



Kingfisher County Health Department

421 W Bowman
Kingfisher, Oklahoma 73750

Telephone (405) 375-3008
Fax (405) 375-5975

RESOLUTION # 7

The Board of County Commissioners, Kingfisher County, met in regular session on Monday, September 11, 2023.

WHEREAS, the Kingfisher County Health Department requests approval for annual contract continuation for the following service agreements for FY2024:

Lease Agreements

Addendum to resolution #35

- **Mercy Hospital Kingfisher County**
Memorandum of agreement/BAA for FY24.Effective 08/31/2023-06/30/2024(New FY 24 Contract)

APPROVED BY THE KINGFISHER COUNTY BOARD OF COMMISSIONERS:

Chairperson



Member



Member

ATTESTS:



Kingfisher County Clerk



Memorandum of Agreement

**Kingfisher County Health Department
AND
Mercy Hospital Kingfisher County, Inc.**

This Agreement shall be entered into between the Kingfisher County Health Department, hereafter referred to as Department, by virtue of the authority vested in it by Title 63, O. S. 1981, Section 1-206 (b) (3) and Mercy Hospital Kingfisher, Inc., hereafter referred to as Contractor.

CONTRACT PERIOD: The provisions of this Agreement are effective as of the date of the last signature below and terminate on June 30, 2024.

GENERAL PURPOSE OF CONTRACT: The purpose of this Agreement is to provide the technical component of certain radiology services to patients of Department .

1. The Contractor will take and process two (2) chest x-rays (PA and Lateral) on each patient referred to Contractor by Department for radiology services (the "X-Ray Services"). Contractor will not provide the professional interpretation or final read of the x-rays. Department acknowledges and agrees that this Agreement shall not be construed to cover the professional interpretation (i.e., physician reading) of the x-rays performed by Contractor and Department shall have the responsibility to separately contract with or obtain professional services from physicians qualified at interpreting x-rays to provide the interpretation of the x-rays performed by Contractor under this Agreement. Department agrees to indemnify Contractor from and against any and all losses arising from or relating to the failure to notify the patient of, failure to interpret, or failure to properly interpret the results of the x-rays.
2. X-Rays will be picked up by the Department for interpretation, which will become the property of the Department. Notwithstanding the foregoing, Contractor may retain copies of the x-rays or other images in a manner compliant with Contractor's record retention policies and the HIPAA Privacy and Security Regulations.
3. After interpretation, the Department physician may refer a patient back to the Contractor for other x-ray services.

CONSIDERATION of this Agreement is as follows:

1. Department agrees to pay a fee for chest X-Ray Services at the rate of \$38.50 per patient for both chest x-rays (PA and Lateral) performed. Contractor shall not bill patients or their third-party payors for the X-Ray Services provided hereunder.
2. Contractor will submit itemized invoices monthly to the Department indicating the date services were rendered, name of patient, and number of x-rays taken and processed each month. Invoices must be filed within thirty (30) days of delivery of services. Department shall pay invoices within thirty (30) days of the receipt of the invoice.
3. Payment will not be made for any x-ray of poor (unreadable) quality which Department's physician has referred back to Contractor for re-take, however, payment is owed for a re-take that is of good (readable) quality. Contractor will provide technical services only, professional completion (reading) of x-ray will be done by Department's physician.
4. Department will schedule patient's appointment with Contractor according to Contractor's normal scheduling practices. Should a patient require an emergent or urgent x-ray, Department should refer the patient to the appropriate emergency department, which may be Contractor's emergency department or the emergency department of another facility.

5. No payments in advance of or in anticipation of goods or services to be provided under this Agreement shall be made by the Department.
6. Nothing contained herein requires the referral of any patient between the parties and no compensation or consideration of any kind shall be paid or given for any such referrals. Notwithstanding any provision contained herein to the contrary, each party retains the right, in its sole discretion, to refer patients to any person or entity deemed appropriate for their care and treatment.

The Contractor certifies that its employees are covered under Worker's Compensation as required by Oklahoma Statutes.

The Contractor hereby gives written affirmation to the Department that it has posted copies of its affirmative action policy statement and the Civil Rights Act in a prominent place for employees review and that it has an Affirmative Action Plan. Failure to comply with these affirmative action requirements, to provide documents as specified above or to falsely affirm compliance with Title VII of the 1964 Civil Rights Act shall result in termination of this contract.

CONFIDENTIAL/PROPRIETARY INFORMATION: In the course of providing x-ray services hereunder, each party will have access to, and will acquire knowledge of, "Confidential and Proprietary Information" of the other party. Neither party shall, at any time during or after the term, disclose any Confidential and Proprietary Information, in whole or in part, to any person, firm, corporation, association or other entity for any reason or purpose whatsoever without the written consent of the other party, except as required by law or for a party to fulfill its obligations hereunder, or otherwise evaluate its rights and remedies hereunder. Confidential and Proprietary Information shall include any confidential or proprietary information concerning the affairs of each other and their affiliates, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, pricing information, patient lists and information, customers, and marketing information.

