



7a.

Minutes

11.12.2020

Special Commission
Meeting

Cibola County Commission
Special Commission Meeting
Thursday November 12th, 2020

The Cibola County Commission held a Regular Meeting on Thursday November 12th, 2020 at 5:00 pm in the Cibola County Commission Chambers

Elected Officials Present Staff

Daniel Torrez, Chairman
Robert Windhorst, 1st Vice Chairman
Martha Garcia, 2nd Vice Chairman
Christine Lowery, Commissioner
Ralph Lucero, Commissioner

Kate Fletcher, County Manager
Paul Ludi, Finance Director
Michelle Dominguez County Clerk
Marisa Baca, Filing/Recording
Denise Salcido, Bureau of Elections

1. CALL TO ORDER

Chairman Torrez, called the meeting to Order at 5:02 pm.

2. ROLL CALL

Chairman Torrez does roll call-5-0 all Commissioners in attendance. 3 present 2 on phone

3. Pledge of Allegiance Led by Commissioner Lucero, recited by all.

4. Prayer Commissioner Windhorst led us in prayer.

5. Approval of Agenda

Kate - I request to remove action item C from the agenda due to not having everything from Core Civic.

Motion to approve the agenda made by Commissioner Lucero , second by Commissioner Windhorst 5-0 affirmative.

6. Public Comment

NONE

7. Minutes

a. Minutes from, October 22nd, 2020 Regular Commission Meeting

Motion by Commissioner Garcia. Second by Commissioner Lowery
5 affirmative

8. Reports

Manager's reports - Kate Fletcher - County Manager

9. New Business- Action May Be

(County Commission Convenes as Canvassing Board)

a. Canvass of the 2020 General Election

5:19pm Motion made by Commissioner Lucero to put the Canvassing Board on hold and recovine later in this meeting. Seconded by Commissioner Windhorst 5 affirmative

b. Consideration of NMDOT Grant Extension Request for 2019/2020 Co-op

Agreements:

1. Resolution 20-59 First Amendment to LGRF
Co-op Agreement Contract # D18219 Control # L600155
2. Resolution 20-60 First Amendment to LGRF Co-op
Agreement Contract # D18220 Control # L600158
3. Resolution 20-61 First Amendment to LGRF Co-op
Agreement Contract # D18218 Control # L600149

Motion by Commissioner Lucero second by Commissioner Lowery,

5-Affirmative

c. Consideration of Core Civic Inmate Housing Agreement - REMOVED

d. Consideration of Resolution 20-62

Adopting a Public Assistance Policy Relating to Indigent Hospital, County Healthcare and Burial Claims

Motion by Commissioner Windhorst second by Commissioner Lowery

5-Affirmative

e. Consideration of Awarding RFP No. 2021-001 FLVD to TJC Construction, LLC

Motion by Commissioner Windhorst second by Commissioner Lowery

5-Affirmative

f. Consideration of Resolution 20-63 to Support the Creation of an Electric Generating Facility Economic District with the Intent to Join the Redevelopment Authority

Motion by Commissioner Lowery second by Commissioner Windhorst

5- Affirmative

reconvene of *County Commission Convenes as Canvassing Board*

a. Canvass of the 2020 General Election

Motion by Commissioner Windhorst second by Commissioner Lucero

5- Affirmative

Commissioner Lucero motioned to reconvene as county Commissioner Windhorst

5-Affirmative

10. Announcements

The Next Special Commission Meeting will be December 10th, 2020 at 5:00p.m. via FB Live. The Cibola County Offices will be closed Thursday and Friday, November 26-27, in observation of the Thanksgiving Holidays.

11. Adjournment

5:58 p.m.



8a.

Reports

Manager's Report

No Backup



8b.

Reports

McKinley County Draft Ordinance

Forming the McKinley County Electric
Generating District

**MCKINLEY COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. 2020-DEC-006**

AN ORDINANCE FORMING THE MCKINLEY COUNTY ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT (THE "DISTRICT"); CREATING THE MCKINLEY COUNTY ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT AUTHORITY (THE "AUTHORITY") TO GOVERN THE DISTRICT; MAKING CERTAIN FINDINGS AND DETERMINATIONS RELATING TO THE INITIAL MEMBERS OF THE AUTHORITY; APPOINTING THE MEMBERS OF THE AUTHORITY; ESTABLISHING THE COMPENSATION TO BE PROVIDED TO MEMBERS OF THE AUTHORITY; ESTABLISHING THE CIRCUMSTANCES UNDER WHICH A MEMBER OF THE AUTHORITY MUST RESIGN FROM THEIR POSITION; DECLARING THAT MEMBERS AND EMPLOYEES OF THE AUTHORITY SHALL BE GOVERNED BY THE PROVISIONS OF THE GOVERNMENTAL CONDUCT ACT AND ESTABLISHING PROHIBITED CONDUCT FOR AUTHORITY MEMBERS AND OTHER OFFICIALS; SETTING FORTH THE METHOD BY WHICH MEMBERS OF THE AUTHORITY MAY BE REMOVED FROM THE AUTHORITY; DECLARING THAT THE DISTRICT AND THE AUTHORITY POSSESS THE AUTHORITY, POWERS AND DUTIES CONFERRED UPON THEM BY, AND ARE SUBJECT TO THE PROVISIONS AND LIMITATIONS OF, THE ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT ACT AND THIS ORDINANCE; ~~IMPOSING CERTAIN LIMITATIONS ON THE DISTRICT;~~ REQUIRING QUARTERLY REPORTING; CALLING FOR A MEETING OF THE AUTHORITY PRIOR TO DECEMBER 31, 2020 TO AUTHORIZE CERTAIN COUNTIES TO BECOME PART OF THE AUTHORITY AND TO APPOINT FOUR ADDITIONAL MEMBERS TO THE AUTHORITY; PROVIDING FOR THE AUTOMATIC REPEAL OF THE ORDINANCE IN THE EVENT NO OTHER COUNTY JOINS THE DISTRICT OR FAIL TO APPOINT MEMBERS TO THE AUTHORITY; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE; TAKING OTHER ACTIONS RELATED TO THE FORMATION OF THE DISTRICT AND THE CREATION OF THE AUTHORITY; AND DECLARING AN EMERGENCY.

WHEREAS, during the 2020 Regular Session of the Legislature of New Mexico (the "Legislature") the Legislature enacted, and Governor Michelle Lujan Grisham signed into law, Chapter 78, Sections 1 to 13 of New Mexico Laws of 2020, codified at NMSA 1978, Sections 71-10-1 to -11 (2020) (the "Electric Generating Facility Economic District Act" or "Act"); and

WHEREAS, the Act, at NMSA 1978, Section 71-10-3 (2020), authorizes a county to form an electric generating facility economic district, the boundaries of which lie within the jurisdiction of the county, and which includes an operating coal-fueled electric generating facility that is owned by a non-investor-owned electric utility or a coal-fueled electric generating facility

that is owned by a non-investor-owned electric utility and has been or is in the process of being retired; and

WHEREAS, the Act, at NMSA 1978, Section 71-10-4 (2020), requires that a county that forms an electric generating facility economic district (an “EGFED”) shall create an authority ~~(an “Authority”)~~ to govern the EGFED consisting of five members who shall be appointed by the governing body of the county and specifies the terms, term limits, qualifications, compensation for members of an ~~Authority~~authority and certain other mandates, limitations, restrictions and requirements applicable to an ~~Authority~~authority and its members; and

WHEREAS, the Act, at NMSA 1978, Section 71-10-4(E), compels an ~~Authority~~authority, for the period ending December 31, 2020, to authorize a county that borders the county that created the EGFED within twenty miles of a qualifying electric generating facility to become part of the ~~[Authority]~~authority and requires any additional county that becomes part of the EGFED to appoint four additional members to the ~~Authority~~authority; and

WHEREAS, the Act, at NMSA 1978, Section 71-10-5 (2020), establishes the authority, powers and duties of an ~~Authority~~authority created by the governing body of a county pursuant to the Act; and

WHEREAS, the Act, at NMSA 1978, Section 71-10-6 (2020), provides that bonds authorized by the Act, the income from those bonds, mortgages or other security instruments executed as security for those bonds, lease agreements authorized by the Act and revenue derived from a lease or sale by an ~~Authority~~authority are exempt from taxation by the State of New Mexico (the “State”) and its subdivisions; and

WHEREAS, the Act, at NMSA 1978, Section 71-10-7 (2020), authorizes the ~~Authority~~authority of an EGFED to issue revenue bonds for the purpose of constructing, purchasing, improving, remodeling, furnishing or equipping any necessary buildings, structures, roads or other infrastructure of the EGFED and establishes the revenues that may be pledged to the repayment of such revenue bonds, directs how revenues in excess of annual principal and interest due on such revenue bonds be accumulated, permits an ~~Authority~~authority to appoint a commercial bank trust department to act as paying agent or trustee of such revenues and to administer the payment of principal of and interest on the bonds, and establishes certain parameters, limitations and procedures for authorizing the issuance and determining the terms of such bonds; and

WHEREAS, the Act, at NMSA 1978, Section 71-10-8 (2020), authorizes an ~~Authority~~authority that has issued bonds in accordance with the Act to issue refunding bonds for the purpose of refinancing, paying and discharging all or any part of outstanding bonds and establishes certain parameters, limitations and procedures for authorizing the issuance and determining the terms of such refunding bonds; and

WHEREAS, the Act, at NMSA 1978, Section 71-10-9 (2020), provides that except as otherwise provided therein, all bonds or other obligations issued pursuant to the Act are payable solely from the revenues of the EGFED that may be pledged to the payment of such obligations, and the bonds or other obligations shall not create an obligation, debt or liability of the State or

any other of its political subdivisions, and that no breach of any pledge, obligation or agreement of an EGFED shall impose a pecuniary liability or a charge upon the general credit or taxing power of the State or any other of its political subdivisions; and

WHEREAS, the Act, at NMSA 1978, Section 71-10-10 (2020), provides that the governing body of the county that formed the EGFED and the governing bodies of any counties that have become part of the EGFED may, by majority vote, agree to unwind and dissolve the EGFED and dismiss the ~~Authority~~authority members if they find the EGFED is not meeting the needs of the community in creating jobs or fostering economic development. In addition, the assets and all debts and obligations of the EGFED shall be transferred to and assumed by the counties as set forth in the unwinding or dissolution agreement; and

WHEREAS, the Act, at NMSA 1978, Section 71-10-11 (2020), specifies that no provision of the Act or Chapter 78, Section 12 of New Mexico Laws of 2020 shall affect an operating coal-fueled electric generating facility that is owned by a non-investor-owned electric utility or a coal-fueled electric generating facility that is owned by a non-investor-owned electric utility and has been or is in the process of being retired unless and to the extent the owner of such a facility and any existing lienors to such a facility agree in writing that such a facility may be affected by the powers of the ~~Authority~~authority or the governing body of a county; and

WHEREAS, Chapter 78, Section 12 of New Mexico Laws of 2020 enacted a new section of the County Local Option Gross Receipts and Compensating Taxes Act, codified at NMSA 1978, Section 7-20E-29 (2020), which authorizes a majority of the members of the governing body of a county in which an EGFED is located and a bordering county within twenty miles of a qualifying electric generating facility to enact an ordinance imposing an excise tax of up to one-fourth percent of the gross receipts of any person engaging in business in the county or county area for the privilege of engaging in business in the county or county area, the revenues of which shall be dedicated only for the payment of interest on and principal of revenue bonds issued pursuant to the Act and for no other purpose; and

WHEREAS, the Board of County Commissioners (the “Board”) of McKinley County, New Mexico (the “County”), as the governing body of the County, has determined that it is necessary and in the best interest of the County and the inhabitants thereof that the County form the McKinley County Electric Generating Facility Economic District, consistent with the requirements of the Act; and

WHEREAS, the Board has determined that it is necessary and in the best interest of the County and the inhabitants thereof that the County create the McKinley County Electric Generating Facility Economic District Authority to govern the McKinley County Electric Generating Facility Economic District, consistent with the requirements of the Act; and

WHEREAS, NMSA 1978, Section 4-37-7(A) (1981) provides that “[o]rdinances shall not be submitted to the board for final passage until a majority of the members have directed that the title and a general summary of the subject matter of the proposed ordinances be published one time in a newspaper of general circulation within the county at least two weeks prior to the

meeting of the board at which the ordinance is proposed for final passage. The date and time of the meeting at which the ordinance is to be considered shall also be published[;]" and

WHEREAS, on November 10, 2020, a majority of the members of the Board passed Resolution No. NOV-20-098 (the "Resolution"), which directed that the title and general summary of this ordinance be published one time in the *Albuquerque Journal* and the *Gallup Sun*, newspapers of general circulation within the County, as soon as was practicable following adoption of the Resolution, but with at least one of those publications occurring no less than 14 days prior to the date of the Board's first meeting in December 2020; and

WHEREAS, on November ~~{3}~~13, 2020, notice of the Board's December 8, 2020 meeting (the Board's first meeting in December 2020) and the title and general summary of this ordinance was published in both the *Albuquerque Journal* and the *Gallup Sun*, as required by the Resolution. Both of the publications occurred more than 14 days before December 8, 2020, the date upon which this ordinance is being proposed for final passage, as required by Section 4-37-7(A).

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, OF THE COUNTY OF MCKINLEY, NEW MEXICO:

Section 1. FORMATION OF THE DISTRICT; BOUNDARIES OF THE DISTRICT; IDENTIFICATION AND STATUS OF FACILITY; LOCATION OF FACILITY. The McKinley County Electric Generating Facility Economic District ~~{(the "District")}~~ is hereby formed to carry out the purposes set forth in, and according to the provisions of, this ordinance (the "Ordinance") and the Act. The initial boundaries of the District are set forth in Exhibit A hereto, which lie within the jurisdiction of the ~~{County}~~. ~~{INSERT NAME OF FACILITY}~~. Tri-State Generation & Transmission Association's Escalante Generating Station (the "Facility") is an operating coal-fueled electric generating facility that is owned by a non-investor-owned electric utility ~~{or a coal-fueled electric generating facility that is owned by a non-investor-owned electric utility and has been or is in the process of being retired}~~. The Facility lies within the boundaries of the District.

Section 2. CREATION OF THE AUTHORITY; COMPOSITION OF AUTHORITY; TERMS OF OFFICE AND REQUIREMENTS FOR MEMBERS OF THE AUTHORITY. The McKinley County Electric Generating Facility Economic District Authority ~~{(the "Authority")}~~ is hereby created to govern the District and shall constitute the governing body of the District. The Authority shall consist of five members, appointed by the ~~{Board}~~, whose terms shall be staggered as described herein, including a non-voting member appointed by the governor who shall serve at the pleasure of the governor for a two-year term. No member of the Authority shall serve more than two consecutive four-year terms. A member who has served two consecutive four-year terms on the authority shall not serve another term until after four years following the second term have elapsed. An elected official shall not serve as a member of the Authority. Each member of the Authority shall post a surety bond for the faithful performance of the member's duties pursuant to the Surety Bond Act, ~~{CITE}~~ NMSA 1978, Sections 10-2-13 to -16 (1978, as amended through 2000), and any subsequent amendments thereto.

Section 3. QUALIFICATIONS FOR AUTHORITY MEMBERS. To be eligible to serve as a member of the Authority, a person must possess the following qualifications:

A. Experience in energy development business, economic development, finance, commercial real estate investment or accounting or possess other qualifications that the governing body appointing the member determines are necessary or appropriate for carrying out the duties of the Authority but does not have at the time of appointment and will not have during service as a member of the Authority employment or a contract with an energy development business; and

B. No direct substantial conflict of interest in the business or operation of the Authority.

Section 4. FINDINGS RELATING TO INITIAL MEMBERS OF AUTHORITY; APPOINTMENT OF INITIAL MEMBERS OF AUTHORITY.

A. As required by NMSA 1978, Section 71-10-4(G) (2020) and Section 3 of this Ordinance, the Board hereby finds and determines that each of the initial members of the Authority identified in Section 4(B) below possesses: (i) experience in energy development business, economic development, finance, commercial real estate investment or accounting or possesses other qualifications that the Board determines are necessary or appropriate for carrying out the duties of the Authority but does not at the time of appointment and will not have during service as a member of the Authority employment or a contract with an energy development business; and (ii) no direct substantial conflict of interest in the business or operation of the Authority.

B. The Board hereby appoints the following individuals to serve as the initial members of the Authority:

1. [INSERT NAME], whose term of office shall be two years.
2. [INSERT NAME], whose term of office shall be two years.
3. [INSERT NAME], whose term of office shall be four years.
4. [INSERT NAME], whose term of office shall be four years.
5. [INSERT NAME], whose term of office shall be four years.

C. Pursuant to Section 71-10-4(D), Governor Michelle Lujan Grisham has appointed [INSERT NAME] to serve as the non-voting member of the Authority, whose term of office shall be two years, and who shall serve at the pleasure of the Governor.]

Section 5. COMPENSATION FOR MEMBERS OF THE AUTHORITY. Pursuant to Section 71-10-4(F), members of the Authority shall receive per diem and mileage from the

District as provided in the Per Diem and Mileage Act, ~~[CITE]~~NMSA 1978, Sections 10-8-1 to -8 (1963, as amended through 2018), and any subsequent amendment thereto, and shall receive no other compensation, perquisite or allowance and the County shall not be responsible for such payments.

