

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR**Contract No. 1213-116****Title: Carson City Jail Pharmaceuticals**

THIS CONTRACT, made and entered into this 6th day of June, 2013, by and between Carson City, a consolidated municipality, a political subdivision of the State of Nevada, hereinafter referred to as the "**CITY**", and Diamond Pharmacy Services hereinafter referred to as the "**CONTRACTOR**".

WHEREAS, the Purchasing and Contracts Manager for the City and County of Carson City is authorized, pursuant to Nevada Revised Statutes Chapter 332 and Carson City Purchasing Resolution #1990-R71, to approve and accept this Contract as set forth in and by the following provisions; and

WHEREAS, it is deemed that the services of **CONTRACTOR** for **CONTRACT No. 1213-116 Carson City Jail Pharmaceuticals** are both necessary and in the best interests of **CITY**; and

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1 **REQUIRED APPROVAL:**

1.1 This Contract shall not become effective until and unless approved by the Carson City Board of Supervisors.

2 **CONTRACT TERM:**

2.1 This Contract shall be effective from June 6, 2013, subject to Carson City Board of Supervisors' approval (anticipated to be June 6, 2013) to June 5, 2014, with the option to renew for a second year, unless sooner terminated by either party as specified in **Section 7 Contract Termination**.

3 **CONSIDERATION:**

3.1 The parties agree that **CONTRACTOR** will provide the **SERVICES** specified in **Section 4 Scope of Work** and **CITY** agrees to pay **CONTRACTOR** the **CONTRACT SUM** based upon time and materials for a not to exceed maximum amount of Seventy Five Thousand Dollars and No Cents (\$75,000.00).

For P&C Use Only	
CCBL expires	<u>waived</u>
GL expires	_____
AL expires	<u>waived</u>
PL expires	_____
WC expires	_____

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3.2 **CONTRACT SUM** represents full and adequate compensation for the completed **WORK**, and includes the furnishing of all materials; all labor, equipment, tools, and appliances; and all expenses, direct or indirect, connected with the proper execution of the **WORK**.

3.3 Payment by **CITY** for the **SERVICES** rendered by **CONTRACTOR** shall be due within thirty (30) calendar days from the date, complete, and descriptive invoice is received by **CITY** employee designated on the sample invoice, whichever is the latter date.

3.4 **CITY** does not agree to reimburse **CONTRACTOR** for expenses unless otherwise specified.

3.5 The continuation of this Contract beyond June 30, 2014 is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Carson City Board of Supervisors.

4 **NOTICE:**

4.1 All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by e-mail, by telephonic facsimile, or by certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified below.

4.1.1 Notice to **CONTRACTOR** shall be addressed to:

Mark Zilner, R.Ph.
Chief Operating Officer
Diamond Pharmacy Services
645 Kolter Drive
Indiana, PA 15701-3570
800-882-6337x1003/877-234-7050 fax
mzilner@diamondpharmacy.com

4.1.2 Notice to **CITY** shall be addressed to:

Carson City Purchasing and Contracts
Kim Belt, Purchasing and Contracts Manager
201 North Carson Street Suite 3
Carson City, NV 89701
775-283-7137/ FAX 775-887-2107
KBelt@carson.org

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5 SCOPE OF WORK:

5.1 **CONTRACTOR** shall provide and perform the following services set forth in **Exhibit A**, attached hereto and incorporated herein by reference for and on behalf of **CITY** hereinafter referred to as the "**SERVICES**".

5.2 **CONTRACTOR** agrees to coordinate specific labeling and training with Jail Physician.

5.3 **CONTRACTOR** represents that it is duly licensed for the purposes of performing the **SERVICES**.

5.4 **CONTRACTOR** represents that it is duly qualified and licensed in the State of Nevada for the purposes of performing the **SERVICES**.

