

CONTRACT FOR HEALTH CARE SERVICES

This Agreement is entered between the South Dakota Department of Human Services, hereinafter referred to as "Department", and Avera McKennan, a non-profit corporation located at 1325 South Cliff Avenue, PO Box 5045, Sioux Falls, SD 57117-5045, hereinafter referred to as "Medical Health Professional". The parties agree as follows:

1. **SCOPE OF SERVICES.** Department hereby contracts with Medical Health Professional to provide healthcare services including the following:
 - A. Assign Dr. Timothy Soundy to provide psychiatric consultation, diagnosis, and treatment plan services at South Dakota Developmental Center.
 - B. Provide face to face, phone, or telemedicine consultations.
 - C. Assist in the maintenance of the State's health program for the mutual protection of individuals, employees, and medical health professionals as follows:
 - (1) Provide documentation of PPD (tuberculosis) status within the prior 12 months of the agreement date, and re-evaluation on an annual basis.
 - (2) Provide documentation of Hepatitis B vaccination, receive the vaccination at the expense of the State, or sign the Hepatitis B vaccine declination.
 - (3) Blood-borne injuries sustained by Medical Health Professional shall be handled according to the OSHA Mandate on Blood-Borne Pathogens. All expenses resulting because of the mandated testing shall be the responsibility of the Medical Health Professional .
2. **COMPENSATION.** Medical Health Professional will be compensated by Department in the following manner:

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- A. Payment for services upon satisfactory completion of services and receipt of a bill.
 - B. Payment to Medical Health Professional - Psychiatrist will be paid at the rate of \$154.00 per hour for services performed and travel time from Sioux Falls to and from Redfield.
 - C. The average number of hours for the Psychiatrist will be (26) hours per month.
 - D. The total amount of this agreement shall not exceed \$48,048.
3. **TERM.** This Agreement will commence on June 1, 2014. The initial term of this Agreement will be 12 months, subject to the necessary appropriation of legislative funds.
4. **TERMINATION.** This Agreement may be terminated in the following manner:
- A. Annual Appropriations and Funding. The parties understand that funds for this Agreement are provided by the Legislature of the State of South Dakota. This Agreement is subject to the annual appropriation of funds necessary for this Agreement by the Legislature. Notwithstanding any provision herein to the contrary, if funds are not appropriated for this Agreement, then Department shall be entitled to immediately terminate this Agreement, without penalty or other liability.
 - B. Termination Due to Lack of Legal Authority. This Agreement may be terminated immediately if Medical Health Professional is determined to lack the legal capacity to fulfill this Agreement due to the lack of certification or licensure.
 - C. Termination without Cause. This Agreement may be terminated without cause by either party by providing sixty (60) days' written notice to the other party.
 - D. Termination for Cause. This Agreement may be terminated with no prior notice for good cause, such as a deficiency in the quality of service provided by Medical Health Professional.

5. **OFFICE SPACE, EQUIPMENT, INVENTORY AND SUPPLIES.** Department agrees to provide Medical Health Professional with office space, facilities, equipment and utilities (except as provided below). Department will provide all capital outlay items which are defined as equipment with a purchase price of \$500.00 or more and a life expectancy of one year or more as provided in the state's procurement regulations. Department will provide necessary maintenance and housekeeping for the office space and facilities provided to Medical Health Professional. Medical Health Professional has inspected the facility and its medical office space and facilities and agrees that those facilities are sufficient for performance of the obligations required under this Agreement. A list of the equipment provided to Medical Health Professional is attached to this Agreement. At the termination of this or any subsequent agreement, Medical Health Professional will return to Department possession and control all equipment described on that inventory in working order, reasonable wear and tear excepted.

6. **MAINTENANCE AND REPLENISHMENT OF EQUIPMENT.** Medical Health Professional will maintain all Department equipment provided under the terms of this Agreement in good working order during the terms of this Agreement. Medical Health Professional will provide immediate written notice of the loss of any equipment, medical supplies, drugs, or controlled substances.

7. **LIABILITY INSURANCE.** Medical Health Professional shall maintain current general professional liability insurance with a limit of not less than one million dollars (\$1,000,000.00) for each occurrence and three million dollars (\$3,000,000.00) in the aggregate. Such insurance shall include South Dakota state employees as an additional certificate holder in the event a claim, lawsuit, or other proceeding is filed against a state

employee as a result of the services provided pursuant to this Agreement. If insurance provided by Medical Health Professional is provided on a claims made basis, then Medical Health Professional shall provide “tail” coverage for a period of five (5) years after the termination of coverage.

8. **BUSINESS AUTOMOBILE LIABILITY INSURANCE.** Medical Health Professional will maintain business automobile liability insurance or its equivalent with a limit of not less than \$500,000.00 for each occurrence. That insurance will include coverage for owned, hired or non-owned vehicles.
9. **WORKER’S COMPENSATION INSURANCE.** In the event that Medical Health Professional utilizes any employees in performing the terms of this contract, then Medical Health Professional shall procure and maintain worker’s compensation and employer’s liability insurance for those employees.
10. **PROOF OF INSURANCE.** Prior to commencement of this Agreement, Medical Health Professional shall furnish the Department with properly executed certificates of insurance which shall clearly evidence all insurance required under the terms of this Agreement. Such certificates will provide that such insurance may not be canceled except upon thirty (30) days’ prior written notice to Department and will include a waiver of the right of subrogation against the State of South Dakota and its agents, employees, and assignees. If requested by Department, Medical Health Professional will provide copies of the actual insurance policies required under the terms of this Agreement.
11. **ASSIGNMENT.** This Agreement may not be assigned without the prior express written consent of the Department.