Section 6. MANDATORY RESIGNATION. Any member of the Authority shall resign from the Authority if a matter to be voted on poses a conflict of interest for that member.

Section 7. APPLICABILITY OF GOVERNMENTAL CONDUCT ACT; PROHIBITED CONDUCT FOR MEMBERS AND EMPLOYEES OF AUTHORITY.

A. Members and employees of the Authority shall be governed by the provisions of the Governmental Conduct Act, ~~[CITE]~~NMSA 1978, Sections 10-16-1 to -18 (1967, as amended through 2019) (the "GCA"), and any subsequent amendment thereto.

B. Members and employees of the Authority are prohibited from:

1. Acquiring a financial interest in a new or existing business venture or business property if the member or employee believes or has reason to believe that the financial interest will be directly affected by an official act conducted in that membership or employment capacity; or
2. Using confidential information acquired by virtue of membership or employment by the Authority for the member's or employee's or another person's private gain; or
3. As a person with a financial or other interest in a business that is party to a contract, enter into a contract with the Authority without there being public notice of the contract, a competitive bidding process for entry into the contract and full disclosure of that financial or other interest.

Section 8. REMOVAL OF AUTHORITY MEMBERS. The Board may remove any member of the Authority if it determines that the member has:

1. Neglected or refused to perform an official duty; or
2. Violated the policies or procedures adopted by the Authority; or
3. Developed a direct, substantial conflict of interest in the business of the Authority.

Section 9. APPLICABILITY OF ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT ACT. The District and the Authority shall have all of the authority, powers and duties conferred upon them pursuant to, and they shall otherwise be subject to all of

the provisions and limitations of, the Electric Generating Facility Economic District Act, as described in the recitals hereto, and this Ordinance.

Section 10. ~~ADDITIONAL LIMITATIONS ON [THE DISTRICT AND] THE AUTHORITY. [INSERT LIMITING PROVISIONS]~~ LIMITATION ON BOND ISSUANCE. Notwithstanding any provision in this Ordinance to the contrary, prior to (i) the issuance of any obligation by the District pursuant to Section 71-10-7 and/or Section 71-10-8 whether designated as a bond, note, loan warrant, debenture, lease purchase agreement or other instrument evidencing an obligation to make payment, (ii) the expenditure of any proceeds from a debt instrument, and (iii) the undertaking of any project with proceeds of a debt instrument, the District shall obtain the approval of the Board. Notwithstanding any approval given pursuant to this Section 10, the County shall not be responsible for any obligation incurred by the District until and unless the County adopts an ordinance pursuant to the provisions of NMSA 1978, Section 4-59-4 or NMSA 1978, Section 4-62-4, which ordinance shall be subject to the approving opinion of expert bond counsel engaged by the County for such purpose.

Section 11. LIMITATION ON OPERATING EXPENDITURES. The Authority of the District shall prepare an annual operating budget which shall be presented to and approved by the Board. The approval of the budget by the Board shall be based on the availability of resources of the District for any proposed expenditures. Should another county participate in the District through the appointment of members of the Authority, the Board shall not approve any expenditures unless the cost of such expenditures shall be evenly divided with the other participating county. In no event shall the Board be required to provide any assistance, through appropriation or otherwise, toward the operations of the District or its Authority.

Section 12. LIMITATION ON ADOPTION OF GROSS RECEIPTS TAX. The Board shall have no obligation to adopt an ordinance imposing a gross receipts tax in accordance with the power given it pursuant to Section 7-20E-29 and no tax shall be enacted unless a bordering county participating in the District and represented by members of the Authority shall adopt a tax in the same increment of tax.

Section 13. LIMITATION ON USE OF NON-DISCLOSURE AGREEMENTS; APPLICABILITY OF INSPECTION OF PUBLIC RECORDS ACT AND OPEN MEETINGS ACT. Neither the District, nor the members of the Authority shall have the power to enter into any non-disclosure or similar confidentiality agreement unless otherwise required pursuant to the laws of the State. To the extent not otherwise required by law, the District and the members of the Authority shall be subject to the provisions of Chapter 10, Article 15 NMSA 1978 (the Open Meetings Act) and Chapter 14 Article 2 NMSA 1978 (the Inspection of Public Records Act).

Section 14. RECOMMENDATIONS OF CHANGES TO THE ENABLING LEGISLATION. The members of the Authority, acting on behalf of the Board, shall make no recommendations relating to the Electric Generating Facility Economic District Act without the approval of the Board.

Section 15. QUARTERLY REPORTS. The members of the Authority of the District shall prepare, at least quarterly, a report of the activities of the District to be delivered in writing and by public presentation to the Board.

Section 16. INITIAL MEETING OF AUTHORITY. The Board hereby directs the Authority to call a meeting on or prior to December 31, 2020, for the purpose of authorizing any county that borders the County within twenty miles of the Facility to become part of the Authority, as required by Section 71-10-4(E). Any county that becomes part of the District shall be entitled to appoint four additional members to the Authority, consistent with the requirements of Section 71-10-4.

Section 17. REINFORCEMENT OF THE GOVERNMENTAL CONDUCT ACT. This Ordinance reinforces and strengthens the GCA, such that no Authority member should have or make a financial benefit in any of their direct and indirect dealings with the Authority.

Section 18. UNDUE INFLUENCE AND IMPROPER REQUESTS. In addition to the provisions of the GCA, no elected official, including federal or state legislators and members of any county commission, shall exert undue influence upon, or make any improper request (quid pro quo, etc.) from, any member of the Authority. Any request from such an elected official that results in any direct or indirect financial benefit to that person or any entity for which they have decision making power or are employed by are specifically deemed to be violation of this Section 18. Should any undue influence be exerted, or an improper request occur, the Board or any member of the Authority having knowledge thereof is obligated to file an ethics complaint with the Secretary of State and the State Auditor's Office.

Section ~~12~~19. SUNSET PROVISION. Should Cibola County, New Mexico (or any other qualifying county) fail to and/or decides not to join the District and/or appoint members of the Authority by ~~[April 1, 2021]~~, this Ordinance shall automatically be repealed.

Section 20. RATIFICATION. All actions not inconsistent with this ~~{Ordinance}~~ heretofore taken by the Board, its members, and the officers, employees and agents of the County with respect to the formation of the District, the creation of the Authority, the appointment of the initial members of the Authority and any other subject matter addressed in this Ordinance are ratified, approved and confirmed; including the motion to approve "the Creation of a special Electric Generating Facility Economic District for McKinley County" which was made and voted on unanimously by the Board in its regular meeting of September 15, 2020 as Item No. 11 on the agenda for that meeting and the publication of the Notice of Meeting and Intent to Adopt an Ordinance Regarding the Formation of a District Pursuant to the Electric Generating Facility Economic District Act in the *Albuquerque Journal* and the *Gallup Sun* on November ~~{13}~~13, 2020.

Section ~~13~~21. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, in conflict with the provisions of this ~~{Ordinance}~~ are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section ~~14.22~~ AMENDMENT OF ORDINANCE. This {Ordinance} may be amended or supplemented to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein by ordinance ~~or resolution~~ adopted by the Board in accordance with the laws of the County and the State.

Section ~~15.23~~ SEVERABILITY. If any section, paragraph, clause or provision of this {Ordinance} shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this {Ordinance}.

Section ~~16.24~~ RECORDING; AUTHENTICATION; PUBLICATION. This {Ordinance}, immediately upon its final passage and approval, shall be authenticated by the signature of the Board Chairman ~~for Vice-Chairman~~ and attested by the signature of the County Clerk or a Deputy County Clerk, and shall be recorded in the ordinance book of the County kept for that purpose. The following notice shall be published one time in the *Albuquerque Journal* and the *Gallup Sun*, newspapers having general circulation in the County, as soon as is practicable following the adoption hereof:

[FORM OF NOTICE]

MCKINLEY COUNTY, NEW MEXICO NOTICE OF ADOPTION OF ORDINANCE NO. 2020-DEC-006

Notice is hereby given of the title and of a general summary of the subject matter contained in an ordinance (the "Ordinance") duly adopted and approved by the Board of County Commissioners of McKinley County, New Mexico, on December ~~18~~ 8, 2020, relating to the formation of the McKinley County Electric Generating Facility Economic District and the creation of the McKinley County Electric Generating Facility Economic District Authority. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the County Clerk, whose office is located at 207 West Hill Ave., Gallup, New Mexico 87301.

The Title of the Ordinance is:

MCKINLEY COUNTY, NEW MEXICO BOARD OF COUNTY COMMISSIONERS ORDINANCE NO. 2020-DEC-006

AN ORDINANCE FORMING THE MCKINLEY COUNTY ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT (THE "DISTRICT"); CREATING THE MCKINLEY COUNTY ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT AUTHORITY (THE "AUTHORITY") TO GOVERN THE DISTRICT; MAKING CERTAIN FINDINGS AND DETERMINATIONS RELATING TO THE INITIAL MEMBERS OF THE AUTHORITY; APPOINTING THE MEMBERS OF THE AUTHORITY; ESTABLISHING THE COMPENSATION TO BE PROVIDED TO MEMBERS

OF THE AUTHORITY; ESTABLISHING THE CIRCUMSTANCES UNDER WHICH A MEMBER OF THE AUTHORITY MUST RESIGN FROM THEIR POSITION; DECLARING THAT MEMBERS AND EMPLOYEES OF THE AUTHORITY SHALL BE GOVERNED BY THE PROVISIONS OF THE GOVERNMENTAL CONDUCT ACT AND ESTABLISHING PROHIBITED CONDUCT FOR AUTHORITY MEMBERS AND OTHER OFFICIALS; SETTING FORTH THE METHOD BY WHICH MEMBERS OF THE AUTHORITY MAY BE REMOVED FROM THE AUTHORITY; DECLARING THAT THE DISTRICT AND THE AUTHORITY POSSESS THE AUTHORITY, POWERS AND DUTIES CONFERRED UPON THEM BY, AND ARE SUBJECT TO THE PROVISIONS AND LIMITATIONS OF, THE ELECTRIC GENERATING FACILITY ECONOMIC DISTRICT ACT AND THIS ORDINANCE; ~~IMPOSING CERTAIN LIMITATIONS ON THE DISTRICT;~~ REQUIRING QUARTERLY REPORTING; CALLING FOR A MEETING OF THE AUTHORITY PRIOR TO DECEMBER 31, 2020 TO AUTHORIZE CERTAIN COUNTIES TO BECOME PART OF THE AUTHORITY AND TO APPOINT FOUR ADDITIONAL MEMBERS TO THE AUTHORITY; PROVIDING FOR THE AUTOMATIC REPEAL OF THE ORDINANCE IN THE EVENT NO OTHER COUNTY JOINS THE DISTRICT OR FAIL TO APPOINT MEMBERS TO THE AUTHORITY; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE; TAKING OTHER ACTIONS RELATED TO THE FORMATION OF THE DISTRICT AND THE CREATION OF THE AUTHORITY; AND DECLARING AN EMERGENCY.

A General summary of the Ordinance is contained in its title.

DATED this ____ day of _____, 2020.

/s/ Harriett K. Becenti

Harriett K. Becenti
County Clerk

[END OF FORM OF NOTICE]

Section ~~17.25~~ 18.25 CONFLICTS OF INTEREST. No member of the Board or employee of the County has any interest, direct or indirect, in the actions taken in or discussed in this ~~{Ordinance}~~, or otherwise in connection with the formation of the District, the creation of the Authority or the appointment of the initial members of the Authority.

Section ~~18.26~~ 19.26 DECLARATION OF EMERGENCY AND EFFECTIVE DATE. Pursuant to its authority under NMSA 1978, Section 4-37-9(C) (1997), the Board declares that it is necessary for the public peace, health and safety that this ~~{Ordinance}~~ take effect immediately

after passage and recordation in the book kept by the County for that purpose and authenticated by the County Clerk.

[Signature page follows]

ADOPTED AND APPROVED this {8th} day of December, 2020 in Gallup, McKinley County, New Mexico.

BOARD OF COUNTY COMMISSIONERS,
MCKINLEY COUNTY, NEW MEXICO

Billy Moore, Chair

Bill Lee, ~~{Vice-Chair/}~~Commissioner]

(SEAL)

ATTEST:

**APPROVED AS TO FORM AND
SUFFICIENCY :**

By: _____
Harriett K. Becenti, County Clerk

Doug Decker, County Attorney

[McKinley County Ordinance No. 2020-DEC-006 Signature Page]

EXHIBIT A

DISTRICT BOUNDARIES

[See Attached]

Commissioner [INSERT NAME] then moved that the ~~ordinance~~Ordinance as filed with the County Clerk be passed and adopted. Commissioner [INSERT NAME] seconded the motion.

The question being upon the passage and adoption of said ~~ordinance~~Ordinance, the motion was voted upon with the following result:

Those Voting Yea:

[Billy Moore, Chair]

[Bill Lee, ~~Vice Chair~~/Commissioner]]

Those Voting Nay:

[None]

Those Absent:

[None]

The Chair thereupon declared that at least a majority of all the members of that Board having voted in favor thereof, the motion was carried and the ~~ordinance~~Ordinance duly passed and was adopted. After consideration of matters not relating to the ~~ordinance~~Ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

BOARD OF COUNTY COMMISSIONERS
MCKINLEY COUNTY, NEW MEXICO

By _____
Billy Moore,
Chair

(SEAL)

Attest:

By _____
Harriett K. Becenti,
County Clerk

[illegible]

I, Harriett K. Becenti, County Clerk of McKinley County, New Mexico (the “County”), do hereby certify:

1. The foregoing pages are a true, correct and complete copy of the record of the proceedings of the Board of County Commissioners (the "Board") of the County, constituting the governing body of the County, taken at a duly called {regular, open meeting} of the Board held in the Commission Chambers, Third Floor of the McKinley County Courthouse located at 207 West Hill Ave., Gallup, New Mexico, being the regular meeting place of the Board, on Tuesday, December {8}, 8, 2020, beginning at 9:00 a.m., insofar as the same relate to the proposed ordinance, a copy of which is set forth in the official records of the proceedings of the County kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Notice of such meeting was given in compliance with the permitted methods of giving notice of meetings of the Board as required by the open meetings standards then in effect, i.e., the County's Open Meetings Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of McKinley County, New Mexico, this day of December, 2020.

(SEAL)

Harriett K. Becenti, County Clerk

Document comparison by Workshare Compare on Wednesday, December 2, 2020 5:15:56 PM

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Document 2 ID	interwovenSite://ALBDMS-WS/ALB/3351748/2
Description	#3351748v2<ALB> - Ordinance No. 2020-DEC-006 - McKinley County, New Mexico - Forming Electric Generating Facility Economic District
Rendering set	Standard

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Padding cell	

Statistics:	
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Moved to	0
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Format changed	0

Total changes	134
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9a.

New Business

Canvass of the 13th
District D.A. Election
Recount

No Backup



9b.

New Business

Resolution 20-64

FY21 Budget Adjustment #3



9c.

New Business

Cibola General Hospital

Lease Agreement & Operating
Agreement Included



Cibola Gen. Lease Agreement



HOSPITAL AND MEDICAL OFFICE BUILDING LEASE

This **HOSPITAL AND MEDICAL OFFICE BUILDING LEASE** (the "Lease"), is entered into this ____ day _____ of 2020, by and between the BOARD OF COUNTY COMMISSIONERS OF CIBOLA COUNTY, NEW MEXICO, a political subdivision of the State of New Mexico ("County") and Cibola General Hospital Corporation, a New Mexico Non-Profit Corporation located in Grants, New Mexico ("CGHC").

Recitals:

WHEREAS, the County owns the real property located at 1016 East Roosevelt Avenue, Grants, NM 87020 (the "Hospital Premises") and 1423 East Roosevelt Avenue, Grants, NM 87020 (the "Clinic Premises") (collective the Hospital Premises and the Clinic Premises are sometimes referred to as the "Premises");

WHEREAS, in a July 2019 Special Election the County submitted to the voters of Cibola County the question of whether to impose a mill levy of 4.25 mills (the "Mill Levy") to support the operation and maintenance of the Cibola General Hospital, a 25-bed critical access hospital operation (the "Hospital"), as a county hospital in and for the County of Cibola, State of Mexico, as authorized by Section 4-48B-1 *et seq.*, NMSA 1978 (the "Hospital Funding Act");

WHEREAS, the voters of Cibola County approved the Mill Levy, which will run through the property tax year 2027;

WHEREAS, pursuant to various prior Management Agreements, the last dated February 20, 2014 (the "2014 Management Agreement"), as extended by mutual agreement of the parties, CGHC has managed and operated the Hospital and the Cibola Family Health Center, a clinic operation for providing acute and chronic medical care (the "Clinic");

WHEREAS, the County and CGHC have negotiated and agreed to a Health Care Facilities Contract (the "HCF Contract") pursuant to which CGHC will continue to manage and operate the Hospital and provide medical and health care services to the citizens of Cibola County and surrounding areas;

WHEREAS, CGHC desires to lease the Hospital Premises and the Clinic Premises from the County in order to provide the medical and health care services contemplated by the HCF Contract;

WHEREAS, the County and CGHC are empowered by the Hospital Funding Act to enter into this Lease;

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter contained, the Parties agree as follows.