5.5 **CONTRACTOR** represents that it and/or the persons it may employ possess all skills and training necessary to perform the **SERVICES** described herein and required hereunder. **CONTRACTOR** shall perform the **SERVICES** faithfully, diligently, in a timely and professional manner, to the best of its ability, and in such a manner as is customarily performed by a person who is in the business of providing such services in similar circumstances. **CONTRACTOR** shall be responsible for the professional quality and technical accuracy of all **SERVICES** furnished by **CONTRACTOR** to **CITY**.

5.6 **CONTRACTOR** represents that neither the execution of this Contract nor the rendering of services by **CONTRACTOR** hereunder will violate the provisions of or constitute a default under any other contract or agreement to which **CONTRACTOR** is a party or by which **CONTRACTOR** is bound, or which would preclude **CONTRACTOR** from performing the **SERVICES** required of **CONTRACTOR** hereunder, or which would impose any liability or obligation upon **CITY** for accepting such **SERVICES**.

5.7 CITY Responsibilities:

5.7.1 **CITY** shall make available to **CONTRACTOR** all technical data that is in **CITY'S** possession, reasonably required by **CONTRACTOR** relating to the **SERVICES**.

5.7.2 **CITY** shall provide access to and make all provisions for **CONTRACTOR** to enter upon public and private lands, to the fullest extent permitted by law, as reasonably required for **CONTRACTOR** to perform the **SERVICES**.

5.7.3 **CITY** shall examine all reports, correspondence, and other documents presented by **CONTRACTOR** upon request of **CITY**, and render, in writing, decisions pertaining thereto within a reasonable time so as not to delay the work of **CONTRACTOR**.

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6 TIMELINESS OF BILLING SUBMISSION:

6.1 The parties agree that timeliness of billing is of the essence to this Contract and recognize that **CITY** is on a fiscal year which is defined as the period beginning July 1 and ending June 30 of the following year. All billings for dates of service prior to July 1 must be submitted to **CITY** no later than the first Friday in August of the same year. A billing submitted after the first Friday in August will subject **CONTRACTOR** to an administrative fee not to exceed \$100.00. The parties hereby agree this is a reasonable estimate of the additional costs to **CITY** of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to **CONTRACTOR**.

6.2 **CITY** acknowledges that some Pharmacy Services may be billable to separate agencies including but not limited to: Federal Bureau of Prison, U.S. Marshall Service, ICE, compensation, Medical Assistance, ADAP, other counties, or other "outside sources", depending on patient eligibility. If requested in writing by **CITY**, **CONTRACTOR** will submit eligible bills to such outside sources, and prescriptions will be billed at the Medicaid rate. It is **CITY'S** responsibility to provide **CONTRACTOR** with accurate patient billing information. In the event that any amounts billed to an outside source remain unpaid after sixty (60) days, **CITY** remains responsible for payment to **CONTRACTOR**. Such responsibility is independent of whether or not **CITY** has received payment from outside sources for any such charges. It is **CITY's** responsibility to verify its invoices monthly to assure claims were billed to the proper agency on a monthly basis and inform **CONTRACTOR** of any discrepancies within fifteen (15) days of receipt of invoices

7 CONTRACT TERMINATION:

7.1 Termination Without Cause:

7.1.1 This Contract may be terminated by either party without cause by giving the other party thirty (30) calendar days written notice of the intent to terminate and specifying the date upon which the termination will be effective.

7.2 Cause Termination for Default or Breach:

7.2.1 A default or breach may be declared with or without termination.

7.2.2 This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

7.2.2.1 If **CONTRACTOR** fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

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7.2.2.2 If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by **CONTRACTOR** to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

7.2.2.3 If **CONTRACTOR** becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or

7.2.2.4 If **CITY** materially breaches any material duty under this Contract and any such breach impairs **CONTRACTOR'S** ability to perform; or

7.2.2.5 If it is found by **CITY** that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by **CONTRACTOR**, or any agent or representative of **CONTRACTOR**, to any officer or employee of **CITY** with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

7.2.2.6 If it is found by **CITY** that **CONTRACTOR** has failed to disclose any material conflict of interest relative to the performance of this Contract.

