

NOTICE OF INTENT

TO ADOPT AN ORDINANCE APPROVING A MEMORANDUM OF AGREEMENT PROVIDING FOR A LONG-TERM LEASE WITH HIDALGO MEDICAL SERVICES, INC. TO MANAGE AND PROVIDE SERVICES TO THE SILVER CITY SENIOR CITIZENS CENTER, UNDER THE PROVISIONS OF CHAPTER 48, SECTION 48-24 OF THE TOWN OF SILVER CITY MUNICIPAL CODE

The Council of the Town of Silver City, Grant County, New Mexico hereby gives notice of its intention to adopt a proposed amendment to the Town of Silver City Municipal Code of Ordinances. This notice is given the title as follows:

ORDINANCE NO. 1255

AN ORDINANCE APPROVING A APPROVING A MEMORANDUM OF AGREEMENT PROVIDING FOR A LONG-TERM LEASE WITH HIDALGO MEDICAL SERVICES, INC. TO MANAGE AND PROVIDE SERVICES TO THE SILVER CITY SENIOR CITIZENS CENTER, UNDER THE PROVISIONS OF CHAPTER 48, SECTION 48-24 OF THE TOWN OF SILVER CITY MUNICIPAL CODE

WHEREAS, the Town of Silver City is the owner of the Silver City Senior Citizens Center, located at 205 West Victoria Street, Silver City, New Mexico (the “facility”); and

WHEREAS, the Town desires to enter into a Memorandum of Agreement with Hidalgo Medical Services, Inc. (“HMS”) wherein the Town will lease the facility to HMS for the purpose of managing the facility and providing particular services with regard to the facility and those who use the facility; and

WHEREAS, Chapter 48, Section 48-24 permits the long-term lease of Town-owned property to a private non-governmental entity where such property has been acquired through funding from a federal or state legislative allocation; and

WHEREAS, HMS has warranted that it has the personnel and expertise to accomplish the purposes described in the aforementioned Agreement; and

WHEREAS, the Town finds HMS to be well qualified to accomplish the purposes so described and finds that a long-term lease for providing management of and services to the facility is in the

Town's and the public's best interest; and

WHEREAS, the Town Council of the Town of Silver City desires to authorize the Town Manager to execute the Memorandum of Agreement with HMS and the lease contained therein; and

WHEREAS, the Town Council finds that the adoption of this ordinance is necessary for the health, safety and welfare of the Town and its inhabitants;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, that:

(A) The Town Council authorizes the Town Manager to execute the Memorandum of Agreement and lease between the Town and HMS relating to the managing of and providing services to the Silver City Senior Citizens Center located at 205 West Victoria Street, Silver City, New Mexico, a copy of which is attached hereto as Appendix "A"; and

(B) The Town Council authorizes the Town Manager to modify the long-term lease referenced in the Memorandum of Agreement during the terms thereof if circumstances shall arise which require such modification to further the interests of the parties.

PASSED, ADOPTED AND APPROVED by vote of the Council of the Town of Silver City, Grant County, New Mexico, this _____ day of _____, 2017.

TOWN OF SILVER CITY

(Seal)

Ken Ladner, Mayor

ATTEST:

Ann L. Mackie, Town Clerk

Consideration of the final adoption of such proposed ordinance will not take place until at least two

(2) weeks subsequent to the date of this notice and only at a public meeting called and held in accordance with Section 3-17-3, N.M.S.A. 1978. Consideration of adoption of said ordinance is currently scheduled for and will not take place prior to _____, 2017.

Ann L. Mackie , Town Clerk

Date

**MEMORANDUM OF AGREEMENT
LEASE OF TOWN-OWNED PROPERTY**

This Memorandum of Agreement ("Agreement") creating a lease of real property commonly known as "Senior Citizens Center of Silver City" is made effective as of _____, 2017, by and between the TOWN OF SILVER CITY ("The Town", or "Landlord") having its principal place of business at P.O. Box 1188, Silver City, New Mexico, and HIDALGO MEDICAL SERVICES, INC., a non-profit health care provider duly certified by Medicaid as a Federally Qualified Health Center, having its principal place of business in Lordsburg, New Mexico and also doing business in Silver City, Grant County, New Mexico. ("hereinafter, "HMS" or "Tenant").

RECITALS

WHEREAS, the Town of Silver City is the owner of certain improved real property located at 205 West Victoria Street, Silver City, New Mexico, commonly referred to as the "Senior Citizens Center of Silver City"; and

WHEREAS, the Town is authorized by its charter and the provisions of Section 3-18-1, N.M.S.A., 1978 Comp., to enter into the lease of said municipal real property; and

WHEREAS, this Agreement for lease is subject to compliance with the terms of Chapter 48, Sections 48-20 et seq. of the Town of Silver City Municipal Code; and

WHEREAS, the Town Council finds that the execution of this Memorandum of Agreement is in conformance with the legal requirements set forth herein; and

WHEREAS, the Town Council finds that execution of this Memorandum of Agreement and long-term lease with HMS to provide management and services at the Town's Senior Citizens Center is in the best interests of the Town, and will promote the health, safety and welfare of the

Town and its inhabitants.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto agree as follows:

1. PREMISES: The Town, in consideration of this Memorandum of Agreement and under the terms and conditions described herein, leases to HMS a parcel of improved real property located at 205 West Victoria Street, Silver City, New Mexico, more commonly referred to as the Senior Citizens Center of Silver City.