SECTION 1: LEASE

1.1 Lease of Premises. County hereby leases to CGHC and CGHC hereby leases from County the Premises.

1.2 Lease Term. The term of this Lease shall be for a period beginning with the Commencement Date (as defined below) and ending at midnight on December 31, 2035 (the "Expiration Date"), unless this Lease or the HCF Contract shall sooner terminate or be extended pursuant to the provisions hereof.

1.3 Holding Over. CGHC, for and in consideration of this Lease and the demise of the Premises, agrees with County that no holding over by CGHC after the expiration of this Lease, or any renewal or extension thereof, whether with or without the consent of County, shall operate to extend or renew this Lease, and that any such holdings over shall be construed as a tenancy from month to month at the monthly rental which shall have been payable at the time immediately prior to when such holding over shall have commenced, and such tenancy shall be subject to all the terms, conditions, and agreements of this Lease. Consistent with the requirements of the New Mexico Board of Finance, the holdover period is limited to six (6) months.

1.4 Commencement Date. The Commencement Date of this Lease will be approval of this Lease by the New Mexico Board of Finance. CGHC will be entitled to take possession of the Premises under the terms of this lease at the Commencement Date.

1.5 Rent:

- A. CGHC, for and in consideration of this Lease, and the demise of the Premises by County to CGHC, hereby agrees with County to provide medical services to Medically Indigent residents of Cibola County, irrespective of a patient's ability to pay, without charge to the County, and to provide medical services to the County's inmates at no cost to the County for the first \$600,000.00 in billed charges for such services in each fiscal year. Thereafter, the County will pay thirty percent (30%) of the billed charges above \$600,000.00 in each fiscal year, to be paid within thirty (30) days after invoicing by CGHC. Should the County's inmate population not utilize the full \$600,000.00 in medical services, the remainder should be utilized for the care of the County's Medically Indigent residents.
- B. The rental rate under this Lease as stated in Section 1.5 (A) above was determined, in part, by a fair market value rent appraisal performed by VMG Heath dated as of June 11, 2020. The VMG appraisal concluded that the fair market rental rate for the Hospital Premises and the Clinic Premises ranged from

a low range of \$290,000 per year, a mid-range of \$400,000 per year and a high range of \$510,000 per year. The parties agree that the mid-range of fair market rent, \$400,000 per year, is most appropriate for purposes of this Lease.

- C. In the event that CGHC does not provide services as described in Section 1.5 (A) above in any calendar year during the term of the Lease of an amount less than \$400,000, as this amount is adjusted each year pursuant to Section 1.5 (D) below, CGHC shall pay to the County by January 31st of the following year, a cash amount equal to the shortfall in the value of services compared to the adjusted fair market rent. CGHC will provide the County with quarterly reports reflecting the value of services provided, substantially in the form of the attached Exhibit A.
- D. The fair market rent value of \$400,000 will be increased each year beginning January 1, 2022 based upon any increases in the CPI from the CPI as of January 1, 2021. For purposes of this Lease "CPI" means the Consumer Price Index for All Urban Consumers (CPI-U) (1982-84 equals 100), as published by the U.S. Department of Labor, Bureau of Labor Statistics, for the Albuquerque, New Mexico, standard metropolitan statistical area, or any successor publication. If the CPI is changed, the new base shall be converted to the 1982-84 base and the base so converted shall be used.

1.6 Utility Charges. CGHC, for and in consideration of this Lease, hereby agrees to pay promptly all utility charges, including charges for electrical, gas, garbage, sewage, which may be incurred in connection with CGHC's use of the Premises. CGHC hereby agrees to pay promptly telephone and internet service, which may be incurred in connection with CGHC's use of the Premises.

1.7 Use of Premises: The Hospital Premises shall be used only for the operation of an acute care general hospital and uses reasonably related or ancillary thereto and the Clinic Premises shall be used only for providing acute and chronic medical care through various providers and uses reasonably related or ancillary thereto. CGHC shall not (i) do or permit to be done in or about the Premises nor bring to, keep or permit to be brought or kept in the Premises anything which is prohibited by, or is in any way in conflict with, any law, statute, ordinance or governmental rule or regulation which is now or may hereafter be in force; (ii) use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose; or (iii) cause, maintain or permit any nuisance in, on or about the Premises, or commit or allow to be committed any waste in, on or about the Premises.

SECTION 2: CONDITION OF THE PREMISES, ALTERATIONS

2.1 Condition of Premises and Repairs: CGHC, for and in consideration of this Lease and the demise of the Premises, hereby agrees and represents that CGHC has examined the Premises prior to the execution hereof, knows the condition thereof, and acknowledges that CGHC has received the Premises in good order and condition except as set forth in the inspection report prepared by the parties as a result of a walk-through inspection performed on June 30, 2020 ("Inspection Report"), and that no representation or warranty as to the condition or repair of the Premises has been made by the County, and, at the expiration of the term of this Lease, or any

renewal or extension thereof, CGHC will yield up peaceably the Premises to the County in as good order and condition as when the same were entered upon by CGHC, loss by fire, damage by the elements, and reasonable use and wear excepted. CGHC will keep, at CGHC's expense, the Premises in good order and repair during the term of this Lease, or any extension or renewal thereof, and will repair and replace promptly, at CGHC's expense, any and all damage, including, but not limited to, damage to roof, walls, floors and foundations, heating and cooling units, plumbing, glass, and all other appurtenances, that may occur from time to time.

2.2 Alterations, Additions and Improvements: CGHC, for and in consideration of this Lease and the demise of the Premises, hereby agrees that CGHC shall not make, or suffer or permit to be made, any alterations, additions, or improvements to permanent real estate fixtures in or about the Premises without first obtaining the written consent of County therefor. However, that such consent, if given, shall be subject to the express condition that any and all alterations, additions, and improvements shall be done at CGHC's own expense and in accordance and compliance with all applicable municipal, state, and federal ordinances, laws, rules and regulations, and that CGHC agrees with County that in doing and performing such work CGHC shall do and perform the same at CGHC's own expense, in conformity and compliance with all applicable municipal, state, and federal ordinances, laws, rules and regulations. That no liens of mechanics, materialmen, laborers, architects, artisans, contractors, subcontractor, or any other lien of any kind whatsoever shall be created against or imposed upon the Premises, or any part thereof. Any alterations, additions and/or improvements will not impact or change, positive or negative, the consideration to be furnished by CGHC under this Lease as stated in Section 1.5 or referenced in other Sections of this Lease.

2.3 Ownership of Alterations, Additions and Improvements: County, for and in consideration of this Lease and the demise of the Premises, hereby agrees with CGHC that any and all non-permanent fixtures alterations, additions, and improvements, made at CGHC's own expense, whether or not attached to the roof, walls, or floors, foundations, or the premises in any manner whatsoever, shall not become a permanent part of the realty, and shall be removed by CGHC at CGHC's expense on or before the termination of the Lease, and CGHC shall repair any damage caused thereby at CGHC's own expense, such that the Premises shall be in as good order and condition as when the same were entered upon by CGHC, subject to normal wear and tear. In addition, with respect to any signs, shelving, furniture and equipment purchased by CGHC and not affixed to the roof, walls or floors of the Premises, CGHC shall have the right to remove or replace any such items in its discretion at any time.

2.4 County's Right of Entry and to Make Alterations, Additions and Improvements. CGHC, for and in consideration of this Lease and the demise of the Premises, hereby agrees with County, County shall have the right at any time, upon reasonable notice to CGHC, to enter upon the said premises, except for areas designated as secure areas for the protection of the health, safety and welfare of the County including areas that contain legally confidential information, to inspect the same. Additionally, upon reasonable advance written request, with sufficient time to respond to the written request, the County shall have the right to inspect during normal business hours records and documents not otherwise privileged or confidential, which are reasonably necessary for the County to be able to determine whether CGHC is in compliance with its obligations under this Lease, post notices of non-responsibility and the like; provided, that

nothing in this provision shall limit the County's right to inspect confidential records or documents, excluding medical records or other records containing protected health information, which the County otherwise has a right to review, including, without limitation proprietary or confidential matters described herein, subject to continuing confidentiality protections.

SECTION 3: ASSIGNMENT AND SUBLETTING

3.1 Assignment and Subletting. Except for renting space within the Premises to health care specialists from time to time, which CGHC will have the right to do without prior County consent, CGHC, for and in consideration of this Lease and the demise of the Premises, hereby agrees with County that neither CGHC nor CGHC's assigns, or successors in interest shall assign this Lease or sublet the Premises, in whole or in part, without first obtaining the written consent of County therefor: that no assignment of this Lease or any subletting of the Premises, in whole or in part, shall be valid, except by and with the written consent of County first obtained, which consent will not unreasonably be withheld or delayed; that the consent of County to any such assignment or subletting shall not operate to discharge CGHC or CGHC's assigns or successors in interest from their liability upon the agreements of this Lease, and CGHC, CGHC's assigns and successors in interest shall remain liable for the full and complete performance of all the terms, conditions, and agreements herein contained as principals and not as guarantors or sureties, to the same extent as though no assignments or sublease had been made; that any consent of County to any such assignment or subletting shall not operate as a consent to further assignment or subletting or as a waiver of this agreement against assignment and subletting; and that the following any such assignment or subletting, the assignee and/or subtenant shall be bound by all of the terms, conditions, and agreements herein contained including the covenant against assignment or subletting.

SECTION 4: TAXES, OTHER ASSESSMENTS

4.1 Taxes, Other Assessments. CGHC and County hereby agree that all taxes and special and general assessments of whatsoever kind and nature, extraordinary as well as ordinary, which have been or may be levied upon the Premises and upon any alterations, additions, and improvements thereon, shall be paid by County at the time when the same become due and payable, and that all taxes and special and general assessments of whatsoever kind and nature, extraordinary as well as ordinary, which have been or may be levied upon the personal property located upon the Premises shall be paid by CGHC at the time when the same shall become due and payable.

SECTION 5: DEFAULT AND TERMINATION

5.1 Default and Termination: In the event of CGHC's default hereunder, then, in addition to any other rights or remedies County may have under any law or this Lease, County shall have the right, at County's option, without further notice or demand of any kind to terminate this Lease and CGHC's right to possession of the Premises and reenter the Premises and take possession thereof, and CGHC shall have no further claims to the Premises or under this Lease. This Lease may be terminated for the following reasons:

- A. **Termination Without Cause:** Pursuant to Section 4-48B-5(J)(1), NMSA1978, this Lease may be terminated by the County without cause upon one hundred eighty days' (180) notice after the first three (3) years of this Lease. However, pursuant to Section 4-48B-5(J)(2), NMSA 1978, this provision shall not apply during the portion of a lease term in which CGHC is obligated to make debt service payments on revenue bonds that finance all or part of the hospital or equipment for the Hospital.
- B. **Changes in Federal or State Law:** Any change in Federal or State law that materially impairs the ability of CGHC or the County to perform the duties and obligations of this Lease.
- C. **Noncompliance with Material Terms:** CGHC's violation of any material term of this Lease.
- D. **An uncured material default under the HCF Contract.**
- E. **Failure to Obtain and Maintain Insurance.** CGHC's failure to Obtain and Maintain Insurance as required by this Lease.
- F. **Dissolution, Bankruptcy or Receivership.** CGHC's adoption of a plan of dissolution, filing for bankruptcy liquidation or receivership.
- G. **Other Act or Omission Inconsistent with any Obligation under this Lease.**

The County may otherwise enforce the terms of this Lease by invoking any other right or remedy allowed at law or in equity, including, without limitation, an action for specific performance if warranted by the particular circumstances.

5.2 Cure: CGHC shall have thirty (30) days from the date of the County's written notice specifying with particularity the nature of the alleged termination event to cure such event, except that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, the CGHC shall not be deemed to be in default if CGHC commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. This Section shall not apply to the termination events set forth in Section 5.1 (A), (B), (D), or (E) of this Lease.

5.3 Effect of Default by the County. CGHC shall have the right to enforce the terms of this Lease by invoking any right or remedy allowed at law or in equity, including without limitation, an action for specific performance if the County fails to perform any of its material obligations under the terms of this Lease, provided such failure continues for thirty (30) after written notice of such default from CGHC, except that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then the County shall not be deemed to be in default if the County commences such cure within said thirty (30) day period and diligently prosecutes such cure to completion.

5.4 CGHC Right to Terminate in Certain Events. CGHC may terminate this Lease upon one hundred eighty (180) days prior written notice to the County in the event: (i) CGHC determines in good faith that the continued operation of the Hospital is impractical due to a lack of revenue, or (ii) a Court of competent jurisdiction renders a determination that the County has, without good cause, materially interfered with CGHC's operation of the Hospital and/or the Clinic.

5.5 Bankruptcy and Condemnation. In no event shall this Lease be deemed an asset of CGHC after the assignment for the benefit of creditors, the adjudication in bankruptcy, the appointment of a receiver or trustee, or the issuance of a Writ of Execution, a Writ of Attachment, a Writ of Replevin, or other court order against CGHC or CGHC's property whereby the Premises or any building or buildings, or alterations, additions, or improvements thereon, shall be taken or occupied or attempted to be taken or occupied by someone other than the CGHC. Further, CGHC hereby covenants and agrees with County that in the event the Premises, or any part thereof, shall be taken for any public or quasi-public use under any statute or by right of eminent domain, this Lease shall automatically terminate, as to the part so taken, as of the date possession shall have been taken, and the rent reserved shall be adjusted so that CGHC shall be required to pay for the remainder of the term that portion of the rent reserved in the proportion that the Premises remaining after the taking for public or quasi-public use bears to the whole of the Premises before the taking for public or quasi-public use. All damages and payments resulting from the taking for public or quasi-public use of the Premises shall accrue to and belong to County, and CGHC shall have no right to any part thereof.

5.6 Waivers: County and CGHC, for and in consideration of this Lease and the demise of the Premises, agrees with each other that the delay or omission in the enforcement of any of the agreements herein contained, or in the exercise of any of the Parties rights hereunder, shall not affect the duty of the other Party to thereafter faithfully fulfill and perform all of the agreements herein contained, and that the failure, neglect, or omission of the other to terminate this Lease for any one or more breaches of any agreements hereof, shall not be deemed a consent by either Party of such breach and shall not impede, impair, stop, bar, or prevent either Party from thereafter terminating this Lease, either for such violation, or for prior to subsequent violations of any agreement hereof.

5.7 Appropriations: The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Board of County Commissioners to allow the County to meet its obligations under this Agreement, this Agreement shall terminate immediately upon written notice being given by the County to the CGHC. The County's decision as to whether sufficient appropriations are available shall be accepted by the CGHC and shall be final. If the County proposes an amendment to the Agreement to unilaterally reduce any required funding by the County, the CGHC shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

5.8 Surrender of Hospital and Clinic Upon Termination. Upon a termination of this Lease for any reason, CGHC shall, on the date of termination, surrender the Premises to the County or an entity designated by the County.

SECTION 6: ENVIRONMENTAL COMPLIANCE

6.1 Compliance with Environmental Laws.

- A. CGHC and the Premises will remain in compliance with all applicable laws, statutes, ordinances, and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, all as amended and modified from time to time (collectively, "environmental laws"). All governmental permits relating to the use or operation of the Premises required by applicable environmental laws are and will remain in effect, and CGHC will comply with them.
- B. CGHC will not permit to occur any release, generation, manufacture, storage, treatment, transportation, or disposal of hazardous material, as that term is defined in applicable environmental laws,) on, in, under, or from the Premises. CGHC will promptly notify County, in writing, if CGHC has or acquires notice or knowledge that any hazardous material has been or is threatened to be released, generated, manufactured, stored, treated, transported, or disposed of, on, in, under, or from the Premises; and if any hazardous material is found on the Premises, County, at its own cost and expense, will immediately take such action as is necessary to detain the spread of and remove the hazardous material to the complete satisfaction of CGHC and the appropriate governmental authorities.
- C. CGHC will immediately notify County and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the premises or compliance with environmental laws. County will promptly cure and have dismissed with prejudice any of those actions and proceedings to the satisfaction of CGHC.

SECTION 7: DAMAGE TO PREMISES; EMINENT DOMAIN

7.1 Damage and Destruction. If during the Term any significant portion of the Hospital Premises or the Clinic Premises shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty, CGHC shall notify the County within ten (10) days of such casualty. CGHC may, upon such notice, at its option elect to either:

- A. Terminate this Lease effective as of the date of such casualty, pay no further rental payments hereunder, and pay all proceeds of the property insurance on the damaged or destroyed real property assets to the County within ten (10) days after such proceeds are received; or
- B. Proceed with all due diligence to restore, repair or replace the damaged or destroyed real property assets using the proceeds of the property insurance on such assets; provided, however, that if CGHC fails (i) to substantially restore, repair or replace such assets within 180 days after such casualty, or (ii) with respect to restoration, repair or replacement which

cannot with reasonable due diligence be completed within said 180-day period, CGHC fails to take all actions necessary to complete such restoration, repair or replacement with all due diligence, the County shall have the right to terminate this Agreement by notifying CGHC of such termination (i) as of the expiration of said 180-day period; or (ii) with respect to restoration, repair or replacement which cannot with due diligence be completed within said 180-day period, after allowing a reasonable time for the completion of such restoration, repair or replacement. In the event that CGHC elects to restore, repair or replace the damaged or destroyed real property assets under this Paragraph, the County shall promptly execute and deliver to CGHC any and all documents necessary to waive any and all rights on claims which the County has or may have in and to all insurance proceeds to the extent of the cost of repairs. If the County elects to terminate this Lease under this Paragraph, CGHC shall promptly pay to the County all remaining insurance proceeds not yet expended on the on-site restoration, repair or replacement of such real property assets.