7.3 Time to Correct:

7.3.1 Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in **Section 3 Notice**, and the subsequent failure of the defaulting party within five (5) calendar days of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

7.4 Winding Up Affairs Upon Termination:

7.4.1 In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

7.4.1.1 The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

7.4.1.2 **CONTRACTOR** shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by **CITY**;

7.4.1.3 **CONTRACTOR** shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by **CITY**;

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8 REMEDIES:

8.1 Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. The parties agree that, in the event a lawsuit is filed and a party is awarded attorney's fees by the court, for any reason, the amount of recoverable attorney's fees shall not exceed the rate of \$125 per hour. **CITY** may set off consideration against any unpaid obligation of **CONTRACTOR** to **CITY**.

9 LIMITED LIABILITY:

9.1 **CITY** will not waive and intends to assert available Nevada Revised Statutes Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any **CITY** breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to **CONTRACTOR**, for the fiscal year budget in existence at the time of the breach. **CONTRACTOR'S** tort liability shall not be limited.

10 FORCE MAJEURE:

10.1 Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

11 INDEMNIFICATION:

11.1 To the extent permitted by law, including, but not limited to, the provisions of Nevada Revised Statutes Chapter 41.

11.1.1 **CITY** agrees to indemnify, defend, and hold harmless **CONTRACTOR**, its agents, officers, and independent contractors individually or collectively, from any and all claims, demands, liabilities, loss, costs or expenses for any loss, damage or injury, caused by the negligent acts or omissions of **CITY** or any of its employees, subcontractors, and agents.

11.1.2 **CONTRACTOR** agrees to indemnify, defend, and hold harmless **CITY**, its agents, officers, and independent contractors individually or collectively, from any and all claims, demands, liabilities, loss, costs or expenses for any loss, damage or injury, caused by

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the negligent acts or omissions of **CONTRACTOR** or any of its employees, subcontractors and agents.

11.1.3 This indemnification includes all costs and expenses, including reasonable attorney fees.

11.1.4 Either Party or any Party affected by this contract shall be entitled, at their own expense, to participate or have their agents or attorneys participate in the defense of any suit against the other where the Party wishing to participate has, or may have, an indemnification obligation to the other Party. Each understands and agrees that any settlement, compromise or consent judgment of any claim, loss or damage asserted against either Party, or anyone contracting under either Party who provided services under this **CONTRACT**, shall not be binding against the other, unless that Party has expressly approved the settlement, compromise or consent judgment in writing.

11.1.5

11.1.6 The indemnification and hold harmless provisions of this **CONTRACT** shall survive the termination of this **CONTRACT** for a period not to exceed that period upon which a claim for loss or damages could be brought against either **CONTRACTOR** or **CITY** under the statute of limitation applicable to any act or acts by either Party. If any complaint or litigation arising out of the terms and conditions of this **CONTRACT** is filed against either Party, the Party served will notify the other Party in writing by providing the other Party with a copy of the complaint or notice of claim at which point the indemnification provisions of this **CONTRACT** will become enforceable.

11.2 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall not be obligated to fund or reimburse any fees or costs provided by any additional counsel for the indemnified party, including counsel through which the indemnified party might voluntarily choose to participate in its defense of the same matter.

11.3 After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall be obligated to reimburse the reasonable attorney's fees and costs incurred by the indemnified party during the initial thirty (30) day period of the claim or cause of action, if any, incurred by separate counsel.

12 INDEPENDENT CONTRACTOR:

12.1 An independent contractor is a natural person, firm or corporation who agrees to perform services for a fixed price according to his or its own methods and without subjection to the supervision or control of the other contracting party, except as to the results of the work, and not as to the means by which the services are accomplished.

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12.2 It is mutually agreed that **CONTRACTOR** is associated with **CITY** only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract. **CONTRACTOR** is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract.

12.3 Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for **CITY** whatsoever with respect to the indebtedness, liabilities, and obligations of **CONTRACTOR** or any other party.