HIPAA: The parties shall at all times comply with the applicable terms of this Agreement and with all applicable federal, state, and local statutes, rules, regulations, accreditation standards, including without limitation the laws and regulations associated with the Medicare and Medicaid programs and other federal or state health care programs; the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations promulgated thereunder, including those set forth at 45 CFR Parts 160 and 164 (collectively, "Privacy and Security Regulations") with regard to the provision of services hereunder; and updates to incorporate any changes to such statutes, rules, regulations, accreditation standards, and other applicable standards.

The Privacy and Security Regulations govern the use and disclosure of an individual's Protected Health Information (as defined by the Privacy and Security Regulations). The parties intend to comply with the applicable requirements of the Privacy and Security Regulations in connection with this Agreement. The parties acknowledge that each party can use and disclose Protected Health Information under the Privacy and Security Regulations for the purpose of treatment of the patient and for the purpose of obtaining payment for such treatment and, in certain instances, for the purposes of the health care operations of such party.

BOOKS AND RECORDS: If this Agreement is a contract within the purview of Section 1861(v)(1)(I) of the Social Security Act (Section 952 of the Omnibus Reconciliation Act of 1980) and the regulations promulgated at 42 CFR Part 420 in implementation thereof, the Parties agree to make available to the Comptroller General of the United States ("Comptroller General"), the Secretary of the Department of Health and Human Services ("Secretary") and their duly authorized representatives, for four (4) years after the latest furnishing of services pursuant to this Agreement, access to the books, documents and records and such other information as may be required by the Comptroller General or Secretary to verify the nature and extent of the costs of services provided by each party, respectively. If either party, upon the approval of the other party, carries out the duties of this Agreement through a subcontract worth Ten Thousand Dollars (\$10,000.00) or more over a twelve (12)

month period with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General and their representatives to the related organization's books and records.

AMENDMENT: This Agreement may be modified, changed or amended only by an instrument in writing, signed and dated by the parties and appended hereto as an identifiable amendment hereof.

CANCELLATION CLAUSE: This Agreement is subject to termination upon thirty (30) days advance written notice by either party. Written notice must be forwarded to one of the following applicable addresses by certified mail:

Kingfisher County Health Department
Attn: Heather Dunavin, Administrative Assistant
421 W. Bowman
Kingfisher, OK 73750

Mercy Hospital Kingfisher County, Inc.
Attn: Administrator
1000 Hospital Drive
Kingfisher, OK 73750

With a copy to:
Mercy Health
Attn: Legal Department
14528 S. Outer 40, Suite 100
Chesterfield, MO 63017

EXCLUDED PROVIDER WARRANTY: Each party represents and warrants that it is not now and at no time has been excluded from participation in any federally-funded health care program, including Medicare and Medicaid. Each party hereby agrees to immediately notify the other party of any threatened, proposed or actual exclusion from any federally-funded health care program, including Medicare and Medicaid. Each party further represents and warrants that, to such party's knowledge after reasonable inquiry, none of its employees (such reasonable inquiry including, without limitation, such party's screening of such employees against the Exclusions List) are now and at no time have been excluded from participation in any federally-funded health care program, including Medicare and Medicaid. If any party to this Agreement or any employee of a party becomes so excluded or if any party becomes so excluded or if any party to this Agreement is in breach of this Section, this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate; provided, however, if the reason for termination is due to the exclusion of an employee of a party and such party promptly after becoming aware removes such employee from the performance of services under this Agreement, this Agreement shall not automatically terminate. For the purposes of this Agreement, "Exclusion Lists" shall mean (i) the HHS/OIG List of Excluded Individuals/Entities (available at <http://www.oig.hhs.gov>); (ii) the General Services Administration's System for Aware Management (available at <http://www.sam.gov>); and (iii) any applicable state Medicaid exclusion lists.

INSURANCE: Department shall maintain, at its sole cost and expense, comprehensive professional and general liability insurance in the minimum amount of One Million Dollars (\$1,000,000) for each occurrence and Three Million Dollars (\$3,000,000) annual aggregate covering itself and the Department physician interpreting the x-rays. Upon termination or expiration of this Agreement, Department shall maintain extended reporting ("tail") coverage to the extent necessary to maintain professional liability insurance coverage for claims related to services provided by Department during the term of this Agreement. Department shall maintain worker's compensation insurance for its employees in amounts required by the laws of the State of Oklahoma. Upon request by Contractor, Department shall provide Department a certificate of insurance or other acceptable proof to evidence the existence of the insurance coverages pursuant to this Section.