7.2 Eminent Domain. If during the Term either title to or the temporary use of the Hospital Premises or Clinic Premises shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, any proceeds received from any award made in any related eminent domain proceedings (after the payment of any expenses incurred in connection with such proceedings) shall be used for the sole purpose of acquiring new land and facilities in the County's name to be used for the provision of health care services to the residents of the County as specified in this Lease, subject to the prior written consent of the County, which consent shall not unreasonably be withheld or delayed. If title to all or substantially all of the Hospital Premises and/or Clinic Premises is taken CGHC may elect to terminate this Lease and CGHC shall not be obligated to pay any further amount as rent hereunder or be bound in anyway by the terms of this Lease effective as of the date of such taking.

SECTION 8: MAINTENANCE AND IMPROVEMENT OF PREMISES

8.1 Maintenance and Improvement of Hospital and Clinic. CGHC shall maintain, preserve and keep the Hospital Premises and Clinic Premises in good condition, repair and working order. CGHC may, at its own expense, make or cause to be made any and all additions, alterations, changes and deletions in and to all or any part of the Hospital Premises and/or Clinic Premises as CGHC, in its sole discretion, deems necessary or appropriate; provided, however, that (i) all additions and alterations shall be performed in a good and workmanlike manner which means that the quality of workmanship and materials shall be at least equal that existing on the Effective Date; (ii) no permanent demolition of any substantial part of the Hospital Premises and Clinic Premises, shall be made without replacement of such assets or replacement space or otherwise without the prior written consent of the County, (iii) CGHC shall not grant any lien, mortgage security interest or other encumbrance on the Hospital Premises and/or Clinic Premises in connection with construction, projects, (iv) CGHC shall, not sell, sublease, exchange, alienate or otherwise dispose of all or a substantial part of the Hospital Premises or Clinic Premises, without the prior written consent of the County, and CGHC shall obtain prior written consent from the County, which consent will not unreasonably be withheld or delayed for any construction project for which the cost is expected to exceed \$250,000 and with respect to such construction projects, CGHC shall pursue such projects in a manner designed to maximize the purchasing value of the expenditure of

funds. Except as otherwise provided in this Lease, ownership of such improvements to the Premises will vest in the County.

8.2 Process for Large Construction Projects. CGHC and the County will agree upon the process to be followed with respect to the expenditure of public monies for all improvements to be made to the Premises in excess of \$250,000 per project to maximize the value of the expenditure of funds.

SECTION 9: INSURANCE

9.1 Insurance. CGHC shall at all times carry and maintain for the benefit of itself and the County, as their respective interests may appear, such type and amount of insurance concerning the Hospital Premises and the Clinic Premises as CGHC deems appropriate, including, but not limited to, comprehensive general liability insurance covering bodily injury and property damage liability, with aggregate coverage of \$6,000,000, business interruption insurance, to the extent reasonably necessary to protect the interests of the County which shall be named as an additional named insured on all such policies. Fire and extended coverage insurance upon all buildings, alterations, and improvements upon the Premises shall be provided for by County. Fire and extended coverage insurance upon all of the contents and other personal property situated upon the Premises shall be provided for by CGHC. Failure to provide or maintain the required insurance shall constitute a material breach of this Lease. CGHC shall obtain, and provide on an annual basis to the County, certificates of all such insurance and shall require each insurance carrier to place an endorsement in each such policy agreeing to give the County at least 30 days' notice of any proposed cancellation of any such coverage.

SECTION 10: GENERAL REPRESENTATIONS OF THE COUNTY

The County hereby agrees with CGHC to take, or cause to be taken, the following actions during the Term (or such other period as may be specified below):

10.1 Consents and Notices. The County shall obtain any consents and give any notices required in connection with this Lease under the terms and conditions hereof.

10.2 Liens and Encumbrances. The County shall not suffer or permit any liens or encumbrances for the County's benefit to be filed or exist against the Hospital Premises or Clinic Premises.

10.3 Exemption from Property Taxes. The County shall not transfer or convey any right, title or interest owned or held in or to the Hospital Premises or Clinic Premises, or take any other action, which would cause any of the Hospital Premises or Clinic Premises to become subject to any property taxes under the laws of the State of New Mexico as now or hereafter enacted.

SECTION 11: INDEMNIFICATION; LIMITATION ON DAMAGES

11.1 Indemnification of County. CGHC shall indemnify and hold the County, its employees and agents harmless from and against, any and all demands, claims, causes of actions, fines,

penalties, damages (including consequential damages), liabilities, judgments, and expenses (including, without limitation, attorneys' fees and costs of defenses) incurred in connection with or arising from: (i) the use or occupancy or manner of use or occupancy of the Hospital Premises or Clinic Premises by CGHC or any person claiming under CGHC; (ii) any activity, work or thing done, permitted or suffered by CGHC in or about the Hospital Premises or Clinic Premises; (iii) any acts, omissions or negligence of CGHC or any person claiming under CGHC, or the contractors, agents, employees, invitees or visitors of CGHC or any such person; (iv) any breach, violation or nonperformance by CGHC or any person claiming under CGHC or the employees, agents, contractors, invitees or visitors of CGHC or any such person of any term or provision of this Lease or any law, ordinance or governmental requirement of any kind; (v) any injury or damage to the person, property or business of CGHC, its employees, agents, contractors, invitees, visitors or any other person entering upon the Hospital Premises or Clinic Premises under the express or implied invitation of CGHC, except for any injury or damage to persons or property on the Hospital Premises or Clinic Premises which is proximately caused by or results proximately from the negligence or intentional wrongdoing of the County, its employees or agents. CGHC, as a material part of the consideration to the County for this Lease, hereby waives and releases all claims against the County, its employees and agents with respect to all matters for which the County has disclaimed a liability pursuant to the provisions of this Lease. Except for any damage or injury to person or property on the Hospital Premises or Clinic Premises which is proximately caused by or results proximately from the negligence or intentional wrongdoing of the County or its agents or employees, CGHC covenants and agrees that the County and its agents and employees shall not at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, injury, death or damage (including consequential damages) to persons, property or CGHC's business interests from any cause, either ordinary or extraordinary, beyond the County's control. No provision of this Lease shall require any indemnity obligation which would render such provision void and unenforceable by operation of any law, including, but not limited to, N.M. Stat. Ann. § 56-7-1 (1978).

Within twenty days after receipt of a threat of any claim or a notice of the commencement or filing of any claim against which the County may be indemnified hereunder, the County shall give written notice thereof to CGHC. Failure to give or delay in giving such written notice shall not relieve the indemnifying party of any liability except to the extent that the defense or insurance coverage of such claim is prejudiced thereby. With regard to any claim for which the County seeks indemnification from CGHC, the County shall allow CGHC to have sole control of the defense and of all negotiations for settlement of such claim, except that no compromise or settlement thereof may be effected or committed unless such settlement or compromise (i) includes a full discharge and release of any and all liability for the County, (ii) does not involve any non-monetary, injunctive or other equitable relief entered against the County, does not require the County to do or to forbear from doing any act, and does not involve, require, or imply the admission of any wrongful act (whether civil or criminal) by the County, and (iii) is kept confidential pursuant to a confidentiality and non-disclosure agreement, subject to the requirements of the New Mexico Inspection of Public Records Act. The County shall provide all reasonable assistance, at CGHC's request and expense, needed in the defense or negotiation for settlement of such claim. The County may also elect to participate in the defense of such claim at its own expense with counsel of its choice.

ARTICLE 12: REPRESENTATIONS AND WARRANTIES OF CGHC

CGHC hereby represents and warrants to the County that the following representations and warranties are true and accurate as of the date hereof and as of the Effective Date:

12.1 Organization. CGHC is a New Mexico nonprofit corporation duly organized and in good standing under the laws of the State of New Mexico. CGHC has the power to contract with third parties and to own assets and to carry on its business as contemplated under this Contract.

12.2 Authority. CGHC has the power to execute and deliver this Lease and to carry out the transactions contemplated hereby and therein, respectively. All corporate actions required to be taken by CGHC to authorize the execution, delivery and performance of this Lease and all transactions contemplated hereby have been duly and properly taken.

12.3 No Conflicts. This Lease is duly executed and delivered and is the valid and legally binding obligation of CGHC enforceable under its terms. The execution and delivery of this Lease does not, and the consummation of the transactions contemplated hereby shall not result in the creation of any lien charge or encumbrance, or the accelerations of any indebtedness or other obligation of CGHC and is not prohibited by, in violation of or in conflict with any provision of and shall not result in a default under or breach of (i) any contract agreement or other, instrument to which CGHC is a party or is bound; (ii) any ordinance, law or regulation or (iii) any order decree or judgment of any court or governmental agency to which CGHC is a party or is bound.

12.4 Compliance with Codes and Regulations. To the knowledge of CGHC the Hospital Premises and Clinic Premises have been and are being used in material compliance with all zoning, environmental, health code and other similar laws, ordinances and regulations and with all conditions and restrictions affecting the Hospital Premises and Clinic Premises.

12.5 Inspection of Hospital. Except as otherwise set forth in the Inspection Report, CGHC acknowledges that prior to execution of this Contract CGHC has made such inspections and investigations of the condition of the Hospital Premises and Clinic Premises as CGHC deems necessary and appropriate and that CGHC has found the Hospital Premise and Clinic Premises to be in good condition, suitable and fit for CGHC's intended uses. ON THE EFFECTIVE DATE CGHC SHALL ACCEPT THE HOSPITAL "AS IS" AND "WHERE IS," WITHOUT WARRANTY OR REPRESENTATION FROM THE COUNTY AS TO CONDITION, STATE OF REPAIR, OR SUITABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE. Except as expressly provided in this County, the County shall have no obligation to CGHC to maintain, repair, restore, replace, alter, remodel, improve or add to the Hospital Premises or Clinic Premises.

SECTION 13: DELIVERABLES

13.1 CGHC Deliverables to the County. CGHC shall deliver the following to the County as of the date of execution of this Contract or within ten (10) business days thereafter, a certified copy of resolutions adopted by the Board of Directors of CGHC, authorizing, and approving the execution and performance of this Lease, and any other agreements contemplated herein.

13.2 County Deliverables to CGHC. The County shall deliver the following to CGHC by the date this Lease is signed by both parties or (except as otherwise provided in this Paragraph) within ten (10) business days thereafter:

- A. Two (2) executed copies of the Lease.
- B. Evidence of all consents and notices required. New Mexico Board of Finance authorization will be required for this Lease pursuant to NMSA 1978, Section 13-6-2.1. This Agreement, and any amendments thereto, shall be subject to and shall not be effective prior to New Mexico Board of Finance approval.
- C. A certified copy of resolutions or ordinances adopted by the County authorizing and approving the execution and performance of this Lease.

13.3 Failure to Deliver. In the event that any party hereto fails to make any delivery required under this Article, and such failure continues for a period of fifteen business days after written request by the other party, any non-defaulting party may, at its option, declare this Lease to be null and void as of the Effective Date, in which case all deliveries shall immediately be returned to the party making the delivery, or seek specific performance and/or pursue such other remedies as may be available at law or in equity.

SECTION 14: MISCELLANEOUS

14.1 Binding Effect: Upon the execution of this Lease, the Lease shall be binding upon and shall inure to the benefit of the parties hereto and their successors.

14.2 Assignment: This Lease shall not be assigned by CGHC or the County to any other party.

14.3 Severability: If any term or provision of this Lease shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision or term shall be severed from the Lease and shall not affect the validity of the remainder of this Lease.

14.4 Applicable Law: The validity, construction and effect of this Lease will be governed by the law of the State of New Mexico, without regard to any conflicts of law provisions contained therein. Venue for any action arising from this Lease will lie in the Thirteenth Judicial District Court in Cibola County.

14.5 Amendment: This Lease may be amended only by a written instrument executed by the County and CGHC. Any amendment will require New Mexico Board of Finance approval.

14.6 Further Assurances: CGHC and the County hereby agree to execute, acknowledge and deliver any documents and instruments and perform any additional acts that may be necessary, appropriate or advisable to carry out their respective obligations under this Lease.

14.7 Attorney's Fees: In the event this Lease results in dispute, mediation, litigation, or settlement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

14.8 Cost of Implementation: In the event this Lease is determined to be invalid or otherwise unenforceable, for any reason whatsoever, CGHC will make no claim against the County or any of its officers, agents, contractors or employees for any compensation for lost profits, costs or expenses incurred in proceeding with the implementation of the terms of the Lease.

14.9 Counterparts: This Lease may be executed in exact counterparts and when so executed by the parties hereto shall be effective in accordance with the terms hereof.

14.10 Impossibility. No party hereto shall be liable for any delay in performance or failure to perform when fire, flood, explosion, accident, energy shortage, war, weather, casualty, act of God, sabotage, law or government regulation, or any other cause reasonably beyond such party's control makes performance impossible despite the best efforts to perform by the party from whom performance is required.

14.11 Entire Agreement. This Lease contains the entire understanding of the parties with respect to the lease of the Premises and supersedes and replaces all other agreements and understandings between the parties. Wherever in this Lease the permission or consent of any party is required or requested, such omission and consent shall not be unreasonably withheld or delayed.

14.12 Accounting Determinations. All accounting determinations required to be made under this Lease shall be made in accordance with generally accepted accounting principles.

14.13 Authorization of CGHC to Act as if CGHC Were Fee Owner in Certain Matters. The County hereby authorizes CGHC to act as if CGHC were the owner of the fee simple title to the Hospital Premises and/or Clinic Premises for the purpose of obtaining licenses and all zoning and/or building permits, maintaining a determination of tax-exempt status under IRC Section 501(c)(3), filing plats of subdivision, negotiating agreements with public and private utilities, and any and all other documents and/or approvals required by or from any governmental authority exercising jurisdiction over all or any part of the Hospital, as CGHC shall from time to time deem necessary or appropriate in order to carry out the health care purposes of CGHC. Nothing in this Article shall be deemed or construed as in any way limiting or amending (1) the obligations of the County to cooperate with CGHC to enable CGHC to exercise its rights hereunder, including without limitation, the obligation to sign any and all documents and to take any and all other steps necessary to accomplish any of the actions set forth in this Article, or (2) the limitations on the rights of CGHC to transfer, mortgage, pledge or otherwise encumber the Hospital Premises or Clinic Premises.

14.14 Conditions Precedent to Effective Date. The obligations of the parties under this Lease are contingent upon the following conditions:

A. There shall have been no material breach by any party in the performance of any of their respective commitments herein, each of the representations and warranties of each of them contained or referred to in this Lease shall be true and correct in all material respects on the Effective Date as though made on the Effective Date, and there shall have been delivered to each party their respective deliveries as described herein;

B. No order shall have entered in any action or proceeding before any court or governmental agency, and no preliminary injunction by any court shall have been issued which would have the effect of (i) making the transactions contemplated by this Lease illegal; or (ii) otherwise preventing consummation of such transactions; and there shall have been no federal or state statute, rule or regulation enacted or promulgated that could reasonably, directly or indirectly, result in any of the consequences referred to in this Paragraph;

C. All necessary federal, state and local governmental approvals and consents shall have been obtained, without the imposition of any material conditions or restrictions and without the loss of any existing material waivers arising out of the closing of the transactions contemplated hereby;

D. If any governmental agency seeks to preliminary enjoin the transactions contemplated hereby, either party may decide not to proceed further with the Lease transactions; and

E. All third-party consents or waivers required to be obtained with respect to the proposed transactions shall have been obtained.

CIBOLA COUNTY

APPROVED, ADOPTED, AND PASSED on this ____ day of _____, 2020.

BOARD OF COUNTY COMMISSIONERS

Daniel Torrez, Chairperson

Robert Windhorst, 1st Vice Chairperson

Martha Garcia, 2nd Vice Chairperson

Christine Lowery, Commissioner

Ralph Lucero, Commissioner

Attest:

Michelle E. Dominguez
Cibola County Clerk

CIBOLA GENERAL HOSPITAL CORPORATION

Eileen Chavez Yarborough, Chair, Board of Directors

Kendra Brown, Vice Chair, Board of Directors

Chase Elkins, Secretary, Board of Directors

W. MacFarland Bridges, II, MD, Board Member

Bob W. Tenequer, Jr., Board Member

Robert Windhorst, Board Member

Kevin Branum, Board Member

Joan Gilmore, Board Member

Ron Ortiz, Board Member

Thomas Whelan, Chief Executive Officer

WITNESS our hands and seals this ____ day of _____, 2020.