12.4 **CONTRACTOR** shall indemnify and hold **CITY** harmless from, and defend **CITY** against, any and all losses, damages, claims, costs, penalties, liabilities, expenses arising out of or incurred in any way because of, but not limited to, **CONTRACTOR'S** obligations or legal duties regarding any taxes, fees, assessments, benefits, entitlements, notice of benefits, employee's eligibility to work, to any third party, subcontractor, employee, state, local or federal governmental entity.

12.5 Neither **CONTRACTOR** nor its employees, agents, or representatives shall be considered employees, agents, or representatives of **CITY**.

13 INSURANCE REQUIREMENTS:

13.1 **CONTRACTOR**, as an independent contractor and not an employee of **CITY**, must carry policies of insurance in amounts specified and pay all taxes and fees incident hereunto. **CITY** shall have no liability except as specifically provided in this Contract.

13.2 **CONTRACTOR** shall not commence work before: (1) **CONTRACTOR** has provided the required evidence of insurance to Carson City Purchasing & Contracts, and (2) **CITY** has approved the insurance policies provided by **CONTRACTOR**.

13.3 Prior approval of the insurance policies by **CITY** shall be a condition precedent to any payment of consideration under this Contract and **CITY'S** approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of **CITY** to timely approve shall not constitute a waiver of the condition.

13.4 Insurance Coverage:

13.4.1 **CONTRACTOR** shall, at **CONTRACTOR'S** sole expense, procure, maintain and keep in force for the duration of this Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by **CITY**, the required insurance shall be in effect prior to the commencement of work by **CONTRACTOR** and shall continue in force as appropriate until the latter of:

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13.4.1.1 Final acceptance by **CITY** of the completion of this Contract; or

13.4.1.2 Such time as the insurance is no longer required by **CITY** under the terms of this Contract.

13.4.2 Any insurance or self-insurance available to **CITY** shall be in excess of and non-contributing with any insurance required from **CONTRACTOR**. **CONTRACTOR'S** insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by **CITY**, **CONTRACTOR** shall provide **CITY** with renewal or replacement evidence of insurance no less than thirty (30) calendar days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by this Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as **CONTRACTOR** has knowledge of any such failure, **CONTRACTOR** shall immediately notify **CITY** and immediately replace such insurance or bond with an insurer meeting the requirements.

13.5 General Requirements:

13.5.1 **Certificate Holder:** Each liability insurance policy shall list Carson City c/o Carson City Purchasing & Contracts, 201 N. Carson Street Suite 11, Carson City, NV 89701 as a certificate holder.

13.5.2 **Additional Insured:** By endorsement to the general liability insurance policy evidenced by **CONTRACTOR**, The City and County of Carson City, Nevada, its officers, employees and immune contractors shall be named as additional insureds for all liability arising from this Contract.

13.5.3 **Waiver of Subrogation:** Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.

13.5.4 **Cross-Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

13.5.5 **Deductibles and Self-Insured Retentions:** Insurance maintained by **CONTRACTOR** shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by **CITY**. Such approval shall not relieve **CONTRACTOR** from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by **CITY**.

13.5.6 **Policy Cancellation:** Except for ten (10) calendar days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) calendar days prior written notice to Carson City Purchasing & Contracts, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall

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provide that notices required by this paragraph shall be sent by certified mail to Carson City Purchasing & Contracts, 201 N. Carson Street Suite 11, Carson City, NV 89701.

13.5.7 **Approved Insurer:** Each insurance policy shall be issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and currently rated by A.M. Best as "A-VII" or better.

13.5.8 **Evidence of Insurance:** Prior to commencement of work, **CONTRACTOR** must provide the following documents to Carson City Purchasing & Contracts, 201 North Carson Street Suite 11, Carson City, NV 89701:

13.5.8.1 **Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to Carson City Purchasing & Contracts to evidence the insurance policies and coverages required of **CONTRACTOR**.

13.5.8.2 **Additional Insured Endorsement:** An Additional Insured Endorsement (CG20 10 or C20 26), signed by an authorized insurance company representative, must be submitted to Carson City Purchasing & Contracts to evidence the endorsement of **CITY** as an additional insured per Subsection 12.5.2.

