

REQUEST FOR AGENDA PLACEMENT FORM

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Sheriff Adam King TODAY'S DATE: 8/17/2021

DEPARTMENT: Johnson County Sheriff's Office

SIGNATURE OF DEPARTMENT HEAD: 

REQUESTED AGENDA DATE: August 23, 2021

SPECIFIC AGENDA WORDING:

Consideration to Approve Agreement between Excel X-Ray LLC and Johnson County.

COMMISSIONERS COURT

AUG 23 2021

Approved

PERSON(S) TO PRESENT ITEM:

Sheriff Adam King & Chief David Blankenship

SUPPORT MATERIAL: (Must enclose supporting documentation)

TIME: 5
(Anticipated number of minutes needed to discuss item)

ACTION ITEM:
WORKSHOP:
CONSENT:
EXECUTIVE:

STAFF NOTICE:

COUNTY ATTORNEY:

IT DEPARTMENT:

AUDITOR:

PURCHASING DEPARTMENT:

PERSONNEL:

PUBLIC WORKS:

BUDGET COORDINATOR:

OTHER:

This Section to be completed by County Judge's Office

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE:

COURT MEMBER APPROVAL:

DATE:

JOHNSON COUNTY CONTRACT TERMS
ADDENDUM – EXCEL XRAY, LLC

The Johnson County Commissioners Court Finds, and the Parties Agree, as Follows:

1.1

This **Addendum** is part of an Agreement between **JOHNSON COUNTY, TEXAS**, a political subdivision of the State of Texas, (hereinafter referred to as “**COUNTY**” and **Excel XRay, LLC**. **Johnson County and Excel Xray, LLC** may be collectively identified as the “**Parties**” or each individually a “**Party**”). **This Addendum is part of the Agreement with Excel Xray, LLC and is intended to modify (as set forth in this Addendum) all documents, including any Service Agreement, Proposal and any acceptance of any Proposal put forth by Xcel Xray, LLC.**

2.1

This Agreement will be governed by and construed according to the laws of the **State of Texas**. Venue for any action or claim arising out of the Agreement must be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.

2.2

Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

2.3

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. Johnson County will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

3.1

The Parties agree that under the Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.

3.2

Article XI, Section 7(a) of the Texas constitution provides in relevant part:

... But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b) ...

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

4.1

The Parties agree and understand that County is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

4.2

The Parties agree and understand that County will not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

4.3

The Parties agree and understand that County will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

4.4

The Parties agree and understand that County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

5.1

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:

- a. the date the governmental entity receives the goods under the contract;
- b. the date the performance of the service under the contract is completed; or
- c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an

overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

6.1

No officer, member or employee of County, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information County reasonably believes that **Excel Xray, LLC** might lawfully seek to claim as confidential, then County will forward the request to **Excel Xray, LLC**. It shall be the obligation of **Excel Xray, LLC** to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be withheld pursuant to Texas Government Code Chapter 552 or other applicable law. County will cooperate with COMPANY in making such submission to the Texas Attorney General's Office. **Excel Xray, LLC acknowledges and understands that contracts, agreements, payment and revenue of a political subdivision of the State of Texas are public information and are not confidential.**

6.3

Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

6.4

Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.

6.5

It is understood and agreed that Johnson County will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration, is hereby deleted.

6.6

Johnson County shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

7.1

If the Agreement provides for the continuation of this Agreement from year to year, then continuation is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the Johnson County Commissioners Court. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the equipment or services provided by **Excel Xray, LLC** pursuant to the terms of this Agreement by County will constitute the County's action and intent to continue this Agreement barring a specific written notice to the contrary. **Notwithstanding the foregoing, in no event shall this Agreement continue for a period exceeding 60 months from the date of execution of this Addendum without additional specific consideration and approval by the Commissioners Court of Johnson County, Texas.**

7.2

Excel Xray, LLC certifies that pursuant to Section 231.006 of the Texas Family Code that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. COMPANY states that it is not ineligible to receive State or Federal funds due to child support arrearages

7.3

Excel Xray, LLC verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term "boycott Israel" is as defined by Texas Government Code Section 808.001, effective September 1, 2017. COMPANY further verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term "foreign terrorist organization" means an organization designated as foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

7.4

Notwithstanding any other provisions contained in the contract documents, any amendment to the terms of the contract must be specifically approved by the Commissioners Court of Johnson County and signed by the Johnson County Judge.