STATE OF NEW MEXICO)
) ss.
COUNTY OF CIBOLA)

The foregoing instrument was acknowledged before me on _____, 2020, by Eileen Chavez Yarbrough, Chair of the Board of Directors, Kendra Brown, Vice Chair of the Board of Directors, Chase Elkins, Secretary of the Board of Directors, W. MacFarland Bridges, II, MD, Board Member, Bob W. Tenequer, Jr., Board Member, Robert Windhorst, Board Member, Kevin Branum, Board Member, Joan Gilmore, Board Member, Ron Ortiz, Board Member and Thomas Whelan, Chief Executive Officer, all of Cibola General Hospital Corporation, on behalf of such corporation.

Notary Public

My Commission Expires:



Cibola Gen. Operating Agreement



HEALTH CARE FACILITIES CONTRACT

This **HEALTH CARE FACILITIES CONTRACT** (the "Contract"), is entered into this ____ day ____ of 2020, by and between the BOARD OF COUNTY COMMISSIONERS OF CIBOLA COUNTY, NEW MEXICO, a political subdivision of the State of New Mexico ("County") and Cibola General Hospital Corporation, a New Mexico Non-Profit Corporation located in Grants, New Mexico ("CGHC").

WHEREAS, the County determined, upon its own initiative, to submit the question of the imposition of a mill levy of 4.25 mills (the "Mill Levy") for the operation and maintenance of Cibola General Hospital, as a county hospital in and for the County of Cibola, State of Mexico;

WHEREAS, the County submitted such question to the registered qualified electors of Cibola County at the July 2019 Special Election, as authorized by Section 4-48B-1 *et seq.*, NMSA 1978 (the "Hospital Funding Act");

WHEREAS, in said election, the voters approved the imposition of the Mill Levy by a vote of 1960 in favor to 676 opposed;

WHEREAS, the State Department of Finance & Administration will impose the Mill Levy for the operation and maintenance of the Hospital pursuant to, and in accordance with, Section 4-48B-15 of the Hospital Funding Act for property tax year 2020;

WHEREAS, the collection of the Mill Levy authorization expires after property tax year

WHEREAS, the County and CGHC are empowered by the Hospital Funding Act to enter into this Contract for purposes of operating, maintaining, and providing for the Cibola General Hospital, a 25-bed critical access hospital operation (the "Hospital") in accordance with the provisions of the Hospital Funding Act;

WHEREAS, pursuant to various prior Management Agreements, the last dated February 20, 2014 (the "2014 Management Agreement"), as extended by mutual agreement of the parties, CGHC has managed and operated the Hospital and the Cibola Family Health Center, a clinic operation for providing acute and chronic medical care (the "Clinic");

WHEREAS, the County and CGHC desire to clarify and extend their relationship with respect to the operation of the Hospital and clarify ownership of the non-real estate assets associated with the Hospital and Clinic;

WHEREAS, the County owns the real property located at 1016 East Roosevelt Avenue, Grants, NM 87020 (the "Hospital Premises") and 1423 East Roosevelt Avenue, Grants, NM 87020 (the "Clinic Premises"), which CGHC wishes to lease from County pursuant to a separate lease agreement in order to provide the medical and health care services contemplated by this Contract; and

WHEREAS, the County and CGHC wish to execute and deliver this Contract to transfer the Mill Levy Funds from the County to CGHC for use in connection with the operation, maintenance and provision of the Hospital pursuant to, among other provisions, Section 4-48B-3(G), NMSA 1978, Section 4-48B-7(A), NMSA 1978, and Section 4-48B-12, NMSA 1978, of the Hospital Funding Act.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants hereinafter contained, the Parties agree as follows.

SECTION 1. THE HOSPITAL

1.1 Control of the Hospital: Subject to the terms of this Agreement, CGHC shall have exclusive jurisdiction and control of the Hospital and its non-real estate assets and shall comply with the laws, rules and regulations of the United States and the State of New Mexico in taking any and all additional action to operate and maintain the Hospital.

1.2 Non-Discrimination Policy: Pursuant to the Hospital Funding Act, CGHC shall treat patients at the Hospital without regard to race, sex, religion or national origin.

1.3 Availability of Services; Description of Facilities; Mission: CGHC undertakes to provide nonsectarian professional medical services to the sick of Cibola County and such other persons as may legitimately require services. CGHC agrees to make the services and facilities identified in the Hospital Funding Act, NMSA 1978, Section 4-48B-3(G) (2003) available to the sick of Cibola County at the Hospital, including but not limited to:

- A. hospital facilities that admit and treat patients without regard to race, sex, religion or national origin;
- B. hospital facilities that include x-ray, laboratory services and a pharmacy or drug room;
- C. adequate emergency equipment, personnel and procedures, including:
 - i. a standby emergency power system;
 - ii. at least one person capable and authorized to initiate immediate lifesaving measures;
 - iii. facilities for emergency laboratory work, including, as a minimum, urinalysis, complete blood count, blood type and cross match; and
 - iv. diagnostic radiographic facilities;
- D. facilities, procedures and policies for prevention, control and reporting of communicable

diseases, including one or more rooms for isolation of patients having or suspected of having communicable diseases;

- E. adequate records, including, as a minimum, a daily census and a register of all births, deliveries, deaths, admissions, emergency room admissions, discharges, operations, outpatients, inpatients and narcotics; and
- F. physical facilities, personnel, equipment and procedures that comply with the regulations promulgated by the public health division of the department of health;
- G. Hospital facilities on a 24 hours emergency basis for both sick and injured; and
- H. A hospital that, at minimum, satisfies the requirements of Section 7.7.2.7(Z) NMAC 2018 (“[A] facility offering in-patient services, nursing, overnight care on a 24-hour basis for diagnosing, treating, and providing medical, psychological or surgical care for three or more separate individuals who have a physical or mental illness, disease, injury, a rehabilitative condition or are pregnant; use of the term “hospital” for any facility not duly licensed according to these requirements is prohibited; any acute care hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury, surgery, and obstetrics; any limited services hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury and surgery; ancillary services such as pharmacy, clinical laboratory, radiology, and dietary are required for acute-care or limited service hospitals.”
- I. Healthcare Services provided to Medically Indigent residents of Cibola County, and the County’s inmate population, irrespective of a patient’s ability to pay, without charge to the County, except as provided below. For purposes of this Agreement (i) a “Medically Indigent resident” means a resident of Cibola County that is deemed indigent pursuant to the County’s Indigent Healthcare Ordinance and (ii) a “County inmate” means an individual under the custody and control of the County held either due to pending criminal charges or who has been convicted of a crime and is committed to the Cibola County Detention Center, though expressly excludes felony probation and parole violators, which are the responsibility of the State of New Mexico. CGHC will provide Healthcare Services to the County’s inmate population without charge for the first \$600,000 in charges for such care for each fiscal year. Thereafter, the County will pay thirty percent (30%) of the charges above \$600,000 in each fiscal year, to be paid within thirty (30) days after invoicing by CGHC. Should the County’s inmate population not utilize the full \$600,000 subsidy, the remainder of the subsidy should be utilized for the care of the County’s Medically Indigent residents. The County has no obligation to pay for care provided to medically indigent residents in excess of the subsidy.
- J. CGHC to Maintain Mission: CGHC shall at all times during the Term maintain its mission of managing, operating and/or, maintaining a hospital and health care related facilities, programs and services to further its public mission of sustaining a healthy community by the provision of quality health care services, included the care of the Medically Indigent as described herein.

1.4 Financial Operation: CGHC takes and assumes full and complete financial responsibility for the maintenance and operating costs of the Hospital, and may utilize any additional public and private funds as permitted under State and Federal law. CGHC may use any Mill Levy Funds transferred by the County for the purposes described in Section 2.2 of this Contract. CGHC shall be responsible for all losses arising out of the operation of the Hospital and shall receive the benefit of all profits arising out of the operation of the Hospital.

1.5 Financing Capital Improvements: CGHC shall develop and implement a capital finance plan to finance and develop any capital improvements necessary to operate and maintain the Hospital. Ownership of all furniture and equipment, even equipment that would normally be considered a fixture, presently financed or acquired after the date of this Agreement, will vest in CGHC. Ownership of real property improvements to the Hospital Premises or Clinic Premises, excluding any equipment that is presently financed or acquired after the date of this Agreement, will vest in Cibola County. CGHC agrees that it shall not acquire any additional real property adjacent to the Hospital Premises or Clinic Premises not incorporated into the Hospital Premises or Clinic Premises without first securing the written consent of Cibola County, which consent shall not be unreasonably withheld. CGHC will be entitled to purchase other real property, with its own funds, to provide for ancillary health services (such as an urgent care centers) in locations separate from the Hospital Premises and Clinic Premises, without seeking consent from the County and such properties may be owned by CGHC and will not vest in the County.

1.6 Private Control of Hospital: CGHC and the County agree that the Hospital will be exclusively operated, maintained, and managed by CGHC, and in its full control and discretion, except as otherwise provided herein, and that the responsibilities of the County are limited to the payment of the Mill Levy Funds in accordance with the Contract.

SECTION 2: THE MILL LEVY FUNDS

2.1. Transfer: Following CGHC's provision of evidence to the County of a Certificate of Licensure from the New Mexico Department of Health and upon the Commencement Date, the County hereby agrees to transfer the "Mill Levy Funds" to CGHC within thirty (30) days of receipt of such funds. The Mill Levy Funds shall be held in a restricted account by the County until transferred to CGHC.

2.2 Use of Mill Levy Funds: Upon the transfer of the Mill Levy Funds to CGHC, CGHC shall use the Mill Levy Funds for the purpose of operation, maintenance, and provision of the Hospital.

2.3 Extensions of Mill Levy: Further mill levy funding requests must be submitted to the County for approval pursuant to Section 4-48B-15, NMSA 1978.

2.4 Impermissible Uses: CGHC may not, under any circumstances, use Mill Levy Funds for any purposes other than those expressly permitted by the Hospital Funding Act, as that Act may be amended from time to time. Use of Mill Levy Funds for an unauthorized expenditure shall be

grounds for termination of this Contract pursuant to Section 4.14 of this Contract and an action to recover funds expended in violation of this Contract.

SECTION 3: REPORTING AND NOTICE REQUIREMENTS:

3.1 Reporting and Addresses for Notices: Any reporting required or permitted under this Contract, and any and all notices required or permitted to be given hereunder, shall be in writing and shall be hand delivered or mailed to the County or CGHC, as the case may be, postage pre-paid and by certified mail, return receipt requested, at their respective addresses shown below (or at such other address as either party may specify to the other party in writing from time to time). Such reporting or notice shall be deemed effective as of the date of mailing.

CGHC: Cibola General Hospital Corporation
1016 East Roosevelt Avenue
Grants, NM 87020
Attn: Chairperson or Board of Directors

cc: Cibola General Hospital Corporation
1016 East Roosevelt Avenue
Grants, NM 87020
Attn: CEO

COUNTY: County of Cibola
Attn: County Manager
700 East Roosevelt, Suite 50
Grants, NM 87020

3.2 Annual Reporting: Pursuant to Section 4-48B-4, NMSA 1978, and within five (5) business days after receipt of the completed audit for CGHC fiscal year, for each of CGHC's fiscal years in which it receives Mill Levy Funds, CGHC hereby agrees to prepare and provide an annual report that accounts for the expenditure of Mill Levy Funds for the prior year and an annual plan explaining the planned use of Mill Levy Funds for the succeeding year. CGHC shall also provide to the County, commencing one year after the Commencement Date and upon each anniversary of the Commencement Date for the duration of this Contract an annual report summarizing the number of patients served at the Hospital Premises and the services offered at the Hospital for the prior year and the services anticipated to be provided in the succeeding year under the contract. These annual reports shall run from the first day of whatever month in which the Commencement Date occurs.

3.3 Annual Audit: CGHC hereby agrees to provide the County on an annual basis, within thirty (30) days of receipt, complete copies of its audited financial statements detailing the financial condition of CGHC. CGHC shall provide the County with an annual balance sheet, personal and real property inventories, profit and loss statements, accounts receivable, accounts payable records, and other financial records bearing on the operation of the Hospital within thirty (30) days of receipt of a request by the County. The financial information shall be in sufficient

detail to allow the County to appropriately analyze the fiscal status and management practices of the Hospital. The financial information shall be deemed a "public record" under the New Mexico Public Records Act (Section 14-3-1 *et seq.*, NMSA 1978) and the Inspection of Public Records Act (Section 14-2-1 *et seq.*, NMSA 1978). If CGHC designates any financial information and/or reporting provided to the County as trade secret information, pursuant to New Mexico's Trade Secrets Act, NMSA 1978, §§ 57-3A-1, *et seq.*, the County agrees to receive and maintain such information as confidential and to permit CGHC to defend and indemnify it against any request or claim for the disclosure of such designated information, including without limitation any claims made under the New Mexico Inspection of Public Records Act, NMSA 1978, §§ 14-12-1, *et seq.* The parties agree that any information provided by CGHC to the County that is protected by the Trade Secrets Act, shall not be considered or treated by the County as a "public record" subject to inspection under the Inspection of Public Records Act.

3.4 Termination Event: The Parties hereby agree to report, in writing, the occurrence of any termination event noted in Section 4.4 of this Contract to the other party within (30) days of a party's knowledge of its occurrence.

SECTION 4: THE CONTRACT

4.1 Term: The term of this Contract shall commence upon the Board of Finance's approval of this Agreement, should the Board of Finance elect to undertake review of this Contract, or the date of approval by both parties of this Contract, whichever occurs later. This Contract shall remain effective, unless otherwise terminated pursuant to the terms of this Contract or applicable law, until the final scheduled distribution of the mill levy funds as described in Section 2.1 above. In the event the mill levy funding is extended by a renewal of the levy by the voters of the County, the term of this Contract will be extended until the final scheduled distribution of the mill levy funds, as extended. In any event, this Contract will terminate by no later than December 31, 2035.

4.2 Demise of Premises: By a separate Hospital and Medical Office Building Lease, of even date of this Contract (the "Lease"), the County has leased to the CGHC the Hospital Premises: 1016 E. Roosevelt Avenue, Grants, NM 87020 and the Clinic Premises: 1423 E. Roosevelt Avenue, Grants, NM 87020 (collectively the "Premises").

4.3 Consideration: CGHC, for and in consideration of this Contract, and for the rental under the Lease, hereby agrees and covenants with County to provide medical services to Medically Indigent residents of Cibola County, irrespective of a patient's ability to pay, without charge to the County, and to provide medical services to the County's inmates at no cost to the County for the first \$600,000.00 in billed charges for such services in each fiscal year. Thereafter, the County will pay thirty percent (30%) of the billed charges above \$600,000.00 in each fiscal year, to be paid within thirty (30) days after invoicing by CGHC. Should the County's inmate population not utilize the full \$600,000.00 subsidy, the remainder of the subsidy should be utilized for the care of the County's Medically Indigent residents.

Notwithstanding, this provision shall not affect CGHC's right to bill insurers for such services.

4.4 Compliance with Applicable Laws: CGHC, for and in consideration of this Contract, hereby agrees and covenants with County that during the term of this Contract, CGHC shall, at its own cost and expense, promptly observe and comply with all present and future municipal, state and federal ordinances, laws, rules and regulations affecting the demised premises or appurtenances thereto, or any part thereof, whether the same are in force and effect at the time of the commencement of the term of this Contract or may in the future be passed, enacted, or directed, and CGHC shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, that may in any manner arise out of or be imposed because of the failure of the CGHC to comply with the covenants and agreements of this provision. Further CGHC hereby agrees and covenants with County that if CGHC fails to comply promptly with any present or future municipal, state, and federal ordinances, laws, rules, and regulations, or fails to comply by such time that compliance may be required by law, County, may, at County's option, take such actions as may be necessary to comply with all present and future municipal, state, and federal ordinances, laws, rules, and regulations, at CGHC's expense.

4.5 Bankruptcy and Condemnation. In no event shall this Contract be deemed an asset of CGHC after the assignment for the benefit of creditors, the adjudication in bankruptcy, the appointment of a receiver or trustee, or the issuance of a Writ of Execution, a Writ of Attachment, a Writ of Replevin, or other court order against CGHC or CGHC's property.

4.6 Default and Termination: This Contract may be terminated for the following reasons:

- A. **Termination Without Cause:** Pursuant to Section 4-48B-5(J)(1), NMSA1978, this Contract may be terminated by the County without cause upon one hundred eighty days' (180) notice after the first three (3) years of the contract. However, pursuant to Section 4-48B-5(J)(2), NMSA 1978, this provision shall not apply during the portion of a contract term in which CGHC is obligated under the contract to make debt service payments on revenue bonds that finance all or part of the hospital or equipment for the Hospital.
- B. **Failure to Appropriately Use Mill Levy Funds:** Pursuant to Section 2.4 of this Contract, the use of Mill Levy Funds for any purpose other than that expressly permitted by the Mill Levy.
- C. **Failure to Provide Services to Patients:** CGHC's failure to provide services to patients as required by this Contract.
- D. **Failure to Follow Reporting Requirements:** CGHC's failure to report any of the information required under Section 3.
- E. **Changes in Federal or State Law:** Any change in Federal or State law that materially impairs the ability of CGHC or the County to perform the duties and obligations of this Contract.