13.5.8.3 **Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

13.5.9 **Review and Approval:** Documents specified above must be submitted for review and approval by Carson City Purchasing & Contracts prior to the commencement of work by **CONTRACTOR**. Neither approval by **CITY** nor failure to disapprove the insurance furnished by **CONTRACTOR** shall relieve **CONTRACTOR** of **CONTRACTOR'S** full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of **CONTRACTOR** or its sub-contractors, employees or agents to **CITY** or others, and shall be in addition to and not in lieu of any other remedy available to **CITY** under this Contract or otherwise. **CITY** reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

14 COMMERCIAL GENERAL LIABILITY INSURANCE:

14.1 Minimum Limits required:

14.1.1 Two Million Dollars (\$2,000,000.00) - General Aggregate

14.1.2 One Million Dollars (\$1,000,000.00) - Each Occurrence

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14.2 Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

15 BUSINESS AUTOMOBILE LIABILITY INSURANCE: (waived)

15.1 Minimum Limit required:

15.1.1 One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage

15.2 Coverage shall be for "any auto", including owned, non-owned and hired vehicles. The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

16 PROFESSIONAL LIABILITY INSURANCE:

16.1 Minimum Limit required: One Million Dollars (\$1,000,000.00)

16.2 Retroactive date: Prior to commencement of the performance of this Contract

16.3 Discovery period: Three (3) years after termination date of this Contract.

16.4 A certified copy of this policy may be required.

17 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

17.1 **CONTRACTOR** shall provide workers' compensation insurance as required by Nevada Revised Statutes Chapters 616A through 616D inclusive and Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.

17.2 **CONTRACTOR** may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that **CONTRACTOR** is a sole proprietor; that **CONTRACTOR** will not use the services of any employees in the performance of this Contract; that **CONTRACTOR** has elected to not be included in the terms, conditions, and provisions of Nevada Revised Statutes Chapters 616A-616D, inclusive; and that **CONTRACTOR** is otherwise in compliance with the terms, conditions, and provisions of Nevada Revised Statutes Chapters 616A-616D, inclusive.

18 BUSINESS LICENSE: (waived)

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19 COMPLIANCE WITH LEGAL OBLIGATIONS:

19.1 **CONTRACTOR** shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by **CONTRACTOR** to provide the goods or services of this Contract. **CONTRACTOR** will be responsible to pay all government obligations, including, but not limited to, all taxes, assessments, fees, fines, judgments, premiums, permits, and licenses required or imposed by law or a court. Real property and personal property taxes are the responsibility of **CONTRACTOR** in accordance with Nevada Revised Statutes 361.157 and 361.159.

20 WAIVER OF BREACH:

20.1 Failure to declare a breach or the actual waiver of any particular breach of this Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

21 SEVERABILITY:

21.1 If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

22 ASSIGNMENT/DELEGATION:

22.1 To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by **CITY**, such offending portion of the assignment shall be void, and shall be a breach of this Contract. **CONTRACTOR** shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written approval of **CITY**.

23 CITY OWNERSHIP OF PROPRIETARY INFORMATION:

23.1 **CITY** agrees that **CONTRACTOR** and its affiliated company SapphireHealth, LLC retains all rights, title, interest in and ownership, and reserves the right to use and control the use of its intellectual property rights in its assets including, but not limited to, its software, reporting packages and user documentation; operations, procedures and strategies; formulary and clinical services; manufacturer, wholesaler, group purchase, vendor contracts and resultant data and information; patient, prescription claim and drug utilization submission; trademarks and service marks. This **CONTRACT** creates no express or implied license for

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CITY to use such intellectual property for any purpose other than carrying out its responsibilities under this **CONTRACT**.