INDEMNIFICATION: Each party, including Department to the extent permitted under the Oklahoma Governmental Tort Claims Act, shall indemnify, pay, defend, and hold harmless the other party and its

employees, officers, representatives and agents from and against any and all damages, liabilities, losses, costs, judgments, expenses, claims and causes of action of any kind or nature asserted against the other party foreseen or unforeseen, accrued or not yet accrued ("Losses"), arising out of or related to: (a) any breach or default in the performance of any obligation on the party's part to be performed under the terms of this Agreement; or (b) any negligent or willful misconduct by the part, its agents, employees, officers or representatives; provided, however, that the party shall have no liability to indemnify, defend or hold harmless the other party to the extent the Losses were the result of the negligence or willful misconduct of the other party. This Section shall survive termination or expiration of this Agreement for any reason.

AUDIT CLAUSE: In accepting this Agreement with the Department, the Contractor agrees that financial records, documents, accounting procedures, or any other items of service relevant to the X-Ray Services under the Agreement will be maintained and available for five (5) years and are subject to examination by Department representatives and the State Auditor and Inspector, or any other individual or entity authorized by law to review such records. This Agreement shall be governed by the laws of Oklahoma.

ETHICAL AND RELIGIOUS DIRECTIVES: Department acknowledges and understands that throughout the term of this Agreement, Contractor must provide all X-Ray Services in accordance with the *Ethical and Religious Directives for Catholic Health Care Services*, as promulgated or amended by the United States Conferences of Catholic Bishops from time to time.

INDEPENDENT CONTRACTOR: It is expressly acknowledged by the parties that Contractor is an independent contractor, and nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship, or a joint venture relationship, or to allow Department to exercise control or direction over the manner or method by which Contractor provides services.

ASSIGNMENT: No assignment of this Agreement or the rights, powers, or duties hereunder shall be valid without the express written consent of both parties hereto, and any such unauthorized assignment shall be void; provided, however, that either party may assign this Agreement to any corporation or other entity which controls, is controlled by or under common control with the assignor without the consent of the other party, provided that said assignee assumes, in full, the obligations of the assignor hereunder.

CAPTIONS. The captions for each section of this Agreement are included for the convenience of reference only and are not to be considered a part hereof, and shall not be deemed to modify, restrict, or enlarge any of the terms or provisions of this Agreement.

FORCE MAJEURE: Either party shall not be liable or deemed to be in default of this Agreement if either is prevented from performing any of its respective obligations for any reason beyond its control, including, without limitations, floods, storms, strikes, acts of God or the public enemy, or statute, ordinance, regulation, rule, or action of any applicable governmental entity.


WAIVER/BREACH: The waiver or breach of any term or condition of this Agreement shall not be deemed to constitute the continuing waiver of the same or any other term or condition.

BINDING EFFECT; THIRD PARTY BENEFICIARIES: This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Except as expressly set forth herein, this Agreement is not intended to confer any rights or remedies upon any other person or entity.

COUNTERPARTS; ELECTRONIC SIGNATURES: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which collectively shall constitute one instrument. It shall not be necessary that any one counterpart be signed by all of the parties hereto so long as each of the parties has signed at least one counterpart. Facsimile signatures and signatures on an electronic image shall be deemed to be original signatures.

SEVERABILITY. If any one (1) or more of the provisions of this Agreement or any application thereof shall be found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement and any other application thereof shall not in any way be affected or impaired thereby so long as the relationship contemplated by this Agreement is not affected to the material detriment of one (1) or both of the parties; and provided, however, that to the extent permitted by applicable law, any invalid, illegal or unenforceable provision may be considered for the purpose of determining the intent of the parties in connection with the other provisions of this Agreement.

ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any and all other agreements, understandings, negotiations, or representation, oral or written, between them.

By:  _____

Title: Administrator
Representative Mercy Hospital Kingfisher, Inc.

Date 7/31/23



Maggie Jackson, Regional Director
Kingfisher County Health Department

8/31/23
Date _____

Approved:

Kingfisher County Commissioner Chairman



Member



Member

Date

Attest:

County Clerk

State of Oklahoma)
)

County of Kingfisher)

The undersigned contractor or supplier of lawful age, being first duly sworn, on oath, says he is authorized to legally bind this organization to the terms of this contract and that it is true and correct. Affiant further states that the services as shown by invoice or claim will be supplied in accordance with the plans furnished by the affiant. Affiant further states that he had made no payment, given or donated or agreed to pay, give, or donate, either directly or indirectly, to any elected official, officer or employee of the State of Oklahoma, of money or any other thing of value to obtain payment or the award of this contract.




Mercy Hospital Kingfisher, Inc.

Subscribed and sworn to before me this 22nd day of AUGUST, 20 23.

My Commission Expires: 11/01/2025

Notary # 21014299



Notary Public