- F. Noncompliance with Material Terms: CGHC's violation of any material term of this Contract.
- G. An uncured material default under the Lease.
- H. Loss of tax-exempt status: CGHC's loss of tax-exempt status under IRC Section 501(C)(3).
- I. Loss of accreditation. CGHC's loss of accreditation of the Hospital by the Joint Commission ("TJC"), the Department of Health, or equivalent nationally recognized accrediting organization.
- J. Fiscal Endangerment: CGHC's endangerment of the continued fiscal and financial integrity and soundness of the Hospital.
- K. Failure to Provide Indigent Medical Care: CGHC's substantial failure to deliver necessary hospital or emergency health care services to the Medically Indigent residents or inmates of Cibola County, irrespective of the party's ability to pay for those services, and to other Medically Indigent individuals as required by law.
- L. Failure to Obtain and Maintain Insurance. CGHC's failure to Obtain and Maintain Insurance as required by this Contract.
- M. Failure to Maintain Mission. CGHC's failure to maintain the mission of CGHC as defined in this Contract.
- N. Timely Audit. CGHC's failure to provide a timely audit as provided in Section 3.3 of this Contract.
- O. Dissolution, Bankruptcy or Receivership. CGHC's adoption of a plan of dissolution, filing for bankruptcy liquidation or receivership.
- P. Excusal of County-Appointed Members from Hospital Board Meetings. CGHC's refusal to permit County-appointed members to attend and participate in all aspects of meetings of the Hospital Board. However, CGHC will be entitled to exclude any Board members who are County Commissioners from any executive sessions or committee meetings involving discussion of disputes between CGHC and the County, and such exclusions will not be events of default. The exclusion of any County appointed Board members that do not involve discussion of disputes between CGHC and the County, other than exclusions that apply to all Board members in accordance with the conflict of interest policy stated in CGHC's Bylaws, will be an event of default.
- Q. Other Act or Omission Inconsistent with any Obligation under this Contract.

The County shall additionally have the right to request replacement of any of its appointed members on the Board of Directors of CGHC, which removal is subject to the removal provisions of CGHC's bylaws.

The County may otherwise enforce the terms of this Contract by invoking any other right or remedy allowed at law or in equity, including, without limitation, an action for specific performance if warranted by the particular circumstances.

4.7 Cure: CGHC shall have thirty (30) days from the date of the County's written notice specifying with particularity the nature of the alleged termination event to cure such event, except that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, the CGHC shall not be deemed to be in default if CGHC commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion. This Section shall not apply to the termination events set forth in Section 4.7(A), (E), (I), (L), or (M) of this Contract.

4.8 Effect of Default by the County. CGHC shall have the right to enforce the terms of this Contract by invoking any right or remedy allowed at law or in equity, including without limitation, an action for specific performance if the County fails to perform any of its material obligations under the terms of this Contract, provided such failure continues for thirty (30) after written notice of such default from CGHC, except that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then the County shall not be deemed to be in default if the County commences such cure within said thirty (30) day period and diligently prosecutes such cure to completion.

4.9 Hospital Funding Act. The parties acknowledge that this Contract and their rights and obligations hereunder are subject to the provisions of the Hospital Funding Act, NMSA §§ 4-48B-1 - 29. No paragraph or subparagraph included in this Contract is intended by the parties to in any way erode the applicability of the Hospital Funding Act to this Contract. In the event that any terms contained in this Contract, including those contained in Paragraph 11.1, conflict with the terms of the Hospital Funding Act, it is intended by the parties that the Hospital Funding Act applies.

4.10 CGHC Right to Terminate in Certain Events. CGHC may terminate this Contract upon one hundred eighty (180) days prior written notice to the County in the event: (i) CGHC determines in good faith that the continued operation of the Hospital is impractical due to a lack of revenue, or (ii) a Court of competent jurisdiction renders a determination that the County has, without good cause, materially interfered with CGHC's operation of the Hospital and/or the Clinic.

4.11 Rights Upon Termination. Upon a termination of this Contract for any reason, CGHC shall not during any notice of termination period or non-renewal period use any assets or cash on deposit for purposes not related to the operation of the Hospital or Clinic or in furtherance of CGHC's mission.

4.12 Waivers: County and CGHC, for and in consideration of this Contract, agrees and covenants with each other that the delay or omission in the enforcement of any of the agreements and covenants herein contained, or in the exercise of any of the Parties rights hereunder, shall not affect the duty of the other Party to thereafter faithfully fulfill and perform all of the agreements and covenants herein contained, and that the failure, neglect, or omission of the other to terminate this Contract for any one or more breaches of any agreements and covenants hereof, shall not be deemed a consent by either Party of such breach and shall not impede, impair, stop, bar, or prevent either Party from thereafter terminating this Contract, either for such violation, or for prior to subsequent violations of any covenant or agreement hereof.

SECTION 5: GENERAL COVENANTS OF CGHC

CGHC hereby agrees and covenants with the County to take at CGHC's sole cost and expense, the following actions during the Term (or such other period as may be specified herein):

5.1 Corporate Status. CGHC shall maintain its corporate existence as a New Mexico nonprofit corporation and its Board of Directors shall not, without first obtaining the prior written approval of the County: (1) adopt a plan of merger or consolidation with another corporation; (2) grant any person or entity the power to appoint or remove a majority of CGHC's Board of Directors, except for the power of the County to appoint new directors as specified herein.

5.2 CGHC Board.

5.2.1 Composition of Board. The CGHC Board shall consist of nine (9) voting members, appointed as provided herein. Four (4) members shall be appointed by the County. One of the members appointed by the County may be a currently seated County Commissioner; provided that no County Commissioner who is an employee of the CGHC, is related to an employee of the CGHC, or provides any type of service to the CGHC shall be eligible to serve on the Board; provided further that no County employees or other elected County officials shall be eligible to serve on the Board; and provided further that no County Commissioners shall be eligible to serve on the Board once CGHC is not characterized as a component unit of the County. CGHC shall directly appoint four (4) Board Members, one of which shall be the Chief of Staff. The ninth and final member of the Board shall be appointed by a majority vote at the first meeting of the Board. Present Board members shall complete their terms, and shall be replaced as detailed herein. Upon the expiration of the terms of the present members on the Board, the County shall issue a request for resumes to identify and select constituents to serve to represent the County on the Board. The CEO of CGHC shall serve as an ex-officio member of the CGHC Board and all committees appointed by the CGHC Board, and shall have no voting power. The County Manager will be entitled to attend all CGHC Board meetings other than executive session meetings of the Board.

5.2.2 Appointment of Board Members. Vacancies on the CGHC Board (other than a vacancy in the Chief of Staff ex officio position which shall automatically be filled by then current Chief of Staff) shall be filled as follows:

5.2.2.1 The County shall directly appoint four (4) Board members from the community,

one of which, during the time that CGHC continues to be characterized as a component unit of the County for financial statement purposes, shall be a currently seated County Commissioner.

5.2.2.2 CGHC shall directly appoint three (3) Board members from the existing board or from the community, not including the Chief of Staff position as described above. Vacancies on the CGHC Board shall be filled by the original appointing Board.

5.2.3 **Staggered Terms.** CGHC Board Members' terms shall be staggered so that at least two CGHC Board members' terms begin each year. Board Members shall be limited to three, consecutive three-year terms, and may not serve additional terms without sitting out for a full three year term. However, if a position continues to be available for a County Commissioner, the term limit will not apply and the Chief of Staff position must be served by the current Chief of Staff.

5.2.4 **Board Appointments.** The Board shall be appointed prior to or on the effective date of this contract by independent action of the Commission and the CGHC.

5.2.5 **Vacancy.** Any vacancy that occurs because of resignation, dismissal, or other cause shall be filled as soon as reasonably possible, but in any event within 90 days. If the departing member was appointed by the County, the County shall fill the position. If the departing member was appointed by CGHC, they will be responsible for filling the position.

5.2.6 **Open Meetings.** The public shall be permitted to attend and listen to all deliberations of the CGHC Board. The meetings shall be held in a room that can accommodate at least twenty-five (25) people. CGHC will adopt a policy, which may be contained in its bylaws, providing for, among other things, publication of meeting notices and agendas of Board meetings, maintenance and inspection of minutes, and a list of exclusions that would exempt from the Board from compliance with the requirement for public meetings.

5.2.7 **Minutes.** The CGHC Board shall keep written minutes of all of its meetings in the forms contemplated by its policy. The minutes shall include at a minimum, the date, time and place of the meeting, the names of the members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken which show the number of votes for and against all matters taken to a vote (roll call vote tabulation is not required). Except as hereinafter specifically provided, minutes shall be open to County inspection. Draft minutes shall be prepared within thirty days after the meeting at which a quorum is present. Minutes shall not apply to the substance of matters discussed during any executive session, though should reflect any actions resulting from such discussions.

5.2.8 **Standing Committees.** CGHC's Board shall be entitled to appoint standing committees to address particular areas, including but not limited to a litigation/claims committee.

5.3 **Tax-Exempt Status.** CGHC shall at all times maintain its status as an organization described in Section 501(c)(3) of the Code, or its exemption from federal income taxation under Section 501(a) of the Code. CGHC covenants that it will not operate the Hospital or engage in any activity that might reasonably be expected to cause any outstanding or future bonds issued by the County for Hospital-related purposes to lose their tax-exempt status under the Code.

5.4 **Hospital License.** CGHC shall maintain its license to operate the Hospital from the New Mexico Department of Health in accordance with the provisions of N.M.S.A. §24-1-5 or any successor or similar statute throughout the Term.

5.5 Lease of Hospital. CGHC will comply with the terms of the Lease.

5.6 Care of the Medically Indigent. During the Term CGHC shall provide medically necessary hospital and emergency services, to the extent normally available, to the Medically Indigent residents of Cibola County, without regard to their ability to pay, and to other persons as required by the Emergency Medical Treatment and Active Labor Act, 42 U.S.C.A. § 1395(d)(d). CGHC's provision of these services constitutes part of the consideration for the Agreement.

5.7 Accreditation and Performance Standards. CGHC shall maintain the Hospital's TJC, or equivalent, accreditation and shall at all times adhere to the TJC, or equivalent, hospital performance standards to maintain such accreditation throughout the term. CGHC shall provide the County with copies of each TJC, or equivalent, accreditation evaluation promptly upon its receipt, including any notices of violations. In addition, CGHC shall furnish the County with evidence of any corrective measures and remediation undertaken in response to any notices of violations.

5.8 Consents, Licenses and Approvals. CGHC shall take all actions it deems necessary or appropriate to obtain and maintain in full force and effect any consents, licenses, permits and approvals necessary in connection with this Agreement, and the furtherance of CGHC's corporate purposes.

5.9 Operation of Hospital and Clinic. CGHC shall be responsible for all Hospital and Clinic operations. CGHC shall (i) maintain, preserve and keep the Hospital Premises and Clinic Premises in good condition, repair and working order, (ii) purchase, repair or replace, any and all equipment necessary to meet the current state licensure and TJC, or equivalent, accreditation standards; and (iii) take all other actions necessary to provide health care services at a level at least equal to the quality of care provided at the Hospital and Clinic as of the Effective Date. CGHC may, at its own expense, make or cause to be made any and all additions, alterations, changes and deletions in and to all or any part of the Hospital Premises and/or Clinic Premises as CGHC, in its sole discretion, deems necessary or appropriate; provided, however, that (i) all additions and alterations shall be performed in a good and workmanlike manner which means that the quality of workmanship and materials shall be at least equal that existing on the Effective Date; (ii) no permanent demolition of any substantial part of the Hospital Premises and Clinic Premises, shall be made without replacement of such assets or replacement space or otherwise without the prior written consent of the County, (iii) CGHC shall not grant any lien, mortgage security interest or other encumbrance on the Hospital Premises and/or Clinic Premises in connection with construction projects, (iv) CGHC shall, not sell, sublease, exchange, alienate or otherwise dispose of all or a substantial part of the Hospital Premises or Clinic Premises, without the prior written consent of the County, and CGHC shall obtain prior written consent from the County, which consent will not unreasonably be withheld or delayed for any construction project for which the cost is expected to exceed \$250,000 and with respect to such construction projects, CGHC shall pursue such projects in a manner designed to maximize the purchasing value of the expenditure of funds. CGHC agrees to complete its improvements to its Emergency Department by July 1, 2022, which improvements will expand the size of the Emergency Department and include the construction of a safe room to hold patients which may pose a danger to CGHC staff or themselves, including inmates, or provide a secure place for CGHC staff, and enhance the safety of CGHC staff and visitors. Except as

otherwise provided in this Contract, ownership of such improvements to the Premises will vest in the County.

5.10 Insurance. CGHC shall at all times carry and maintain for the benefit of itself and the County, as their respective interests may appear, such type and amount of insurance concerning the operation of the Hospital and Clinic, including, but not limited to, comprehensive general liability insurance with aggregate coverage of \$6,000,000, business interruption insurance, hospital professional liability insurance, and fidelity and surety coverage on employees as is customary in the case of similarly situated not-for-profit hospital corporations engaged in the same or similar activities, to the extent reasonably necessary to protect the interests of the County which shall be named as an additional named insured on all such policies. Failure to provide or maintain the required insurance shall constitute a material breach of this Contract. CGHC shall obtain, and provide on an annual basis to the County, certificates of all such insurance and shall require each insurance carrier to place an endorsement in each such policy agreeing to give the County at least 30 days' notice of any proposed cancellation of any such coverage.

5.11 Operating Expenses and Taxes. CGHC shall pay, or otherwise cause to be paid, all Operating and Maintenance Expenses incurred during the Term. CGHC shall also pay, as the same respectively become due, all taxes, assessments and governmental charges that may be lawfully assessed or levied against or otherwise attributable to CGHC's operations; provided however, that with respect to taxes, assessments or governmental charges that may lawfully be paid in installments over a period of years, to the extent that such charges are the responsibility of CGHC, CGHC shall be obligated to pay only such installments as are required to be paid during the Term and any renewal Term.

5.12 Provider in Good Standing. CGHC shall at all times maintain its status as a provider in good standing under the Medicare and Medicaid programs of the United States and the State of New Mexico and shall enter into such participation and reimbursement Agreements with third party payers and insurers as CGHC determines to be in the best interests of the residents of the County.

5.13 Government Grants. CGHC shall comply with the terms of all government grants received by the Hospital prior to the Effective Date or received by CGHC on or after the Effective Date, including, but not limited to, grants made by the State of New Mexico and the Federal Government.

5.14 Fiscal Responsibility, Financial Standards and Reporting Requirements. CGHC shall comply with the financial standards generally accepted in the hospital industry for a hospital fully accredited by the TJC, or equivalent, and shall provide to the County the following reports and notices. Due to the proprietary nature of the items included, the County agrees to keep the reports disclosed pursuant to Paragraphs 5.14 (A-D) below confidential to the extent permitted by law:

A. Annual budgets for the Hospital prepared and provided to the County in advance of the beginning of each fiscal year;

B. Quarterly financial reports and statements of financial condition, including internally prepared income statements and balance sheets due to the Board of County Commissioners by the end of the month following the end of the prior calendar quarter;

C. The County's and CGHC's audit must be performed by the same firm if CGHC is determined to be a component unit of the County. In the Request for Proposals for Independent Audit Services, the County will specify such criteria to include the requirement that the firm have no less than five years of experience completing hospital audits. The CGHC will submit its completed audit to the County no later than forty-five (45) days prior to the deadline for submission of the County's audit.

D. Utilization statistics and reports within one hundred twenty (120) days after the end of each fiscal year; such statistics and reports shall include but not be limited to the following: beds in service, occupancy rate, admissions, average length of stay, outpatient visits, emergency room visits, surgical procedures and amount of indigent hospitalization and emergency services provided.

E. A verbal report to be presented by CGHC's CEO or CFO on a quarterly basis during a duly notice meeting of the Board of County Commissioners detailing the beds in service, occupancy rate, admissions, average length of stay, outpatient visits, emergency room visits, surgical procedures and amount of indigent hospitalization and emergency services provided.

SECTION 6: GENERAL COVENANTS OF THE COUNTY

The County hereby covenants with CGHC to take, or cause to be taken, the following actions during the Term (or such other period as may be specified below):

6.1 Consents and Notices. The County shall obtain any consents and give any notices required in connection with this Contract under the terms and conditions hereof.

6.2 Cooperation with CGHC. The County, at CGHC's expense, shall cooperate reasonably with CGHC in any manner necessary (including cooperation, at CGHC's expense, to obtain mill levies to support the Hospital to enable CGHC to fulfill CGHC's obligations and exercise CGHC's rights under this Agreement. Subject to the provisions of this Contract, the County may, at CGHC's request and only with CGHC's written consent, and at the County's discretion, issue bonds payable from Hospital revenues to finance improvements to the Hospital Premises and/or Clinic Premises and to incur other indebtedness from time to time, related to CGHC's tax-exempt purposes.

6.3 Liens and Encumbrances. The County shall not suffer or permit any liens or encumbrances for the County's benefit to be filed or exist against the Hospital Premises or Clinic Premises.

6.4 No Interference with Operation of Hospital. The County shall not interfere with CGHC's management and operation of the Hospital or Clinic during the Term, subject only to the right of the County to terminate the Agreement under the default provisions of this Agreement and of the Hospital Funding Act, NMSA §§ 4-48B-1 -29, and to seek removal of its Board member in accordance with CGHC's bylaws.