24 PUBLIC RECORDS:

24.1 Pursuant to Nevada Revised Statute 239.010, information or documents received from **CONTRACTOR** may be open to public inspection and copying. **CITY** will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. **CONTRACTOR** may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with Nevada Revised Statute 332.061, provided that **CONTRACTOR** thereby agrees to indemnify and defend **CITY** for honoring such a designation. The failure to so label any document that is released by **CITY** shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

25 CONFIDENTIALITY:

25.1 The **PARTIES** acknowledge that in carrying out their obligations under this **CONTRACT**, the **PARTIES** may have to exchange or otherwise divulge Confidential Business information, including, but not limited to, client lists, vendor lists, pricing, proprietary procedures, software programs, and business processes, the formulary, etc. The Party receiving such proprietary information SHALL NOT DISCLOSE such information to any third-Party individual organization or entity without the prior, express, written approval from the original Disclosing Party. Each Party certifies that they have policies and procedures in place that will protect the Disclosing Party from the re-Disclosure of any such Confidential Information. If a Party believes they are required by law to re-Disclose such information, that Party has a Duty to notify the original Disclosing Party, in writing, of the need for such re-disclosure within such time that allows the Other Party to file objections or to otherwise defend against such re-disclosure.

25.2 **CONTRACTOR** agrees to maintain and ensure the confidentiality, privacy, and security of patient information to the extent required by law and **CITY** policy. Without limiting the generality of the foregoing, **CONTRACTOR** agrees to comply with the Health Insurance Portability and Accountability Act of 1996 with respect to the privacy and security of "protected health information" (as defined by HIPAA) created, transmitted, maintained or received pursuant to, or in connection with, the performance of **CONTRACTOR** obligations under this **CONTRACT**.

25.3 **CITY** agrees to maintain and ensure the confidentiality, privacy, and security of patient information to the extent required by law and **CONTRACTOR** policy. Without limiting the generality of the foregoing, **CITY** agrees to comply with the Health Insurance Portability and Accountability Act of 1996 with respect to the privacy and security of "protected health information" (as defined by HIPAA) created, transmitted, maintained or received pursuant to, or in connection with, the performance of **CONTRACTOR** obligations under this **CONTRACT**.

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25.4 The **PARTIES** acknowledge that federal regulations relating to the confidentiality of individually identifiable health information require covered entities to comply with the privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time (codified at 45 C.F.R. Parts 160 and 164) ("Privacy Standards"). The Privacy Standards require covered entities to ensure that business associates who receive confidential information in the course of providing services comply with certain obligations regarding the confidentiality of health information.

25.5 **CONTRACTOR** shall keep confidential all information, in whatever form, produced, prepared, observed or received by **CONTRACTOR** to the extent that such information is confidential by law or otherwise required by this Contract.

26 FEDERAL FUNDING:

26.1 In the event federal funds are used for payment of all or part of this Contract:

26.1.1 **CONTRACTOR** certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

26.1.2 **CONTRACTOR** and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

26.1.3 **CONTRACTOR** and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions).

27 LOBBYING:

27.1 The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

27.1.1 Any federal, state, county or local agency, legislature, commission, counsel or board;

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

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Title: Carson City Jail Pharmaceuticals

27.1.2 Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or

27.1.3 Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

28 GENERAL WARRANTY:

28.1 **CONTRACTOR** warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications as set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

29 PROPER AUTHORITY:

29.1 The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. **CONTRACTOR** acknowledges that this Contract is effective only after approval by Carson City Purchasing & Contracts and only for the period of time specified in this Contract. Any services performed by **CONTRACTOR** before this Contract is effective or after it ceases to be effective are performed at the sole risk of **CONTRACTOR**.

30 ALTERNATIVE DISPUTE RESOLUTION:

29.1 Pursuant to NRS 338.150, public body charged with the drafting of specifications for a public work shall include in the specifications a clause requiring the use of a method of alternative dispute resolution before initiation of a judicial action if a dispute arising between the public body and the contractor engaged on the public work cannot otherwise be settled. Therefore, in the event that a dispute arising between **CITY** and **CONTRACTOR** cannot otherwise be settled, **CITY** and **CONTRACTOR** agree that, before judicial action may be initiated, **CITY** and **CONTRACTOR** will submit the dispute to non-binding mediation. **CITY** shall present **CONTRACTOR** with a list of three potential mediators. **CONTRACTOR** shall select one person to serve as the mediator from the list of potential mediators presented by **CITY**. The person selected as mediator shall determine the rules governing the mediation.