7.5

Notwithstanding any other provision in this Addendum or the associated documents, to the extent **Excel Xray, LLC** is being contracted to provide information technology and services or to maintain and make available information for use by Johnson County and the public, including documents, data, content and records then said documents, data, content and records are and shall be the exclusive property of Johnson County, Texas or the State of Texas or a political subdivision thereof.

7.6

[This item's text deleted as not applicable to this Agreement]

8.1

In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to Johnson County in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted. *THE TERMS OF THIS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN OTHER DOCUMENTS PUT FORTH BY EXCEL XRAY, LLC IS HEREBY DELETED.*

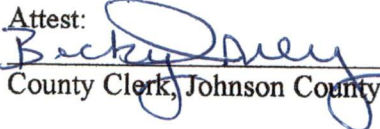
APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:



Roger Harmon
As Johnson County Judge

8-23-21
Date

Attest:

County Clerk, Johnson County



8-23-21
Date

Excel Xray, LLC:

Carrie Robson
Authorized Representative of
Excel Xray, LLC

8/17/2021
Date

Printed Name: Carrie Robson

Title: CEO

SERVICE AGREEMENT

This Agreement ("Agreement") is made and effective 07/20/2021

BETWEEN: **Excel Xray, LLC**, a company organized and existing under the laws of the State of Texas, with its head office located at:

3200 Troup Hwy
Suite 130
Tyler, Texas 75701

AND: **Johnson County Jail**, with its office located at:

1800 Ridgemar
Cleburne, TX 76033

RECITALS

Excel Xray is engaged in providing portable x-ray services, its Employer Tax I.D. Number is 27-0026470. Excel Xray has complied with all Federal, State, and local laws regarding licenses, reporting requirements, tax withholding requirements, and other legal requirements of any kind that may be required to carry out said business and the Scope of Work which is to be performed as an Independent Contractor pursuant to this Agreement. Excel Xray is or remains open to conducting similar tasks or activities for clients other than Johnson County Jail and holds themselves out to the public to be a separate business entity.

Johnson County Jail desires to engage and contract for the services of Excel Xray to perform portable x-ray services as set forth below. Excel Xray desires to enter into this Agreement and perform as an independent contractor for the Johnson County Jail, and is willing to do so on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and conditions contained in this Agreement, the Parties agree as follows:

1. TERMS

This Agreement shall be effective commencing 07/20/2021 and shall continue until terminated by either party.

2. STATUS OF INDEPENDENT CONTRACTOR

This Agreement does not constitute a hiring by either party. It is the parties intentions Excel Xray shall have an independent contractor status and not be an employee for any purposes. Independent Contractor shall retain sole and absolute discretion in the manner and means of carrying out their activities and responsibilities under this Agreement. This Agreement shall not be considered or construed to be a partnership or joint venture, and Johnson County Jail shall not be liable for any obligations

incurred by Excel Xray unless specifically authorized in writing. Excel Xray shall not act as an agent of Johnson County Jail, ostensibly or otherwise, nor bind Johnson County Jail in any manner, unless specifically authorized to do so in writing.

3. TASKS, DUTIES, AND SCOPE OF WORK

- a. Excel Xray agrees to devote as much time, attention, and energy as necessary to complete or achieve the following: Necessary radiographs with the quantity and quality required to satisfy Johnson County Jail.
- b. Excel Xray shall abide by all confidentiality and privacy rules set forth by Johnson County Jail.
- c. The images and/or records related to the Scope of Work set forth in this Agreement shall be maintained by Excel Xray and a CD of images per case will be provided to Johnson County Jail if requested.
- d. Excel Xray shall be responsible to the management and directors of Johnson County Jail, but Excel Xray will not be required to follow or establish a regular or daily work schedule. Excel Xray will supply all necessary equipment, materials and supplies to perform its tasks. Excel Xray will not rely on the equipment of Johnson County Jail for completion of tasks and duties set forth pursuant to this Agreement. Johnson County Jail retains the right to inspect, stop, or alter the work of Excel Xray to assure its conformity with this Agreement.

