

**REQUEST FOR AGENDA PLACEMENT FORM**

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

SUBMITTED BY: Sheriff Adam King TODAY'S DATE: 2/1/2022

DEPARTMENT: Johnson County Corrections Center

SIGNATURE OF DEPARTMENT HEAD: 

REQUESTED AGENDA DATE: February 14, 2022

**SPECIFIC AGENDA WORDING:**

Consideration to Approve Agreement between Johnson County and Diamond Pharmacy for the jails pharmacy needs.

COMMISSIONERS COURT

FEB 14 2022

**Approved**

**PERSON(S) TO PRESENT ITEM:**

Adam King or 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:   
AUDITOR:   
PERSONNEL:  
BUDGET COORDINATOR:

IT DEPARTMENT:  
PURCHASING DEPARTMENT:  
PUBLIC WORKS:  
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:

## PHARMACY SERVICES AGREEMENT

**THIS AGREEMENT** is effective the 15th day of FEBRUARY 2022, by and between JOHNSON COUNTY, TEXAS, a political subdivision of the State of Texas located at 2 North Main Street, Cleburne, Texas 76033 (main address, NOT the "Facility" address), (hereinafter referred to as "FACILITY") and Diamond Drugs, Inc., aka Diamond Pharmacy Services, and/or Diamond Medical Supply, RemedyRepack, SapphireHealth, and InnovaScript, a Pennsylvania Corporation having principal offices at 645 Kolter Drive, Indiana, PA 15701-3570 (hereinafter referred to as "DIAMOND").

**WHEREAS**, FACILITY is obligated to provide healthcare services for its correctional patients;

**WHEREAS**, DIAMOND contracts to provide services to correctional healthcare services companies and correctional facilities;

**WHEREAS**, FACILITY wishes to engage DIAMOND to provide services to their correctional patients;

**WHEREAS**, DIAMOND wishes to provide such services to FACILITY as agreed to between the Parties;

**WHEREAS**, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

### **2. DIAMOND RESPONSIBILITIES:**

- a. DIAMOND agrees to provide prescription dispensing services, pharmacy benefit management services, software services, and medical supplies to FACILITY and to furnish all qualified personnel, equipment, materials and services that FACILITY requires to ensure compliance with state and federal law as well as the terms of this Agreement.
- b. DIAMOND shall provide Services in a prompt and timely manner, in accordance with the terms and conditions of this Agreement, in accordance with all applicable laws, rules and regulations, community standards of practice, and in accordance with all policies and procedures of FACILITY.
- c. DIAMOND shall dispense medications to the Residents with scheduled deliveries during normal business hours. Scheduled deliveries will be made at least once daily Monday thru Saturday.
- d. DIAMOND shall provide emergency deliveries 24 hours per days 7 days per week any time an emergency occurs. DIAMOND shall provide emergency deliveries within 4 hours of receipt of FACILITY's emergency request in all cases except: (i) if the emergency request is for a medication that is not in stock at DIAMOND and is not readily available from DIAMOND's back-up pharmacies or a proximate acute care provider, then DIAMOND shall deliver the medication no later than the end of the business day following the date it receives the emergency request as long as the medication is available from DIAMOND's primary wholesaler; and (ii) if the emergency request is for a compounded product, DIAMOND shall deliver the product as soon as practically possible but in any event no later than 72 hours from DIAMOND's receipt of FACILITY's request for the product.

