

**PROFESSIONAL SERVICES AGREEMENT
WITH DSI MEDICAL SERVICES, INC.
TO PROVIDE DRUG AND ALCOHOL TESTING SERVICES**

THIS AGREEMENT is made and entered into on this 22nd day of December, 2016, by and between Santa Fe County (hereinafter referred to as the "County"), an New Mexico political subdivision, and DSI Medical Services, Inc., a corporation with a principal address located at 300 Welsh Road, Bldg No. 4 Suite 160, Horsham, Pennsylvania 19044, (hereinafter referred to as the "Contractor").

WHEREAS, Santa Fe County recognizes that a healthy and drug-free work force can contribute to a more productive and stable employment environment. In an effort to reduce on-the-job injuries and lost work time, the County has a drug and alcohol screening program for prospective and current employees which includes testing for pre-employment, post accident, reasonable suspicion, random, and return to work; and

WHEREAS, pursuant to NMSA 1978, Sections 13-1-112 and 13-1-117, competitive, sealed proposals were solicited via a formal request for proposals, RFP No. 2017-0057-HR/MM for the provision of the professional services; and

WHEREAS, based upon the evaluation criteria established within the request for proposals for the purposes of selecting the most qualified Offeror, the County has determined the Contractor as the most responsive and highly rated Offeror; and

WHEREAS, the County requires the services of the Contractor, and the Contractor is willing to provide these services and both parties wish to enter into this Agreement

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

I. SCOPE OF WORK

Contractor shall:

- A. Provide a centralized local Santa Fe office for the performance of these services.
- B. Provide on-site services for Santa Fe County staff and fire fighters including:
 - a) DRUG AND ALCOHOL TESTING FOR NEW EMPLOYEES
 - i. Alcohol Screening,
 - ii. Urine Drug Screen – Non NIDA 10 panel and alcohol,
 - iii. Medical Review Officer (MRO),

shall be used to ensure confidentiality of its records by limiting access to authorized individuals.

- L. Meet all applicable provisions of state license requirements for and maintain certification with the Substance Abuse Mental Health Services Administration (SAMHSA) or the College of American Pathologists in Forensic Urine Drug Testing (CAP-FUDT).
- M. Requirements for the Contractor's laboratory are:
 - a) Laboratory facility must be in compliance with federal, state, and local laws governing and regulating the operations of clinical laboratories. The County reserves the right to visit and inspect the Contractor's laboratory to perform such investigations as may be deemed necessary to ensure that competent personnel and management will be utilized in the performance of these services.
 - b) The laboratory shall have sufficient and appropriate space, equipment, facilities, and supplies for the performance of the required volume of work with accuracy, precision, efficiency and safety. In addition, the laboratory shall have effective methods for communication to ensure prompt and reliable reporting. There shall be appropriate record storage and retrieval.
 - c) The laboratory must be a safe working space for the personnel and individuals it serves. It must comply with the safety codes of regulatory authorities. The safe collection and handling of specimens and reagents shall be an integral part of the laboratory safety program. Proper disposal of hazardous wastes shall be provided.
 - d) The laboratory testing must be performed by the laboratory personnel and with the laboratory's own equipment, unless otherwise authorized by the County.
 - e) The laboratory must abide by the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Parts 160 to 164, and all other federal and state guidelines concerning confidentiality.
 - f) Appropriate safeguards shall be used to ensure confidentiality of records by limiting access to all testing records and patient information to authorized individuals.
 - g) A specimen initially tested negative need not be retained. Specimens tested positive shall be confirmed. All confirmed positive specimens shall be placed in long-term frozen storage for a period of 365 days. If at the end of this 365-day period, the laboratory has not been notified by the user facility to retain a certain specimen, the laboratory shall dispose of that

specimen.

2. COMPENSATION, INVOICING, AND SET-OFF

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- 1) County shall pay to the Contractor in full payment for services satisfactorily performed and all costs and expenses shall be in accordance with Exhibit A.
- 2) The total amount payable to the Contractor under this Agreement, exclusive of gross receipts tax shall not exceed \$50,000.00 per year. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
- 3) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The County shall notify the Contractor 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.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within 30 days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within 30 days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

C. In the event the Contractor breaches this Agreement, after providing notice and reasonable time to correct, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

3. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one year later, unless earlier terminated pursuant to Section 5 (Termination) or Section 6 (Appropriations and Authorizations). The County has the option to extend the contract at the same price, terms and conditions for a period of three years, on a year-to-year basis. The County may exercise this option by submitting a written notice to Contractor that the term of this Agreement will be extended an additional year. The notice must be submitted to Contractor at least 60 days prior to expiration of the term of the Agreement.

4. ADDITIONAL SERVICES

A. The parties agree that all tasks set forth in Paragraph 1, Scope of Work of this Agreement, shall be completed in full, to the satisfaction of the County, for the amount set forth in Section 2, Compensation, Invoicing, and Set-Off, of this Agreement, and for not other cost, amount, fee, or expense.

B. The County may from time-to-time request changes in the Scope of Work 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 County and the Contractor, shall be incorporated in written amendments to this Agreement.

5. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective 30 days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 30 days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from the Contractor's receipt of the notice. The County shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

6. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and or, if

state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

7. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

8. 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 advance written approval of the County, which shall not be unreasonably withheld. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

9. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County, which shall not be unreasonably withheld. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

10. PERSONNEL

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

11. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

12. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

13. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

A. The County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under this Agreement solely and exclusively for Santa Fe County.

B. The Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement and developed exclusively for Santa Fe County a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country, the County shall own any such copyright.

14. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section I, (Scope of Work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

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

17. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. Contractor shall comply with the requirements of Santa Fe County Ordinance 2014-1 (Establishing a Living Wage).

C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be federal and state district courts of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under

this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
Office of the County Attorney
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: DSI Medical Services, Inc.
Attention: Roger Hornby
300 Welsh Road, Building No.4, Suite 160
Horsham, Pennsylvania, 19044

WPAUT 8-10-17

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement.

C. Contractor is legally registered and licensed to operate as a business in New Mexico and is properly licensed to do the work anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

D. It will maintain throughout the life of this Agreement, its registration, licensure to conduct business in the State of New Mexico.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. LIMITATION OF LIABILITY

The County's liability to the Contractor for any breach of this Agreement by the County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2, (Compensation and Invoicing), of this Agreement. In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

27. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

28. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other

equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Contractor shall increase the maximum limits of any insurance required herein.

29. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

30. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

32. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS, if applicable

The Contractor hereby irrevocably appoints, CT Corporation System, a New Mexico company located at, 123 East Marcy, Santa Fe, New Mexico 87501, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

33. SURVIVAL

The provisions of following paragraphs shall survive termination of this Contract; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

SANTA FE COUNTY:

CE/ 
Katherine Miller
Santa Fe County Manager

12.22.16
Date

Approved as to Form:


Gregory S. Shaffer
Santa Fe County Attorney


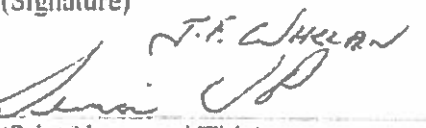
11-28-16
Date

Finance Department Approval:


Don D. Moya
Santa Fe County Interim Finance Director

12-1-16
Date

CONTRACTOR:


(Signature)

(Print Name and Title)

12/22/16
Date

**EXHIBIT A
COST PROPOSAL
DRUG AND ALCOHOL TESTING SERVICES
Agreement No. 2017-0057-HR/MM**

	ADAMPA	RAILYARD URGENT CARE
PROTOCOL		
Breath Alcohol Testing	\$ 25.00	\$ 52.00
Rapid UDS 5 Panel	\$ 35.00	\$ 52.00
PROTOCOL		
Breath Alcohol (Post Accident)	\$ 25.00	\$ 52.00
Non Regulated UDS (Post Accident)	\$ 42.50	\$ 35.00
PROTOCOL		
Non Regulated UDS Follow Up (these are observed, so you need to make sure the Quest sites have the same sex employee on staff that day, the test is needed)	\$ 42.50	\$ 35.00
PROTOCOL		
Breath Alcohol Test Pre Employment	\$ 25.00	\$ 52.00
Non Regulated UDS Pre Employment	\$ 42.50	\$ 35.00
PROTOCOL		
Breath Alcohol Test (After Hours Collection - performed at Adampa office)	\$ 25.00 *	\$ 25.00
Non Regulated UDS (After Hours Collections - performed at Adampa office)	\$ 42.50 *	\$35.00 (if seen Sat/Sun "walk in" between 8am-3pm)
Regulated Drug Screen (After Hours Collections- performed at Adampa office) *there is a \$55.00 per event callout fee only with ADAMPA	\$ 42.50 *	\$35.00 (if seen Sat/Sun "walk in" between 8am-3pm)
PROTOCOL		
Breath Alcohol Test (On Site Drug & Alcohol Testing)*	\$ 25.00 *	
Non Regulated UDS (On Site Drug & Alcohol Testing)*	\$ 42.50 *	
Regulated Drug Screening (On Site Drug & Alcohol Testing)*	\$ 42.50 *	
*there is a \$55.00 per event callout fee only with ADAMPA		
Online Training		
Reasonable Suspicion	\$ 40.00 /	License
Effects of Drugs/Alcohol in the workplace	\$ 15.00 /	License

Split Specimen RETEST of MRO-Confirmed Specimen (Bottle B) at Alternate Lab: \$150/metabolite

There are no additional charges for the following:

Annual Generation Reports
HR Policy Review and Developmental Sugestions by DSI Consultant
DOT Regulatory Updates/Guldance
24/7 Secure/Password Protected Online Access to Test Results & Reports
MRO Review

LOCAL FACILITIES HOURS OF OPERATION

ADAMPA Facility (1919 5th Street)
Monday - Friday 7:00am-6:00pm (Walk-In)

ADAMPA MOBILE ONSITE/MOBILE & AFTER HOURS
24 Hours a day, 7 days a week

Quest Diagnostics @ Santa Fe Railyard Urgent Care (831 South St Francis Drive)
Monday - Friday 8:00am-3pm
Saturday/Sunday 8:00am - 3:00pm