12. **COMPLIANCE WITH LAW.** Medical Health Professional will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement.
13. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION.** Consultant certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State, if during the term of this Contract, the Consultant or its principals become subject to debarment, suspension, proposed for debarment, or declared ineligible from participating in transactions by the federal government, or by any state or local government department or agency.
14. **LAWSUITS AGAINST DEPARTMENT.** In the event that any lawsuit, action or claim (whether frivolous or otherwise) is filed against either the State of South Dakota, its elected officials, employees or agents based on or containing any allegations concerning the negligence or willful misconduct of Medical Health Professional and Medical Health Professional's employees, agents, subcontractors or assignees, the parties agree that Medical Health Professional will indemnify and hold harmless the State of South Dakota, its officers, agents and employees, from any and all such actions, lawsuits or claims and any resulting judgments. This section does not require Medical Health Professional to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

19. **MEDICAL RECORDS.** Medical Health Professional will maintain complete and adequate medical records for each patient who receives healthcare services from Medical Health Professional. Such medical records will be maintained in accordance with applicable laws and standards. Those records will remain the property of Department.
20. **REGULAR REPORTS TO DEPARTMENT.** If requested by Department, Medical Health Professional will provide to Department monthly and annual reports containing an analysis of healthcare services provided under this contract.
21. **CONTROLLED SUBSTANCES.** Any controlled substances or legend drugs will remain the sole and exclusive responsibility of Medical Health Professional, who will comply will all applicable laws and rules with regard to the maintenance, record keeping and delivery to patients of such controlled substances.
22. **LOSS OF EQUIPMENT AND SUPPLIES.** Department will not be liable for the loss of or damage to any equipment or supplies of Medical Health Professional or its agents, employees or subcontractors unless such loss or damage was caused by the negligence of Department or its employees.
23. **INDEPENDENT CONTRACTOR STATUS.** The parties acknowledge that Medical Health Professional is an independent contractor and not an employee. Nothing in this Agreement is intended to or shall be construed to create an agency relationship, an employer/employee relationship, or a joint venture relationship between the parties to the contract and their agents, employees and assignees.
24. **NOTICE.** Unless otherwise provided in this Agreement, all notices or other communications required to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered personally by hand or certified mail, return

receipt requested, postage prepaid, and addressed to the appropriate party at the following address or to any other person at any other address as may be designated in writing by the parties:

- (A) South Dakota Department of Human Services
South Dakota Developmental Center
Ted Williams
17267 West 3rd Street
Redfield, SD 57469
- (B) Medical Health Professional
David L. Kapaska, DO
Avera McKennan
800 East 21st Street
PO Box 5045
Sioux Falls, SD 57117-5045

- 25. **CHOICE OF LAWS AND VENUE.** This Agreement and the rights and obligations of the parties to this Agreement shall be governed by, and construed according to, the laws of the State of South Dakota. The parties agree that the venue for any action hereunder shall be in Hughes County, South Dakota.
- 26. **MODIFICATION.** This Agreement may be modified only by a written agreement, executed with the same formalities as this instrument.
- 27. **WAIVER OF BREACH.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision in this contract.
- 28. **SEVERABILITY.** In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the agreement which shall remain in full force and effect.
- 29. **PATIENT GRIEVANCES.** If requested to do so by Department, Medical Health Professional agrees to cooperate in responding to all patient complaints and grievances

regarding the provision of medical care provided by Department and Medical Health Professional.

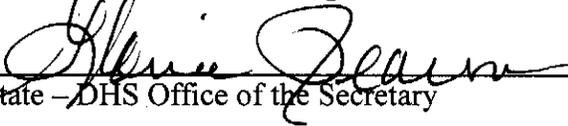
30. **REPORTING INJURIES.** Medical Health Professional agrees to immediately report to the Department any event or incident encountered in the performance of this Agreement which results in injury to the person or property of any third party or which may otherwise subject Medical Health Professional and Department to liability. Medical Health Professional's obligation to report shall not require disclosure of any information subject to a privilege or confidentiality under the laws of the State of South Dakota. Reporting to the Department under this section will not excuse or otherwise satisfy any obligation of Medical Health Professional to report any matter to law enforcement or other entities under the requirements of any applicable law.
31. **ENTIRE AGREEMENT.** This Agreement embodies the entire agreement of the parties and supersedes all previous communications, representations, or agreements, either verbal or written, between the parties.

32. **AUTHORIZED SIGNATURES:** In witness hereto, the parties signify their agreement by affixing their signatures hereto.

 _____
 Consultant Signature 7/24/14
Date

 _____
 State - DHS Division Director 6/5/14
Date

 _____
 State - DHS Office of Budget & Finance 6-2-14
Date

 _____
 State - DHS Office of the Secretary 6-3-14
Date

CONTRACT DESCRIPTION CODE: 812

State Agency Coding:

Company	1000	2003	_____	_____
Account	<u>520410000</u>	<u>520410000</u>	_____	_____
Center Req	<u>1911043</u>	<u>1911043</u>	_____	_____
Center User	<u>J0208</u>	<u>J0208</u>	_____	_____
Dollar Total	<u>\$23,005.38</u>	<u>\$25,042.62</u>	_____	_____
SVC PO Code	<u>2043</u>	<u>2044</u>	_____	_____

DHS Program Contact Person Ted Williams
 Phone (605) 472-4214

DHS Fiscal Contact Person Alan Fickbohm
 Phone (605) 773-5990

Consultant Program Contact Person Mark Vortherms
 Phone (605) 322-7932

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 Phone (605) 322-7932