DIAMOND shall immediately notify FACILITY if an emergency delivery will not be made within 4 hours of the emergency request as provided for by subsection (a) or (b) above. DIAMOND shall not charge FACILITY an additional fee for any emergency delivery except as follows: DIAMOND may charge



FACILITY a \$75 fee when FACILITY has requested emergency delivery of a medication that is included in FACILITY's e-box or electronic emergency dispensing system

**3. FACILITY RESPONSIBILITIES:**

- a. To pay to DIAMOND all fees for services rendered as outlined in Attachment "A" to this Agreement.
- b. To furnish all legally required medication and product order information to DIAMOND on any Formulary and Non-Formulary Medications prescribed for inmates of the FACILITY.
- c. FACILITY 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 FACILITY, DIAMOND will submit eligible bills to such outside sources, and prescriptions will be billed at the Medicaid rate. In the event that any amounts billed to an outside source remain unpaid after sixty (60) days, FACILITY remains responsible for payment to DIAMOND. Such responsibility is independent of whether or not FACILITY has received payment from outside sources for any such charges.
- d. It is FACILITY's responsibility to provide DIAMOND all appropriate and accurate patient and billing information prior to submitting orders. Billing other agencies is provided by DIAMOND as a courtesy and DIAMOND will not be responsible for any third Party claims which are not invoiced accurately due to FACILITY's failure to provide the correct patient billing information.
- e. It is FACILITY's responsibility to verify its invoices monthly to assure claims were billed to the proper agency on a monthly basis and inform DIAMOND of any discrepancies within fifteen (15) days of receipt of invoices.
- f. FACILITY is responsible for all applicable sales, use, lease, ad valorem, and any other tax that may be levied or assessed by reason of this transaction, unless FACILITY provides a tax exemption certificate (blanket or transaction specific) to DIAMOND in a timely manner.
- g. Pay all invoices and other payments due to DIAMOND via EFT or to:

Diamond Drugs, Inc.  
Diamond Pharmacy Services  
P.O. Box 200796  
Pittsburgh, PA 15251-0796

4. **EQUIPMENT** - In the event that a RFP or bid and bidding procedures require such, DIAMOND shall provide an adequate number of medication carts for each facility serviced to accommodate their respective needs, and one (1) fax machine that will be dedicated solely for use with operations related to DIAMOND's services. This equipment will remain the property of DIAMOND throughout performance of the terms of this Agreement. Upon termination or expiration of this Agreement, FACILITY agrees to return such equipment to DIAMOND within fifteen (15) days of service termination or expiration. FACILITY will be charged for any damages of said equipment while in FACILITY's possession up through DIAMOND's receipt of the returned equipment. If FACILITY fails to return the equipment within fifteen (15) days, FACILITY will be responsible for paying DIAMOND an amount equal the replacement cost for new equipment equivalent to the equipment retained by FACILITY.
5. **INTELLECTUAL PROPERTY** - FACILITY agrees that DIAMOND 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 Agreement creates no express

or implied license for FACILITY to use such intellectual property for any purpose other than carrying out its responsibilities under this Agreement.

6. **TERM AND TERMINATION** - The initial term of this Agreement shall commence on FEBRUARY 15, 2022, and continue for a period of three (3) years, at which point the contract shall automatically renew for three (3) consecutive one year periods unless either Party provides notice of its intent not to renew this Agreement AT LEAST one hundred twenty (120) days prior to the automatic renewal date.

Either Party may terminate This Agreement for significant breach of the terms and conditions of this Agreement by the other party by using the following procedure provided that the non-breaching party shall deliver a detailed, written notice of such breach that allows the breaching Party forty-five (45) days to cure said breach. If the Breach is not cured to the reasonable satisfaction of the non-breaching Party within forty-five (45) days, this agreement shall terminate upon delivery, by the non-breaching Party, of a final written notice that the Breach has not been cured to the reasonable satisfaction of the non-breaching Party. DIAMOND has the right to terminate this Agreement immediately for payment delays of more than thirty (30) days past any invoice date. The Parties may, by mutual consent, terminate this Agreement at any time only under circumstances and terms mutually agreed upon. Terminations for convenience will not be permitted.

In the event that any subsequent State or Federal statute, regulation, or agency interpretation makes either party's right or obligations under this Agreement illegal or impractical, all other rights and obligations shall remain in force.

7. **Medications Returned to DIAMOND for Credit:**

In accordance with the terms outlined in Attachment "A", DIAMOND will provide FACILITY credit for "Eligible Drugs" returned to DIAMOND from FACILITY.