31 GOVERNING LAW; JURISDICTION:

31.1 This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. **CONTRACTOR** consents and agrees to the jurisdiction of the courts of the State of Nevada located in Carson City, Nevada for enforcement of this Contract.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

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32 ENTIRE CONTRACT AND MODIFICATION:

32.1 This Contract and its integrated attachment(s) constitute the entire Contract of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other Contracts that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by Carson City Purchasing and Contracts. The parties agree that each has had their respective counsel review this Contract which shall be construed as if it was jointly drafted.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

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33 ACKNOWLEDGMENT AND EXECUTION:

33.1 In witness whereof, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

CARSON CITY

Finance Director

Attn: Kim Belt

Purchasing and Contracts Manager

201 North Carson Street, Suite 3

Carson City, Nevada 89701

Telephone: 775-283-7137

Fax: 775-887-2107

KBelt@carson.org

CITY'S LEGAL COUNSEL

Neil A. Rombardo, District Attorney

I have reviewed this Contract and approve
as to its legal form.

By: _____
Kim Belt

By: _____
Deputy District Attorney

DATED _____

DATED _____

I certify that funds are available and that CONTRACTOR will not be given authorization to begin work until this Contract has been signed by Purchasing and Contracts.

BY: Romaine Gilliland, Interim Director
Carson City Health and Human Services
900 East Long Street
Carson City, NV 89706
Telephone: 775-887-2190
Fax: 775-887-2248
rgilliland@carson.org

By: _____

DATED _____

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

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Undersigned says: That he is the **CONTRACTOR** or authorized agent of the **CONTRACTOR**; that he has read the foregoing Contract; and that he understands the terms, conditions, and requirements thereof.

CONTRACTOR

BY: Mark J. Zilner, R.Ph.

TITLE: Owner and Chief Operating Officer

FIRM: Diamond Pharmacy Services

CARSON CITY BUSINESS LICENSE #: waived

Address: 645 Kolter Drive

City: Indiana **State:** Pennsylvania **Zip Code:** 15701-3570

Telephone: 800-882-6337 x1003/ **Fax #:** 877-234-7050

E-mail Address: mzilner@diamondpharmacy.com

(Signature of **CONTRACTOR**)

DATED _____.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

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Title: Carson City Jail Pharmaceuticals

CONTRACT ACCEPTANCE AND EXECUTION:

The Board of Supervisors for Carson City, Nevada at their publicly noticed meeting of June 6, 2013, approved the acceptance of **CONTRACT No. 1213-116** Further, the Board of Supervisors authorizes the Mayor of Carson City, Nevada to set his hand to this document and record his signature for the execution of this contract in accordance with the action taken.

CARSON CITY, NEVADA

ROBERT L. CROWELL, MAYOR

DATED this 6th day of June, 2013.

ATTEST:

ALAN GLOVER, CLERK-RECORDER

DATED this 6th day of June, 2013.

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

Contract No. 1213-116

Title: Carson City Jail Pharmaceuticals

SAMPLE INVOICE

Invoice Number: _____

Invoice Date: _____

Invoice Period: _____

Vendor Number: _____

Invoice shall be submitted to:

Carson City Health Department
900 East Long Street
Carson City, NV 89706

Use this section if CONTRACT SUM was based on a lump sum.

Line Item #	Description	Value	% Completed	Total \$\$
Total for this invoice				

Original Contract Sum	\$	_____
Less amount previously billed	\$	_____
= contract sum prior to this invoice	\$	_____
Less this invoice	\$	_____
=Dollars remaining on Contract	\$	_____

ENCLOSE COPIES OF RECEIPTS & INVOICES FOR EXPENSES & OUTSIDE SERVICES