6.5 Exemption from Property Taxes. The County shall not transfer or convey any right, title or interest owned or held in or to the Hospital Premises or Clinic Premises, or take any other action,

which would cause any of the Hospital Premises or Clinic Premises to become subject to any property taxes under the laws of the State of New Mexico as now or hereafter enacted.

SECTION 7: INDEMNIFICATION; LIMITATION ON DAMAGES

7.1 Indemnification of County. CGHC shall indemnify and hold the County, its employees and agents harmless from and against, any and all demands, claims, causes of actions, fines, penalties, damages (including consequential damages), liabilities, judgments, and expenses (including, without limitation, attorneys' fees and costs of defenses) incurred in connection with or arising from: (i) the use or occupancy or manner of use or occupancy of the Hospital Premises or Clinic Premises by CGHC or any person claiming under CGHC; (ii) any activity, work or thing done, permitted or suffered by CGHC in or about the Hospital Premises or Clinic Premises; (iii) any acts, omissions or negligence of CGHC or any person claiming under CGHC, or the contractors, agents, employees, invitees or visitors of CGHC or any such person; (iv) any breach, violation or nonperformance by CGHC or any person claiming under CGHC or the employees, agents, contractors, invitees or visitors of CGHC or any such person of any term, covenant or provision of this Contract or any law, ordinance or governmental requirement of any kind; (v) any injury or damage to the person, property or business of CGHC, its employees, agents, contractors, invitees, visitors or any other person entering upon the Hospital Premises or Clinic Premises under the express or implied invitation of CGHC, except for any injury or damage to persons or property on the Hospital Premises or Clinic Premises which is proximately caused by or results proximately from the negligence or intentional wrongdoing of the County, its employees or agents. CGHC, as a material part of the consideration to the County for this Contract, hereby waives and releases all claims against the County, its employees and agents with respect to all matters for which the County has disclaimed a liability pursuant to the provisions of this Contract. Except for any damage or injury to person or property on the Hospital Premises or Clinic Premises which is proximately caused by or results proximately from the negligence or intentional wrongdoing of the County or its agents or employees, CGHC covenants and agrees that the County and its agents and employees shall not at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, injury, death or damage (including consequential damages) to persons, property or CGHC's business interests from any cause, either ordinary or extraordinary, beyond the County's control. No provision of this Contract shall require any indemnity obligation which would render such provision void and unenforceable by operation of any law, including, but not limited to, N.M. Stat. Ann. § 56-7-1 (1978).

Within twenty days after receipt of a threat of any claim or a notice of the commencement or filing of any claim against which the County may be indemnified hereunder, the County shall give written notice thereof to CGHC. Failure to give or delay in giving such written notice shall not relieve the indemnifying party of any liability except to the extent that the defense or insurance coverage of such claim is prejudiced thereby. With regard to any claim for which the County seeks indemnification from CGHC, the County shall allow CGHC to have sole control of the defense and of all negotiations for settlement of such claim, except that no compromise or settlement thereof may be effected or committed unless such settlement or compromise (i) includes a full discharge and release of any and all liability for the County, (ii) does not involve any non-monetary, injunctive or other equitable relief entered against the County, does not

require the County to do or to forbear from doing any act, and does not involve, require, or imply the admission of any wrongful act (whether civil or criminal) by the County, and (iii) is kept confidential pursuant to a confidentiality and non-disclosure agreement, subject to the requirements of the New Mexico Inspection of Public Records Act. The County shall provide all reasonable assistance, at CGHCs request and expense, needed in the defense or negotiation for settlement of such claim. The County may also elect to participate in the defense of such claim at its own expense with counsel of its choice.

ARTICLE 8: REPRESENTATIONS AND WARRANTIES OF CGHC

CGHC hereby represents and warrants to the County that the following representations and warranties are true and accurate as of the date hereof and as of the Effective Date:

8.1 Organization. CGHC is a New Mexico nonprofit corporation duly organized and in good standing under the laws of the State of New Mexico. CGHC has the power to contract with third parties and to own assets and to carry on its business as contemplated under this Contract.

8.2 Authority. CGHC has the power to execute and deliver this Contract and to carry out the transactions contemplated hereby and therein, respectively. All corporate actions required to be taken by CGHC to authorize the execution, delivery and performance of this Contract and all transactions contemplated hereby have been duly and properly taken.

8.3 No Conflicts. This Contract is duly executed and delivered and is the valid and legally binding obligation of CGHC enforceable under its terms. The execution and delivery of this Contract does not, and the consummation of the transactions contemplated hereby shall not result in the creation of any lien charge or encumbrance, or the accelerations of any indebtedness or other obligation of CGHC and is not prohibited by, in violation of or in conflict with any provision of and shall not result in a default under or breach of (i) any contract agreement or other, instrument to which CGHC is a party or is bound; (ii) any ordinance, law or regulation or (iii) any order decree or judgment of any court or governmental agency to which CGHC is a party or is bound.

SECTION 9: DELIVERABLES

9.1 CGHC Deliverables to the County. CGHC shall deliver the following to the County as of the date of execution of this Contract or within ten (10) business days thereafter, a certified copy of resolutions adopted by the Board of Directors of CGHC, authorizing, and approving the execution and performance of this Contract, and any other agreements contemplated herein.

9.2 Deliverables to CGHC. The County shall deliver the following to CGHC by the date this Contract is signed by both parties or (except as otherwise provided in this Paragraph) within ten (10) business days thereafter:

A. Two (2) executed copies of the Contract.

B. A certified copy of resolutions or ordinances adopted by the County authorizing and approving the execution and performance of this Contract.

9.3 Failure to Deliver. In the event that any party hereto fails to make any delivery required under this Article, and such failure continues for a period of fifteen business days after written request by the other party, any non-defaulting party may, at its option, declare this Contract to be null and void as of the Effective Date, in which case all deliveries shall immediately be returned to the party making the delivery, or seek specific performance and/or pursue such other remedies as may be available at law or in equity.

SECTION 10: MISCELLANEOUS

10.1 Binding Effect: Upon the execution of this Contract, the Contract shall be binding upon and shall inure to the benefit of the parties hereto and their successors.

10.2 Assignment: This Contract shall not be assigned by CGHC or the County to any other party.

10.3 Severability: If any term or provision of this Contract shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision or term shall be severed from the Contract and shall not affect the validity of the remainder of this Contract.

10.4 Applicable Law: The validity, construction and effect of this Contract will be governed by the law of the State of New Mexico, without regard to any conflicts of law provisions contained therein. Venue for any action arising from this Contract will lie in the Thirteenth Judicial District Court in Cibola County.

10.5 Amendment: This Contract may be amended only by a written instrument executed by the County and CGHC.

10.6 Further Assurances: CGHC and the County hereby agree to execute, acknowledge and deliver any documents and instruments and perform any additional acts that may be necessary, appropriate or advisable to carry out their respective obligations under this Contract.

10.7 Attorney's Fees: In the event this Contract results in dispute, mediation, litigation, or settlement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

10.8 Cost of Implementation: In the event this Contract is determined to be invalid or otherwise unenforceable, for any reason whatsoever, CGHC will make no claim against the County or any of its officers, agents, contractors or employees for any compensation for lost profits, costs or expenses incurred in proceeding with the implementation of the terms of the Contract.

10.9 Counterparts: This Contract may be executed in exact counterparts and when so executed by the parties hereto shall be effective in accordance with the terms hereof.

10.10 Impossibility. No party hereto shall be liable for any delay in performance or failure to perform when fire, flood, explosion, accident, energy shortage, war, weather, casualty, act of God, sabotage, law or government regulation, or any other cause reasonably beyond such party's control makes performance impossible despite the best efforts to perform by the party from whom performance is required.

10.11 Entire Agreement. This Contract contains the entire understanding of the parties with respect to the transactions contemplated hereby and supersedes and replaces all other agreements and understandings between the parties. Wherever in this Agreement the permission or consent of any party is required or requested, such omission and consent shall not be unreasonably withheld or delayed.

10.12 Accounting Determinations. All accounting determinations required to be made under this Agreement shall be made in accordance with generally accepted accounting principles.

10.13 Conditions Precedent to Effective Date. The obligations of the parties under this Contract are contingent upon the following conditions:

A. There shall have been no material breach by any party in the performance of any of their respective covenants herein, each of the representations and warranties of each of them contained or referred to in this Contract shall be true and correct in all material respects on the Effective Date as though made on the Effective Date, and there shall have been delivered to each party their respective deliveries as described herein;

B. No order shall have entered in any action or proceeding before any court or governmental agency, and no preliminary injunction by any court shall have been issued which would have the effect of (i) making the transactions contemplated by this Contract illegal; or (ii) otherwise preventing consummation of such transactions; and there shall have been no federal or state statute, rule or regulation enacted or promulgated that could reasonably, directly or indirectly, result in any of the consequences referred to in this Paragraph;

C. All necessary federal, state and local governmental approvals and consents shall have been obtained, without the imposition of any material conditions or restrictions and without the loss of any existing material waivers arising out of the closing of the transactions contemplated hereby;

D. If any governmental agency seeks to preliminary enjoin the transactions contemplated hereby, either party may decide not to proceed further with the Contract transactions; and

E. All third-party consents or waivers required to be obtained with respect to the proposed transactions shall have been obtained.

CIBOLA COUNTY

APPROVED, ADOPTED, AND PASSED on this ____ day of _____, 2020.

BOARD OF COUNTY COMMISSIONERS

Daniel Torrez, Chairperson

Robert Windhorst, 1st Vice Chairperson

Martha Garcia, 2nd Vice-Chairperson

Christine Lowery, Commissioner

Ralph Lucero, Commissioner

Attest:

Michelle Dominguez
Cibola County Clerk

CIBOLA GENERAL HOSPITAL CORPORATION

Eileen Chavez Yarborough, Chair, Board of Directors

Kendra Brown, Vice Chair, Board of Directors

Chase Elkins, Secretary, Board of Directors

W. MacFarland Bridges, II, MD, Board Member

Bob W. Tenequer, Jr., Board Member

Robert Windhorst, Board Member

Kevin Branum, Board Member

Joan Gilmore, Board Member

Ron Ortiz, Board Member

Thomas Whelan, Chief Executive Officer

WITNESS our hands and seals this ____ day of _____, 2020.

STATE OF NEW MEXICO)
) ss.
COUNTY OF CIBOLA)

The foregoing instrument was acknowledged before me on _____, 2020, by Eileen Chavez Yarbrough, Chairman of the Board of Directors, Kendra Brown, Vice Chairman of the Board of Directors, Chase Elkins, Secretary of the Board of Directors, W. MacFarland Bridges, II, MD, Board Member, Bob W. Tenequer, Jr., Board Member, Robert Windhorst, Board Member, Kevin Branum, Board Member, Joan Gilmore, Board Member, Ron Ortiz, Board Member and Thomas Whelan, Chief Executive Officer, all of Cibola General Hospital Corporation, on behalf of such corporation.

Notary Public

My Commission Expires:



9d.

New Business

Core Civic Inmate Housing Contract

Contract Included



RENEWAL OF INMATE HOUSING AGREEMENT

THIS AGREEMENT is made by and between Cibola County, New Mexico, hereinafter referred to as the "County" and CoreCivic, Inc., a Maryland corporation, hereinafter referred to as the "Contractor" or "CoreCivic" upon execution of both parties, hereinafter referred to as "Parties".

WHEREAS, the County has a need for housing for County inmates;

WHEREAS, authority exists in the laws and regulations of the County and funds have been budgeted, appropriated and otherwise made available for the purposes of this Agreement; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, the Contractor is willing to contract for the confinement of a minimum of 100 adult male and female pretrial or convicted misdemeanants or felons in the custody of the County at the following facility ("Facility"):

Facility	Street Address	City	State	Zip Code
Cibola County Correctional Center	2000 Cibola Loop	Milan	New Mexico	87201

WHEREAS, the County is empowered to enter into contracts and agreements with a private entity for the provision of correctional services, subject to the approval of the Attorney General and the Department of Finance and Administration, Local Government Division; and

WHEREAS, the Contractor has legal authority to enter into an agreement with the County;

WHEREAS, the Parties wish to execute this first of six permitted renewals for a three-year term.

NOW THEREFORE, for and in consideration of the mutual covenants, conditions, and promises contained herein, the parties hereto agree as follows:



1. DESCRIPTION OF SERVICES:

It shall be the responsibility of the Contractor to confine and supervise adult male and female inmates committed to or in the custody of the County in a constitutionally adequate manner. The County shall be responsible to assign a minimum of 100 inmates at all times under this Agreement. Contractor shall provide to such inmates care and treatment, including the furnishing of subsistence and all necessary on-site routine medical care; to provide for their physical and psychological needs; to retain them in safe, supervised custody; to maintain proper discipline and control; to make certain that sentences and orders of the presiding courts are effectively managed and executed; and otherwise to comply with applicable law.

2. TERM:

This Agreement shall be in full force and effect beginning September 12, 2020 and shall continue for three (3) years hereafter, unless sooner terminated by notice from either party in accordance with Section 3 of this Agreement. Upon mutual agreement, the parties may renew this Agreement for additional terms of one or more years at the expiration of the extended three-year period. This extension will constitute the first of six permitted extensions pursuant to Section 33-3-27, NMSA 1978.

3. TERMINATION:

This Agreement may be terminated by either party for convenience, with sixty (60) days written notice from the terminating party mailed to the other party.

4. RIGHT OF INSPECTION:

The County shall have the right to inspect, at any reasonable time, the Facility in which its inmates are confined.

5. INMATE INFORMATION:

Prior to the delivery of inmates to the Facility, separate information packets for each individual inmate shall be provided electronically by the County to the Facility. To the extent the information is available at or after the time of transfer, the information provided by the County should include the inmate's classification; full information and all necessary documents relating to the case history; physical, clinical and medical records to include medical clearance in the form of a negative PPD and/or chest X-ray and executed medical release certifying that the inmate has not been diagnosed with tuberculosis; judicial and



administrative rulings and orders relating or pertinent to the inmate and the sentences, if any, pursuant to which confinement is to be had or to continue; information relative to the inmate's participation in a Security Threat Group (STG); information regarding inmate's involvement in any past or ongoing investigation involving a serious facility-based incident, identification data, photographs, and fingerprints.

6. DELIVERY AND RELEASE OF INMATES:

Cibola County will assign at least one County Employee to maintain detainee charge status for Cibola County detainees in the Counties jail management system. During weekends and Cibola County observed Holidays, an E-911 employee will maintain custody status for Cibola County detainees. CoreCivic employees will be responsible for the initial booking and data entry of detainees assigned to the facility for housing. The County Employee will additionally conduct an NCIC check prior to each detainees' release to confirm that there are no active warrants under the County's Originating Agency Identifier ('CORI') number. The County Employee may additionally serve as the designee pursuant to Rule 6-408 NMRA 2017 to effectuate the release of inmates. County inmates may be housed with inmates from other jurisdictions. The County agrees that the Contractor shall not house any injured inmates unless and until the County has furnished an acceptable medical release signed by medical personnel, certifying that the inmate may be incarcerated. CoreCivic staff shall never release a county detainee without receiving a "Cibola County release authorization form" signed by the County Detention employee.

- Upon entry of a new County detainee, CoreCivic intake staff shall make sure the delivering/arresting officer provides all appropriate documents and or commitment orders necessary for a legal confinement. Paperwork needed will be an arrest booking sheet in which should be attached to a criminal complaint and probable cause statement, signed served warrant and or commitment orders necessary for a legal confinement, in which will be used for the booking process.
- When a detainee is admitted to Cibola County custody, CoreCivic intake officers shall make sure all detainee personnel information is up to date in computer and picture (mug shot) is taken each time an individual is booked into custody to show current age identity. CoreCivic intake officers shall verbally ask detainees all necessary questions to update their personal information in computer system, as well as add any additional information that may be necessary. Examples of information that needs to be obtained and updated each time an individual is booked will be, their physical address, mailing address, phone number, employer, occupation, emergency contact information, tattoos, scars, birthmarks, height, weight, facial hair, marital status, religious preference, if they wear glasses or



contacts, place of birth (city and state), hair color, eye color date of birth, social security number etc..