As used herein, the term "Eligible Drug" means, (i) a non-controlled oral solid medication; (ii) that was originally dispensed by DIAMOND to a patient/inmate at the FACILITY (iii) is sealed in unopened tamper-evident packaging and either individually packaged or packaged in unit-dose packaging; (iv) has not been compounded; (v) does not require refrigeration; (vi) returned with more than 90 days until the expiration date; (vii) was under the control of the FACILITY's medical personnel at all time and has not been released to the inmate population or labeled as "Keep on Person"; (ix) was properly stored at the FACILITY; and (x) upon reasonable inspection by a DIAMOND pharmacist, the package does not appear to have been adulterated.

8. **INSURANCE, INDEMNIFICATION, AND FINES**

- a. **Insurance** - Both DIAMOND and FACILITY shall maintain professional and general liability insurance coverage at a minimum in the amount of one million dollars per occurrence, and five million dollars aggregate, naming the other as an additional insured. This insurance will be fully applicable to all services rendered by Party under this Agreement subject to the normal terms and exclusions of the policy. Each Party will provide the other with a certificate evidencing that the insurance is in place upon this execution of this Agreement. Each policy will provide for at least thirty (30) days written notice before any cancellation or alteration in policy terms before any term can be changed, or the policy cancelled. Each Party agrees to send the other copies of any notices of cancellation or alteration, and that they will do so within ten (10) days of the receipt of any notice.
- b. **Indemnification** – Negligent Acts of Either Party - FACILITY agrees to indemnify, defend, and hold harmless DIAMOND, its agents, officers, and independent DIAMONDS 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 FACILITY or any of its employees, subcontractors, and agents.

DIAMOND agrees to indemnify, defend, and hold harmless FACILITY, its agents, officers, and independent DIAMONDS 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 DIAMOND or any of its employees, subcontractors and agents. This indemnification includes all costs and expenses, including reasonable attorney fees.

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 Agreement, shall not be binding against the other, unless that Party has expressly approved the settlement, compromise or consent judgment in writing.

The indemnification and hold harmless provisions of this Agreement shall survive the termination of this Agreement for a period not to exceed that period upon which a claim for loss or damages could be brought against either DIAMOND or FACILITY 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 Agreement 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 Agreement will become enforceable.

- c. **Indemnification for Civil Fines, Penalties or other Monetary Assessments** - Any fine, penalty or other monetary assessment ("Fines") issued against either Party by any State Board of Pharmacy, DEA, FDA, Facility, State, County or any other federal or state entity with jurisdiction over FACILITY shall be the responsibility of the Party whose conduct is the subject of such Fines, regardless of which Party to this Contract is named and against whom the Fine is actually assessed. Thus, FACILITY will indemnify Diamond with respect to any Fines assessed by the State Board of Pharmacy or other agency against DIAMOND based on the acts or omissions of the FACILITY; and Diamond will indemnify FACILITY with respect to any Fines assessed by the State Board of Pharmacy or other agency against FACILITY based on the acts or omissions of DIAMOND for non-compliance or arising from the failure of DIAMOND to provide services in accordance with this Agreement.

- 9. **NOTICE** - All notices, designations, consents, offers, acceptance or any other communication provided for herein required to be in writing will be given by registered, certified mail, return receipt requested, overnight courier addressed to the Parties as shown below:

FACILITY:	Johnson County, Texas Attn: County Attorney's Office 2 North Main St. Cleburne, TX 76033	DIAMOND:	Diamond Drugs, Inc. Attn: Mark J. Zilner 645 Kolter Drive Indiana, PA 15701
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- **GOVERNING LAW AND VENUE** - The laws of the State of Texas shall govern this Agreement as to the interpretation, construction and performance of the Parties. Any dispute that should arise between the Parties as related to performance of this Agreement or in any way relating to this Agreement shall be resolved in the courts of Indiana County, Pennsylvania.

