlled by FCCH, shall belong exclusively to FCCH.

B. Notwithstanding the foregoing, intellectual property previously in the possession of the Contractor and upon which the Contractor may have relied for purposes of fulfilling its obligations under this AGREEMENT, including such intellectual property in which the Contractor already has ownership rights or to which the Contractor possesses legitimate rights to use, shall not be considered as having resulted from work pertaining to this AGREEMENT.

C. Any publication resulting from this AGREEMENT supported in whole or in part by funds provided by the Health Resources and Services Administration (HRSA) of the US Department of Health and Human Services shall include the following language:

This project is/was supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) under grant number and title for grant amount (specify grant number, title, total award amount and percentage financed with nongovernmental sources). This information or content and conclusions are those of the author and should not be construed as the official position or policy of, nor should any endorsements be inferred by HRSA, HHS or the U.S. Government.

Examples of HRSA-supported publications include, but are not limited to, manuals, toolkits, resource guides, case studies and issue briefs.

ARTICLE 21. EQUAL EMPLOYMENT OPPORTUNITY/NON-DISCRIMINATION

The Contractor hereby agrees to comply with the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as well as Executive Order 11246, Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.), Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. 12150, et seq.) and all other applicable federal and state laws and regulations. These laws and regulations prohibit discrimination on the grounds of race, color, national origin, sex, age, handicap or disability.

ARTICLE 22. APPLICABLE LAW

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

ARTICLE 23. AUTHORITY

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

ARTICLE 24. ASSURANCES AND CERTIFICATIONS

Contractor certifies, by signing this AGREEMENT, that the following assurances and certifications are met by Contractor. Contractor will comply with all applicable federal statutes, regulations, and policies, and all applicable state and local laws and ordinances. Contractor certifies that it is in compliance with the following, as applicable:

A. Debarment and Suspension. Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this AGREEMENT by any Federal department or agency (45 CFR, Part 76). Contractor shall notify FCCH immediately should it become aware that its status has changed. FCCH cannot compensate any Contractor who has been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;

B. Restrictions on Lobbying. Contractor certifies that it has not used and will not use federal funds for lobbying in connection with this Agreement (45 CFR, Part 93);

C. Restrictions on Corporations with Recent Felonies. Contractor certifies to the best of its knowledge that neither it nor any officer or any agent acting on its behalf has within the twenty-four month period preceding this AGREEMENT been indicted or convicted of a felony under any federal or state law (Consolidated Appropriations Act, 2014, Div. E, Title VI, Sec. 623, Pub. L. 113-46);

D. Restrictions on Corporations with Unpaid Federal Tax Liability. Contractor certifies that neither it nor any person to be paid from funds under this AGREEMENT is delinquent in repaying any federal tax liability (Consolidated Appropriations Act, 2014, Div. E, Title VI, Sec. 622, Pub. L. 113-46);

E. The Copeland “Anti-Kickback” Act (40 U.S.C. §3145), as supplemented by Department of Labor regulations (29 CFR, Part 3), which prohibits inducing, by any means, any person employed by the Contractor in the construction, completion, or repair of public work to give up any part of the compensation to which the individual is otherwise entitled;

F. All applicable standards, orders or regulations issued pursuant to the **Clean Air Act**, as amended (42 U.S.C. §7401 *et seq*) and the **Federal Water Pollution Control Act** as amended (33 U.S.C §1251 *et seq*); and

G. Contractor shall pay all employees at a rate not less than current prevailing minimum wages specified in wage determinations issued by the US Department of Labor or state or local laws, whichever is higher.

ARTICLE 25. SCOPE OF AGREEMENT

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

IN WITNESS WHEREOF the parties have executed this AGREEMENT as of the date first set forth above.

First Choice Community Healthcare, Inc:

:

By: _____

By: _____

Date: _____

Date: _____

EXHIBIT A

SERVICES TO BE PROVIDED

DELIVERABLES