- Once detainee is booked, CoreCivic intake staff shall immediately email/fax arrest paperwork along with information sheet and inmate photo to Cibola County staff for the entry into their jail management system.
- CoreCivic shall obtain fingerprints on ALL County detainees upon being booked as part of the booking process in accordance with New Mexico State Statute 29-3-8. Fingerprints shall be taken on the Livescan fingerprint machine that is provided by Cibola County. Cibola County shall facilitate the provision of Livescan machine training to Contractor. In the event the Livescan fingerprint machine is down, CoreCivic staff shall notify Cibola County Detention staff immediately. Prior to Contractor staff receiving Livescan machine training or in the circumstance that the Livescan fingerprint machine is down, detainee fingerprints shall be done manually on **TWO** manual fingerprint cards. All information on manual cards shall be neatly and legibly printed on with all information required on the cards. Once prints are complete, CoreCivic shall make sure signature of detainee and employee that is taking the prints are written on fingerprint card and all information on card is correct and accurate. A copy of the detainees' photo shall be printed out and attached to the fingerprint cards. Original fingerprint cards shall be kept safe by CoreCivic intake staff and be made ready for pick up by Cibola County staff.
- If new charge(s) and or warrant(s) are served on a County detainees after detainee has already been initially booked, CoreCivic shall immediately forward any and all documentation to Cibola County staff so they can update detainee status and make sure they are being held on all necessary charges.
Any court documents pertaining to a county inmate that is received by CoreCivic staff shall be immediately be forwarded via email/fax to the Cibola county staff for updating of detainee status.
- Corecivic will be responsible for the transportation of County detainees to and from court which includes detainees that are required to appear before the Judge via phone or video. CoreCivic supervisor or designated staff will ensure all detainees are at the designated area and ready for court. CoreCivic will be responsible for maintaining control and security during the court proceedings. Corecivic supervisor or designated staff will ensure that all detainees have reviewed the "Advice of Rights" video prior to Cibola County Magistrate court appearances in its entirety. **ALL LANGUAGES.**



- CoreCivic shall present received paperwork to detainees so they may obtain signatures and information on any documentation that requires detainee to sign and or fill out. Once paperwork is completely signed and filled out, CoreCivic shall make a copy of the paperwork and give copy to the detainee and immediately email/fax Cibola County staff all signed paperwork. CoreCivic shall then place all original signed court paperwork in the proper courts safe located in the facility Conex.
- CoreCivic shall never release a County detainee without a release authorization form signed and approved by Cibola County Staff. Once CoreCivic intake staff receives the release authorization form, they shall sign the form acknowledging that they received the release authorization form and email/fax the signed release authorization form back to Cibola County staff to acknowledge receipt of release. CoreCivic intake staff shall then work on the release of the detainee(s) in a timely manner.
- CoreCivic shall submit a daily roster of daily booking and releases to Cibola County staff for the purpose of verifying bookings and releases.
- Cibola County staff and CoreCivic staff shall give a courtesy call to one another to make sure paperwork was received on any paperwork emailed/faxed back and forth from County designated personal and CoreCivic staff. This will help verify the receipt of documents.

7. TRANSFER OF INMATE FUNDS/PERSONAL PROPERTY:

Personal funds due transferred inmates shall be provided by the County upon transfer of the inmate to the Facility, to be credited to the account of the transferred inmate by the Contractor. Upon return of the inmate to the County, the Contractor shall issue payment to the County in the amount due the inmate at the time of return within five days of transfer. The County will package and identify the personal property of each inmate offender prior to transferring the inmate offender to the Facility. The County will ensure inmate property is transferred to the Facility on the day of inmate transfer. The County will not transport inmate property to the Contractor's facility if the property violates the Contractor's policies or procedures. Any property sent from the County to the Contractor that violates the Contractor's policies and procedures will be mailed out of the Contractor's facility at the County's expense.

8. INMATE WORK:

- (a) County inmates may be assigned to programs designed to simulate real world work experience by the Contractor. It is understood and agreed that this



provision does not create an employer/employee relationship subject to the Federal Fair Labor Standards Act; and that such work is performed as part of the custodial arrangement.

- (b) If the Cibola County Sheriff elects to engage the inmates in County work projects, the Sheriff shall be responsible for all related inmate transportation and supervision. The Contractor shall cooperate with the County in making the inmates available for this purpose.

9. DISCIPLINE:

The Contractor shall have physical control and the power to exercise disciplinary authority over all inmates from the County consistent with accepted correctional practices and all applicable constitutional standards, provided: (1) the disciplinary action is reasonable and proportionate in relation to the violation; (2) the action taken is impartial and nondiscriminatory; (3) the action is neither arbitrary nor retaliatory; (4) the discipline is not physically abusive; and (5) the inmates are afforded both substantive and procedural due process.

Inmates who have violated the Contractor's rules and regulations will be subject to the same disciplinary rules and regulations as any other inmate housed at the Facility. However, nothing contained herein shall be construed to authorize or permit the imposition of a type of discipline prohibited by the laws and regulations applicable to the County or the State of New Mexico.

10. RECORDS:

Access to County inmate records, including medical records, will be made available by the Contractor to the Board of County Commissioners or its designees.

11. RETAKEING OF INMATES:

The Contractor will surrender any of said inmates to the proper officials of the County upon demand made to the Contractor and presentation of official written authority to receive said inmate.

12. PHOTOGRAPHING AND PUBLICITY:

Institutional or other officials of the Contractor shall not be authorized to release publicity concerning inmates without the County's approval. The Contractor may photograph



inmates from the County as a means of identification for official use only; however, photographs of an inmate may be disseminated to appropriate law enforcement officials and to the press in the event of any escape from the Facility by such inmate, or where otherwise required by law.

13. COST AND REIMBURSEMENT:

The per diem for housing of County inmates at the Facility shall be \$57.12 per inmate per day. On the anniversary date of this Contract each year, the per diem rate shall automatically increase by a percentage that is equivalent to the percentage increase in the Consumer Price Index (CPI-U) for the preceding 12 month period. The County shall be billed monthly by the Contractor based on the minimum population guarantee of 100 inmates per day, plus the applicable per diem rate for each additional County inmate housed at the Facility each day. The County shall pay the Contractor for the day the Contractor takes custody of an inmate and every subsequent day the inmate remains in the custody of the Contractor.

Payment shall be made by the County within thirty (30) days of receipt of the Contractor's invoice.

The parties agree, if necessary, to engage in good faith negotiations to amend this Contract to achieve commensurate reduction in services corresponding to any proposed or necessary per diem reduction.

The parties recognize that rates agreed upon in this contract are based upon current law, applicable policies, ACA standards, regulations and economic conditions in effect as of the date of this Agreement. If changes in law, policy, ACA standards, regulations or economic conditions increase the cost of Contractor's fulfillment of its obligations under the Agreement, the parties agree to review the changes and negotiate a modification of the Agreement in good faith to provide adequate compensation for the additional services.

14. TRANSPORTATION:

The Contractor shall provide up to 20 round trip transports each week for the purpose of transporting inmates to and from the 13th Judicial District Court, Magistrate Court, Village Court and Municipal Court. The Contractor is not responsible to provide security for the inmates while attending court. Additional transportation and security needed shall be provided by the County at the County's expense or may be provided by the Contractor and reimbursed by the County at the actual costs of security including mileage at the prevailing GSA mileage rate. The current hourly guard rate is \$36.95 per hour.



15. FOOD SERVICE:

Contractor shall provide food service in accordance with ACA standards. Inmates shall be provided three meals daily, with no more than fourteen (14) hours between the evening meal and breakfast.

16. UTILITIES:

Contractor shall pay for all utility costs incurred in the performance of this Agreement.

17. VISITATION:

Contractor shall provide physical space, furniture, equipment and supervision for visitation in accordance with applicable ACA Standards. Contractor shall only offer non-contact visitation to inmates at the Facility.

18. COMMISSARY:

Contractor shall provide a commissary for the inmates in accordance with ACA Standards. The Contractor shall retain all commissary revenues.

19. ACCESS TO COURTS:

Contractor shall ensure that inmates have adequate access to the courts, consistent with applicable law and ACA Standards. Contractor shall also ensure that detainees receive all correspondence from their attorneys, and make reasonable accommodations to facilitate communications between detainees and their attorneys.

20. LAUNDRY AND CLOTHING:

Contractor shall provide inmate clothing and laundry services in accordance with applicable law and ACA standards.

21. TELEPHONES:

The Contractor shall provide a telephone system for use by County inmates. The Contractor shall retain all telephone revenues.



22. POLICIES:

Inmates from the County housed at the Contractor's Facility shall be subject to the policies and procedures as well as the rules and regulations of the Contractor.

23. INDEMNIFICATION:

The Contractor shall indemnify, defend and hold harmless the County and its officers and employees from liability and any claims, suits, judgments and damages to the extent such claims, suits, judgments and damages arise as a result of the Contractor's acts and/or omissions in the performance of this Agreement. The County shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold the County harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by the County in connection with the performance by Contractor of Contractor's duties according to this Agreement. Nothing herein be construed to require Contractor to defend or indemnify any party for any claims, lawsuits, damages, expenses, costs or losses arising with respect to any Habeas Corpus action or any other action challenging the validity of a conviction or sentence. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than five (5) days after it receives notice thereof, notify the legal counsel of Cibola County and the County's insurance carrier by certified mail.

24. DEATH OF AN INMATE:

In the event of the death of an inmate, the Contractor shall promptly notify the County. Arrangements shall be made for a fingerprint (right thumb or right index) to be taken. The coroner shall be requested to review all deaths. The County shall furnish instructions and information regarding the disposition of the body. All expenses relative to any necessary preparation and delivery of the body shall be reimbursed by the County. The provisions of this paragraph shall govern only the relations between the parties and shall not affect the



liability of any relative or other person for the disposition of the deceased or for any expenses connected therewith.

25. MEDICAL:

(a) Except as otherwise stated herein, the costs of providing routine on-site medical services such as sick call and non-prescription, over-the-counter/non-legend and routine drugs and medical supplies, mental health or dental services, customarily provided to persons sentenced to confinement in the Facility shall be considered usual costs incidental to the operation of the Facility and part of the costs reimbursed by the fixed inmate day rate as provided by this Agreement.

(b) The County is responsible for the costs of all off-site medical, mental health and dental services, prescription drugs and associated treatments, including all costs associated with hospitalization of an inmate. CoreCivic will supply all on-site prescription drugs, and will bill the County at cost for those prescription drugs and the dispensing fee. Unless and except for emergency medical matters, the County shall be given at least twenty-four (24) hours advance written notice of any off-site medical services needed for County inmates.

(c) The County is responsible for all medical expenses related to the treatment of Hepatitis C, HIV/AIDS or any novel virus.

(d) The County shall provide transportation and security to such off-site medical services listed in paragraph (b). In the event of emergency, Contractor agrees to provide transportation and security. The County shall reimburse Contractor for actual costs of security including mileage at the prevailing GSA mileage rate. The current hourly guard rate is \$36.95 per hour.

(e) Contractor has the right to arrange for the health care provider to bill the County directly for the costs of medical care. If the health care provider refuses to bill the County directly, the County shall reimburse CoreCivic for such costs within thirty (30) days of receipt of an invoice from the Contractor, in accordance with Section 13 of this Agreement.

(f) The Contractor shall receive written authorization for any inmate requiring off-site medical attention in all non-emergency situations. The Contractor shall notify the County as soon as practicable of an emergency medical situation.

(g) Upon transfer of an inmate to the Facility, the County agrees to provide a seven day supply of the inmate's current prescribed medication to the extent that the County possesses such medication.



26. APPROPRIATIONS:

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the County Commission for the performance of this Agreement. If sufficient appropriations and authorization are not made by the County Commission, this Agreement shall terminate upon sixty (60) days written notice provided by the County to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

27. EMERGENCY PLAN:

The Contractor shall develop and implement a written procedure outlining the coordination of law enforcement activities in the case of riot, rebellion, escape, or other situations requiring assistance from city, county or state law enforcement agencies.

28. GOVERNING LAW:

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern and that venue will lie in Cibola County. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the state and federal courts located in of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

29. INDEPENDENT CONTRACTOR STATUS:

The Contractor shall perform its duties hereunder as a contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be or shall be deemed an agent or employee of the County.

Contractor shall pay when due all required employment taxes and income tax withholding including all federal and state income tax on any moneys paid pursuant to this Agreement. Contractor acknowledges that the Contractor and its employees are not entitled to unemployment insurance benefits unless the Contractor or a third party provides such coverage and that the County does not pay for or otherwise provide such coverage. Contractor shall provide workers' compensation insurance and unemployment compensation in accordance with applicable law.

Contractor shall have no authorization, express or implied, to bind the County to any agreements, liability or understanding except as expressly set forth herein.

30. NOTICES:

Any notice provided for in this Agreement shall be in writing and served by personal delivery or by certified mail, return receipt requested, postage prepaid, or by a national overnight courier service at the addresses listed in below until such time as written notice of



a change is received from the other party. Any notice so mailed and any notice served by personal delivery shall be deemed delivered and effective upon receipt or upon attempted delivery. This method of notification will be used in all instances, except for emergency situations when immediate notification is required pursuant to the appropriate sections of this Agreement.

CORECIVIC:

Cole Carter General Counsel
5501 Virginia Way, Suite 110
Brentwood, TN 37027

And
Warden
Cibola County Correctional Center
2000 Cibola Loop
Milan, New Mexico 87201

COUNTY:

Cibola County Manager
700 East Roosevelt, Suite 50
Grants, NM 87020

31. ASSIGNMENT:

No right or interest pursuant to this Agreement shall be assigned or delegated by the Contractor without the prior written permission of the County. However, the Contractor is authorized to subcontract with any entity for the performance of the Contractor's obligations hereunder provided each such subcontractor agrees to be bound by all applicable provisions of this Contract. The Contractor acknowledges it will not by the act of subcontracting be absolved or released from any obligations under this Contract and will remain responsible for all performance under this Contract. The authorization granted herein with reference to subcontracting shall be limited to individual areas of service within the Contract but in no event shall any party other than Contractor be the primary operator of the Facility.

32. THIRD-PARTY BENEFICIARY:

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the County and the Contractor, and nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other person on this Agreement. It is the express intention of the



County and the Contractor that any entity, other than the County or the Contractor receiving services or benefits under this Agreement, shall be deemed an incidental beneficiary only.

This Agreement is not intended to create any rights, liberty interest or entitlement in favor of any inmate. The Agreement is intended only to set forth the contractual rights and responsibilities of the contract parties.

33. MODIFICATION AND WAIVER:

This Agreement contains the entire agreement and understanding between the parties and supersedes any other agreements concerning the subject matter of this transaction, whether oral or written. No modification, amendment, novation, renewal or other alteration of or to this Agreement shall be deemed valid or of any force or effect whatsoever, unless mutually agreed upon in writing by the parties. No breach of any term, provision or clause of this Agreement shall be deemed waived or excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse of any other different or subsequent breach.

34. HEADINGS:

Headings herein are for convenience of reference only and shall not be considered any interpretation of this Agreement.

35. TIME OF THE ESSENCE:

Time is of the essence in the performance of all of the parties' obligations and duties under this Agreement.

36. SEVERABILITY:

If any term or condition of this Agreement shall be held to be invalid, illegal or unenforceable, this Agreement shall be construed and enforced without such provision, to the extent this Agreement is then capable of execution within the original intent of the parties.

37. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall, at all times during the performance of its obligations of this Agreement comply with all applicable federal, state and local laws and regulations.

38. INSURANCE/PERFORMANCE BOND

Contractor shall secure and keep in force during the term of this Agreement, commercial general liability and professional liability insurance covering any and all claims



of any nature arising out of this Agreement. The County shall be endorsed on the policy as an additional insured and Contractor shall furnish a certificate of insurance coverage and a copy of the additional insured endorsement to the County prior to commencement of this Agreement. Contractor shall furnish annually to the County a certificate of insurance as evidence the policy is in effect. The minimum limits of liability required are \$1,000,000.00 per person and \$5,000,000 per occurrence. The policy may not be cancelled or modified without sixty (60) days prior written notice to the County. Additionally, CoreCivic shall be required to supply a performance bond in a form satisfactory to, and approved in writing by, the local government division of the department of finance and administration and the office of the attorney general.

39. FORCE MAJEURE:

Neither County nor Contractor shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

40. ACCREDITATION:

Contractor agrees to maintain ACA accreditation, and shall provide and pay for its employees to comply with ACA standards in the housing of County inmates.

41. 'CONFLICT OF INTEREST' GOVERNMENTAL CONDUCT ACT:

41.1 The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

41.2 The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:



- 41.2.1 in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any County employee while such employee was or is employed by the County and participating directly or indirectly in the County's contracting process;
- 41.2.2 this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the County; (ii) the Contractor is not a member of the family of a public officer or employee of the County; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest.
- 41.2.3 in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the County within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the County whose official act, while in County employment, directly resulted in the County's making this Agreement;
- 41.2.4 in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
- 41.2.5 in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the County.
- 41.3 Contractor's representations and warranties in this Section are material representations of fact upon which the County relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the County if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in this Section were erroneous on the Effective Date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in this section



were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the County and notwithstanding anything in the Agreement to the contrary, the County may immediately terminate the Agreement.

41.4 All terms defined in the Governmental Conduct Act have the same meaning in this Article 41.

42. PENALTIES FOR VIOLATION OF LAW:

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

43. EQUAL OPPORTUNITY COMPLIANCE:

The Contractor agrees to abide by all federal, state and county laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

44. WORKERS COMPENSATION

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the County.

45. RECORDS FINANCIAL AUDIT AND INSPECTION

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the County, the Department of Finance and Administration and the State Auditor. The County shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payments.



46. MEDIATION

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the County's insurer and the parties shall utilize a striking process until a mediator is agreed upon.

IN WITNESS WHEREOF, the parties have caused their authorized representatives to execute this Agreement as of the date first written above.

CIBOLA COUNTY COMMISSION CHAIRMAN-DANIEL J. TORREZ

By: _____

Date: _____

CORECIVIC, INC.

By: _____

Date: _____



9e.

New Business

Sheriff's Vehicles- 2
Additional

No Back Up