4. COMPENSATION

- a. Excel Xray shall be entitled to compensation for performing those tasks and duties related to the Scope of Work as follows:
\$150.00 Per Xray Exam, and \$30 per additional body part.
- b. Such compensation shall become due and payable to Excel Xray in the following manner:
Excel Xray will send out a monthly invoice payable within 30 business days.

5. NOTICE CONCERNING WITHHOLDING OF TAXES

Excel Xray recognizes and understands that it will receive a Form 1099 statement and related tax statements, and will be required to file corporate and/or individual tax returns and to pay taxes in accordance with all provisions of applicable Federal and State law.

6. TERMINATION

This Agreement may be terminated prior to the completion or achievement of the Scope of Work by either party giving 30 days written notice. Such termination shall not prejudice any other remedy to which the terminating party may be entitled, either by law, in equity, or under this Agreement.

Independent Contractor Agreement

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7. NON-DISCLOSURE OF TRADE SECRETS AND/OR INFORMATION

- a. Excel Xray agrees not to disclose or communicate, in any manner, either during or after Excel Xray's agreement with Johnson County Jail, information about Company, its operations, incarcerated individuals, or any other information, that relate to the business of Johnson County Jail including, but not limited to, the names of its incarcerated individuals, situations, and/or information pertaining to the tasks, its operations, or any other information of any kind which would be deemed confidential, a trade secret, a customer list, or other form of proprietary information of Johnson County Jail. Excel Xray acknowledges that the above information is material and confidential and that it affects the privacy of Johnson County Jail. Excel Xray understands that any breach of this provision, or that of any other Confidentiality and Non-Disclosure Agreement, is a material breach of this Agreement.

8. LEGAL COMPLIANCE

Excel Xray is encouraged to treat all Johnson County Jail employees, customers, clients, business partners and other affiliates with respect and responsibility. Excel Xray is required to comply with all laws, ethical codes and company policies, procedures, rules or regulations, including those forbidding sex harassment, discrimination, and unfair business practices.

9. LICENSING, WORKERS' COMPENSATION AND GENERAL LIABILITY INSURANCE

Excel Xray agrees to immediately supply the Company with proof of any licensing status required to perform the Scope of Work pursuant to this Agreement, Workers' Compensation Coverage where required by law and General Liability Insurance (including malpractice insurance, if warranted), upon request of the Company.

10. PERSONS HIRED BY INDEPENDENT CONTRACTOR

All persons hired by Excel Xray to assist in performing the tasks and duties necessary to complete the Scope of Work shall be the employees of Excel Xray unless specifically indicated otherwise in an agreement signed by all parties. Excel Xray shall immediately provide proof of Workers' Compensation insurance and General Liability insurance covering said employees, upon request of the Company.

11. NOTICES

Any notice to be given hereunder by any party to the other may be affected either by personal delivery in writing, or by mail, registered or certified, postage pre-paid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraphs of this Agreement, but each party may change their address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of five (5) days after mailing. Excel Xray agrees to keep Johnson County Jail current as to their business and mailing addresses, as well as telephone, facsimile, email and pager numbers.

12. GOVERNING LAW

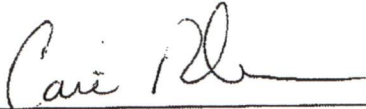
This Agreement shall be governed by, and construed under, the laws of the State of Texas.

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

Johnson County Jail

EXCEL XRAY


Authorized Signature


Authorized Signature

Adam King, Sheriff
Printed Name and Title

Carrie Robson, CEO, RT (R)
Printed Name and Title