- 11. **AMENDMENTS** - This Agreement may be amended, changed or modified only in writing, signed by authorized representatives of each of the Parties hereto.

**12. REPRESENTATIONS** - BOTH PARTIES will comply with all applicable laws and regulations related to providing services under this Agreement, including ensuring that Both Parties and all employees of BOTH PARTIES comply with any and all licensing requirements, any and all applicable environmental laws and regulations, any and all federal, state, and local regulations and all state non-discrimination requirements.

**13. CONFIDENTIALITY** - The Parties acknowledge that in carrying out their obligations under this Agreement, the Parties may have to exchange or otherwise divulge Confidential Business information, including, but not limited to, FACILITY lists, vendor lists, pricing, proprietary procedures, software programs, and business processes, the formulary, etc. Confidential Information does not include: (i) information which, at the time of disclosure to the receiving party, is in the public domain; (ii) information which, after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement; (iii) information which was in the receiving party's possession at the time of disclosure by the disclosing party, and which was not acquired, directly or indirectly, from the disclosing party; (iv) information which the receiving party can demonstrate resulted from its own research and development, independent of disclosure from the disclosing party; (v) information which the receiving party receives from third parties, provided such information was not obtained by such third parties from the disclosing party on a confidential basis; or (vi) information which is produced in compliance with applicable law or a court order, provided the other party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production.

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.

DIAMOND and FACILITY each agree to maintain and ensure the confidentiality, privacy, and security of patient information to the extent required by law and each Party's policy. Without limiting the generality of the foregoing, The Parties agree 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 DIAMOND obligations under this Agreement.

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.

This Confidentiality section shall survive termination of this Agreement.

**14. SEVERABILITY** - If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

**15. WAIVER OF CONTRACTUAL RIGHT** - The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**16. SCOPE OF AGREEMENT** - By execution of this Agreement, Both Parties agree to the terms and conditions set forth herein. This Agreement supersedes any and all other agreements, except for the Johnson County Contract Terms Addendum - Diamond Drug, Inc. (attached), either oral or in writing, between the contracting Parties with respect to the subject matter covered by this Agreement, and no other agreement,



statement, or promise relating to the subject matter of this Agreement that is not contained in this Agreement shall be valid or binding unless in writing as an amendment and signed by Both Parties.

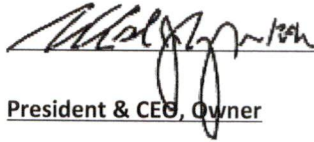
17. **COOPERATION** - Both Parties agree to use their best efforts to cooperate with each other in providing all information pertaining to all legal and regulatory compliance requirements when providing services under this Agreement, and will duly investigate and comply with any complaints brought to the other's attention by the other Party immediately. DIAMOND and FACILITY agree to work with each other in good faith to rectify any problems that may arise between Parties.
18. **STATUS OF PARTIES** - Neither DIAMOND nor FACILITY is for any purpose an agent, partner, or employee of the other. This Agreement does not constitute a joint venture between the Parties. It is agreed that in performing pharmacy services pursuant to this Agreement, DIAMOND and its employees will, at all times, be an independent contractor of FACILITY.
19. **FORCE MAJEURE** - Neither Party shall be in breach of this Agreement if the failure to perform arises out of causes beyond the control and without the fault of that Party. Such causes may include, but are not restricted to strikes or labor disputes, inmate disturbances, acts of God, acts of civil and military authority, acts of public enemy, fires, explosions, earthquakes, supplies, manufacturers, and floods. Such non-performing Party shall immediately notify the other Party in writing of its inability to perform by specifying all reasons constituting the cause or causes beyond its control and without its fault.
20. This Agreement is made in accord with the parties' membership or association with the 791 Purchasing Cooperative.

**IN WITNESS WHEREOF**, intending to be legally bound, the Parties have caused their authorized representative to execute this Agreement on the date set forth above.

**DIAMOND:**

Diamond Drugs, Inc.,  
a Pennsylvania FACILITY, a.k.a. Diamond Pharmacy  
Services

By:

  
\_\_\_\_\_

Title: President & CEO, Owner

Date: 1/28/2022

**FACILITY:**

Johnson County, Texas

By:

  
\_\_\_\_\_

Title:

County Judge

Date:

2-14-22

## Attachment A

### Diamond Pharmacy Services Bid

To the

Johnson County Jail, TX

December 8, 2021

#### Strip packaging will be billed as follows:

AAC plus 10% plus \$2.50 per 14-day supply per prescription

AAC plus 10% plus \$2.50 per catch up supply per prescription (if baggies  
are processed as cycle fill)

#### Medications not dispensed in strip packaging will be billed as follows:

AAC plus a dispensing fee of \$3.95 per prescription and stock piece

#### Regarding the Above Price

- ◆ Actual Acquisition Cost (AAC) is defined as Diamond's direct upfront wholesaler medication cost at the time of dispensing
- ◆ Maintenance medications are dispensed in a routine 14-day supply
- ◆ Acute medications are dispensed in the quantity as written by the prescriber
- ◆ Prescription stock oral solids are dispensed in 30-count blister cards with one (1) unit per bubble. OTC stock may be purchased in the original manufacturer bottle. Non-oral solid stock medications are distributed as the individual purchase quantity
- ◆ Prescriptions will be dispensed as one medication per baggie (or multi-dose baggies if requested) and each individual baggie will contain the inmate name, medication name and strength, lot number, expiration date, and directions.
- ◆ Medications dispensed in strip packaging will not be eligible for return or credit
- ◆ All rates are based on Diamond being Johnson County's exclusive pharmacy provider (other than those medications sourced locally for urgent needs) for medication dispensing and pharmacy program management

#### The Above Bid Rate Includes

- ◆ Patient specific prescription dispensing, pharmacy benefit management, stock distribution services, and standard delivery of medication to a single location at your facility from Diamond
- ◆ A pharmacist serving as the primary contact and account manager
- ◆ A pharmacist for up to quarterly on-site inspections where required by law or NCCHC accreditation, if requested. All other inspections, or those not required by law or accreditation will be billed as a pass-through cost for time and travel
- ◆ Pharmacist participation in P&T meetings via teleconference or webinar unless coordinated with a regularly scheduled inspection visit
- ◆ 24-hour a day, 7-day a week, and 365-day a year (24/7/365) telephone consulting



- ◆ Medication cart(s) provided on loan for the duration of the contract (when all medications are purchased from Diamond) if current carts cannot be purchased, are unsafe, or have fallen into a state of disrepair as determined by your Diamond pharmacy account manager. The number and type of carts, if provided, is based on the facility census and at the discretion of Diamond's pharmacist account manager
- ◆ Fax machine on loan for the duration of the contract unless using an online ordering program. Model and number of fax machine(s) based on facility size and as determined by Diamond. Replacement toner can be purchased from Diamond or toner can be purchased elsewhere at Johnson County's expense
- ◆ No additional software charges for electronic ordering and electronic medication administration records (eMARs) if you choose our Sapphire computerized physician order entry (CPOE) and eMAR solution when all orders are submitted via Sapphire and all medications are purchased from Diamond
- ◆ No additional charges for Sapphire CPOE/eMAR routine software updates, initial training, initial jail management system (JMS) interfacing, and 24/7 IT support. Johnson County will be responsible for charges related to appropriate hardware, IndeTrust USB EPCS token(s) (for electronic prescribing of controlled substances), and internet access
- ◆ Access to Diamond's free web-based electronic reconciliation (medication check-in and credit) program
- ◆ Access to Diamond's free web-based Online Reporting Program (ORP) and utilization dashboard
- ◆ One hand-held tethered scanner provided on loan at no charge to be used for electronic medication reconciliation (check-in) and medication return processing, if requested

#### Additionally

- ◆ If Johnson County is seeking a comprehensive electronic health record (EHR)/electronic medical record (EMR) solution, Diamond offers Sapphire EMR/EHR at a separate negotiable price
- ◆ For any pharmacy interfaces, including those for prescription transmission, with EMRs/EHRs other than Sapphire, or third-party vendors, Diamond will be responsible only for standard interface charges and standard programming required on Diamond's end of the interface provided the requirements are in HL7 version 2.3 or NCPDP XML accepted standards. Any other interfaces or requirements beyond these and other currently established specifications will be mutually agreed upon and billed as a pass-through charge. Interfacing as well as any other costs with automated dispensing machines are outside the scope of this agreement and will be separately negotiated
- ◆ In the event an EHR/EMR, JMS company, switch company, or any other company charges a transmission, submission, or other fee or charge, it will be billed as a pass-through charge
- ◆ Diamond will retain and reserves all rights, title, use, control, interest in and ownership of 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, and vendor contracts and resultant data and information; patient, drug dispensing claims, and drug utilization information; trademarks and service marks
- ◆ Backup pharmacy services will be billed as a pass-through charge at the contracted backup pharmacy's rate—as billed through a pharmacy benefit management (PBM) company—plus the backup pharmacy's delivery charge or on-call charge, or the taxi or courier charge, if applicable
- ◆ If your facility requires fewer days in your routine supply of maintenance medications, or if you transition to a model where greater than 50% of medications are administered from a stock supply, or if you require packaging other than strip packs and blister cards, a new rate will be negotiated
- ◆ If ever needed, durable medical equipment (DME) and medical supplies are billed at Diamond's correctional pricing, and prices will be quoted on a case-by-case basis, when requested and may be require shipping to be billed as a pass-through cost on select items
- ◆ If ever needed, specialty pharmaceutical items - those items that are not available through normal wholesale channels without manufacturer or FDA program authorization or that must be ordered through specialty channels, drop shipped, and/or that require pharmacist or other intervention to procure, such as, but not

limited to plasma products, factor products, specialty vaccines, medications with REMS requirements, limited distribution medications, and chemotherapy agents are invoiced at the price charged to Diamond by our wholesaler or from the specialty pharmacy plus \$250.00

- ◆ If ever need, compounded IV Medications are billed at the Average Wholesale Price (AWP) per ingredient as published by Medi-Span, plus five-dollars (\$5.00) per piece
- ◆ If ever needed, Total Parenteral Nutrition (TPN) Products will be billed at the AAC per ingredient plus a dispensing fee of seventy-five dollars (\$75.00) per bag
- ◆ If ever needed, non-sterile compounded medications will be billed at Diamond's Actual Acquisition Cost per ingredient plus compounding labor plus twenty-five dollars (25.00) per piece
- ◆ Optional Service: Non-formulary Alternative Treatment Recommendations (ATRs) are an enhanced clinical service beyond the scope of this agreement and will be provided with appropriate access to the patients' full medication chart, at a rate of five hundred (\$500.00) per month, if requested
- ◆ If Johnson County implements a distribution model where greater than fifty percent of medications are distributed as stock, and if Diamond is required to provide monthly paper MARs, there will be a charge of one dollar and sixty-five cents (\$1.65) per profiled order
- ◆ Regarding 340B program management, Diamond will work with any covered entity to establish and manage a 340B program and will negotiate an agreement directly with the entity outside the scope of this agreement
- ◆ If the services of a reverse distributor are needed for the disposition of controlled substances or other medications or drug devices, those charges will be billed at Johnson County's expense through direct contract with the reverse distributor
- ◆ If the services of a waste company become necessary for the disposition of hazardous and non-hazardous pharmaceutical waste, those charges will be billed at Johnson County's expense through direct contract with the waste company
- ◆ Shipping costs are included as part of our bid rate. Diamond utilizes a preferred shipping partner, if a common carrier other than our preferred shipping partner is requested, then costs for shipping will be billed as a pass-through charge. If medications are shipped to correctional institutions other than to Johnson County or to multiple locations within the correctional complex, those shipping costs will be a pass-through charge
- ◆ Johnson County will be responsible for damaged or lost Diamond equipment that was provided on loan
- ◆ Diamond will serve as the pharmacy benefit manager of record and will maintain a drug formulary, will manage pharmaceutical expenditures, be in control of the prescription claims, and may benefit exclusively through any subsequent remunerations generated due to these services
- ◆ Payment by credit card or purchase card will be assessed a three percent (3%) convenience fee
- ◆ Invoicing will occur monthly. Payment shall be made by check or EFT (Electronic Funds Transfer in the form of ACH or Wire) from Johnson County to Diamond within thirty days of receipt of invoice by Johnson County. A finance charge of one and one quarter percent (1.25%) per month will be charged on all amounts received thirty days past the end of the billing cycle
- ◆ Hepatitis C medications are invoiced twice monthly and payment terms are net 30-days
- ◆ Johnson County is responsible for all applicable sales, use, lease, ad valorem, and any other tax that may be levied or assessed by reason of this transaction, unless Johnson County provides a tax exemption certificate (blanket or transaction specific) to Diamond in a timely manner
- ◆ Diamond's dispensing and return processing fee will remain fixed and firm for an initial 1-year term and will be increased annually thereafter by three percent (3%) on the anniversary date of the agreement
- ◆ Billing disputes must be requested within thirty days from the time invoiced was received by Johnson County. Any items not in dispute are required to be paid and are not to be withheld
- ◆ In the event that local, state, or federal laws, rules, or regulations change that affect the services offered either operationally or financially, the parties shall work together in good faith to negotiate new rates



- ◆ Services and programs outside the specifications of this document, based on the unique needs of Johnson County, will have any additional costs, management fees, or dispensing fees, negotiated in good faith between Johnson County and Diamond for the provision of those unique services that are not listed herein.

### Credit on Returns

Diamond is offering credit on oral solid medications in full and partial blister cards only at one hundred percent (100%) of the actual acquisition cost of the medication at the time of dispensing less a one dollar and thirty-five cents (\$1.35) processing fee per returned card. Medications dispensed in strip packaging are not eligible for return or credit.

When and where permitted by the State Board of Pharmacy and the U.S. Food and Drug Administration (FDA), Diamond offers credit on oral solid medications in full and partial blister cards returned to us, provided the medications:

- ◆ Remain in their original sealed blister packs
- ◆ Have been stored under proper conditions
- ◆ Are not defaced or have been adulterated
- ◆ Are not within 4 months of expiration
- ◆ Are packed as one full unit per blister
- ◆ Have not been released to the inmate population or labeled/dispensed as keep on person
- ◆ Are not controlled substance medications
- ◆ Are not refrigerated items
- ◆ Are not dispensed in strip packaging
- ◆ Are not specialty, REM's, or limited distribution medications
- ◆ Have not been billed to a private insurance, third party, USM, ICE, 340B, or Medicaid
- ◆ Were originally purchased from Diamond

Diamond is responsible for shipping costs for all returned medications and provides your facility with prepaid preaddressed FedEx Package Returns Program (PRP) or UPS Authorized Return Service (ARS) labels. These labels are simply affixed to the return box, which is handed to express delivery personnel during their normal pickup/delivery to your facility.

Controlled substance medications and opened partial stock medications cannot be credited per federal regulations. Credits are issued on medications based upon the professional judgment of a Diamond pharmacist and not exceeding the current market value of the medication. Liquids, injections, topicals, medications dispensed in vials, medications dispensed in strip packaging, and inhalers are not eligible for credit. Blister cards that are dispensed with half tablets or with more than one single unit per individual bubble of the blister card are not eligible for return. Oral solid medications dispensed as Brand Medically Necessary or Dispense as Written will be credited at the actual acquisition cost of the generic equivalent. Oral solid medications returned in sealed manufacturer bottles will be eligible for credit in accordance with the policy above. Credit will only be issued on medications that Diamond currently stocks and can be redistributed to other clients for administration prior to expiring. Diamond will abide by all current and future Board of Pharmacy and Federal provisions regarding medication reuse and will only credit medications that are permitted per reuse, these regulations will automatically amend what is proposed in this agreement. Returns received at Diamond, during the term of the contract, by the 15th of each month will be credited on the next invoice for that calendar month. Credit memos will be deducted from payment of the oldest outstanding invoices. Medications ineligible for credit will not be returned.

**JOHNSON COUNTY CONTRACT TERMS  
ADDENDUM – DIAMOND DRUGS, INC.**

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**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 sometimes referred to as “**COUNTY**” and sometimes referred to in documents proffered by **DIAMOND DRUGS, INC.** as “**FACILITY**”. **DIAMOND DRUGS, INC.** is sometimes referred to as **DIAMOND** in documents making up the Agreement. The term “**FACILITY**” as used in certain documents put forth by **DIAMOND** refers to **JOHNSON COUNTY, TEXAS**. **JOHNSON COUNTY, DIAMOND**, (or both, as may be applicable) may be collectively identified as the “**Parties**” or each individually a “**Party**”). **This Addendum is part of the Agreement with DIAMOND DRUGS, INC. and is intended to modify (as set forth in this Addendum) all documents, put forth by DIAMOND DRUGS, INC. This Addendum modifies (as set forth in this Addendum) the DIAMOND DRUGS, INC. Pharmacy Services Agreement and any other document proffered to JOHNSON COUNTY by DIAMOND DRUGS, INC.**

**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 31<sup>st</sup> 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 **DIAMOND DRUGS, INC.** might lawfully seek to claim as confidential, then County will forward the request to **DIAMOND DRUGS, INC.** It shall be the obligation of **DIAMOND DRUGS, INC.** 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 **DIAMOND DRUGS, INC.** in making such submission to the Texas Attorney General's Office. **DIAMOND DRUGS, INC. 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 and products 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 **DIAMOND DRUGS, INC.** 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 72 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**

**At any time following the expiration of 180 DAYS from the execution of the contract, COUNTY may terminate the contract at its discretion, without charges for unutilized term, or penalty of any kind, by giving DIAMOND DRUGS, INC. 90 days written notice of such termination.**

**8.1**

**DIAMOND DRUGS, INC.** 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. **DIAMOND DRUGS, INC.** states that it is not ineligible to receive State or Federal funds due to child support arrearages

**8.2**

**DIAMOND DRUGS, INC.** 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. **DIAMOND DRUGS, INC.** 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.

### 8.3

**DIAMOND DRUGS, INC.** verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and, will not discriminate during the term of the contract against a firearm entity or firearm trade association.

### 8.4

**DIAMOND DRUGS, INC.** verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it:

- (1) does not boycott energy companies; and
- (2) will not boycott energy companies during the term of the contract.

In this provision:

- (1) “Boycott energy company” has the meaning assigned by Section 809.001.
- (2) “Company” has the meaning assigned by Section 809.001, except that the term does not include a sole proprietorship.
- (3) “Governmental entity” has the meaning assigned by Section 2251.001.

### 9.1

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.

### 9.2

Notwithstanding any other provision in this Addendum or the associated documents, to the extent **DIAMOND DRUGS, INC.** 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.

### 9.3

**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 DOCUMENT(S) PUT FORTH BY DIAMOND DRUGS, INC. IS HEREBY DELETED.***


APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:



Roger Harmon  
As Johnson County Judge

2-14-22  
Date

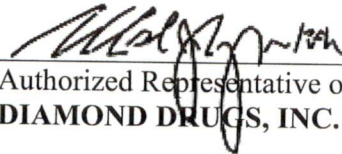
Attest: 

County Clerk, Johnson County



2-14-22  
Date

:

  
Authorized Representative of  
**DIAMOND DRUGS, INC.**

1/28/2022  
Date

Printed Name: Mark J. Zilner

Title: President & CEO, Owner