2. TERM: The Agreement term will begin on _____, 2017 and will continue for a period of five (5) years, unless otherwise terminated under the provisions of this Agreement. This agreement shall automatically renew for an additional period of five (5) years on the same terms as this Agreement or as it may exist as amended, unless either party gives written notice of the termination no later than one hundred and twenty days prior to the end of the term or renewal term.

3. LEASE PAYMENTS. The Town shall accept services rendered to the Town and its inhabitants as credit towards a monthly rent, subject to the terms and conditions mentioned herein.

4. POSSESSION: HMS shall be entitled to possession on the first day of the term of this Agreement and shall yield possession to the Town on the last day of the term of this Agreement,

unless otherwise agreed by both parties in writing.

5. USE OF THE PREMISES: As a condition of the granting of this lease, HMS obligates itself to provide services to the facility, and to its employees and clients, which services are described in Appendix “A”, attached hereto and by this reference made a part hereof. HMS warrants that it has the personnel and expertise to accomplish the services to be rendered.

6. PROPERTY INSURANCE: HMS will secure and maintain liability insurance upon the demised premises in an amount at least equal to the dollar cap on claims prescribed by the New Mexico Tort Claims Act as it exists now, or may exist in the future.

7. INDEMNITY REGARDING USE OF PREMISES: HMS agrees to indemnify, hold harmless, and defend the Town from and against any losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which Town may suffer or incur in conjunction with HMS’ use of the Premises. HMS shall notify the Town of any claim made against it, whether real or anticipated within five (5) days of learning of such claim.

8. OWNERSHIP OF IMPROVEMENTS: Improvement made to or upon the demised premises shall become fixtures thereof, and ownership thereof shall pass to the Town at the termination of the lease and any renewals thereof.

9. DESTRUCTION OR CONDEMNATION OF IMPROVEMENTS PREMISES: If the improvements to and upon the Premises are destroyed in a manner that prevents the conducting of Tenant's use of the Premises in a normal manner and, if the damage is not repairable within a

reasonable time period, this Lease shall terminate and possession of the real property shall revert back to the Town, with no further obligations to Tenant.

10. MECHANICS LIENS: Neither the Tenant, HMS, or anyone claiming through the Tenant shall have the right to file mechanics liens or any other kind of lien on the Premises and the filing of this Lease constitutes notice that such liens are invalid. Further, Tenant agrees to give actual advance notice to any contractors, subcontractors or suppliers of goods, labor, or services that such liens will not be valid.

11. DEFAULTS: Tenant shall be in default of this Lease, if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. If the Tenant fails to fulfill its obligation to the Town within thirty (30) days after written notice of such default is provided by the Town to HMS, the Town may take possession of the Premises without further notice, and without prejudicing the Town's rights to damages. In the alternative, the Town may elect to cure any default and the cost of such action shall be borne by HMS unless the Town, in its full discretion, chooses to make some other agreement with HMS. HMS shall pay all costs, damages, and expenses suffered by the Town by reason of HMS' defaults. Other occurrences which shall be considered to be acts of default are:

1. The total abandonment or surrender of the Premises by HMS.
2. An event of insolvency occurs, which event shall be any of the following:
 - A. If HMS shall make an assignment for the benefit of creditors.
 - B. IF HMS shall file or acquiesce in a petition in any court (whether or not pursuant to any statute of the United States or of any state) in any bankruptcy, reorganization,

composition, extension, arrangement, or proceedings.

C. If HMS shall make an application in any such proceedings for or acquiesce in the appointment of a trustee or receiver for HMS of all or any portion of its property.

D. If any petition shall be filed against HMS to which it does not acquiesce in any court (whether or not pursuant to any statute of the United States or any state) in any bankruptcy, reorganization, composition, extension, arrangement, or insolvency proceedings, and the proceedings shall not be dismissed, discontinued, or vacated within ninety (90) days.

E. The commencement of any proceeding pursuant to the application of any person other than HMS to which HMS does not acquiesce in which a receiver or trustee shall be appointed for HMS or for all or any portion of the property of HMS, and the receivership or trusteeship shall not be set aside within ninety (90) days after such appointment.

12. ASSIGNABILITY/SUBLETTING: Tenant may not assign or sublease any interest in the Premises without the prior written consent of Town. If subletting is permitted, any revenue generated therefrom shall become the property of the Town, unless otherwise is mutually agreed upon by the parties.

13. INDEPENDENT CONTRACTOR: No Partnership. This Lease is by and between the Town and HMS, and is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association as between the Town and HMS.

14. SEVERABILITY: If any portion of this Lease 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 Lease 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: The failure of either party to enforce any provisions of this Lease 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 Lease.

16. CUMULATIVE RIGHTS: The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

17. GOVERNING LAW: This Lease shall be construed in accordance with the laws of the state of New Mexico.

18. NOTICE: Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

Town Manager
Town of Silver City
PO Box 1188
Silver City, New Mexico 88061

TENANT:

Hidalgo Medical Services, Inc.

COUNTY OF GRANT)

SUBSCRIBED AND SWORN TO by _____, as chief executive officer of Hidalgo Medical Services, Inc. on this ____ day of _____, 2017

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Notary Public

My Commission expires:

STATE OF NEW MEXICO)

) ss.

COUNTY OF GRANT)

SUBSCRIBED AND SWORN TO by ALEX C. BROWN, as Town Manager of the Town of Silver City, Grant County, New Mexico on this ____ day of _____, 2017

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Notary Public

My Commission expires: