

ORDINANCE NO. 1255

AN ORDINANCE APPROVING AN OPERATING AND LEASE 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 an Operating and Lease 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 Operating and Lease 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 Operating and Lease Agreement 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 Operating and Lease 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.

(Seal)

TOWN OF SILVER CITY

Ken Ladner, Mayor

Attest:

Ann L. Mackie, Town Clerk

OPERATING AND LEASE AGREEMENT

This Operating and Lease Agreement (the "Agreement") dated this 1st day of July 2017 is between the Town of Silver City, herein referred to as "Local Government" and Hidalgo Medical Services, herein referred to as "Service Provider," (together referred to as the "Parties").

Service Provider has agreed to provide services to the Local Government on the terms and conditions set out in this Agreement, while Local Government is of the opinion that Service Provider has the proper and necessary qualifications, experience and abilities to provide services to Local Government.

Therefore, in consideration of the matters described above, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties agree as follows:

1. Governing Law

The goal of Title III of the Older Americans Act ("OAA") is to reduce hunger and food insecurity and promote socialization and health among vulnerable older Americans to include but not limited to, providing meals, health screenings, education and community support, and transportation services ("Services"). Both state and federal law mandate that the Aging and Long Term Services Department ("ALTSD") provide health and welfare-related services to older adults in New Mexico. ALTSD, through its partner agencies, specifically the Area Agency on Aging ("AAA") network, contract with area service providers to provide Services to older adults as mandated by the OAA.

2. Scope of Work—Premises

The Local Government shall allow the Service Provider to use the Local Government-owned premises at 205 W. Victoria Street, Silver City, NM, known as the "Senior Center" to provide the Local Government with the following Services: Senior Citizen's Center

Check which Party is responsible for the following:

- Local Government Service Provider - **Air Conditioning**
- Local Government Service Provider - **Cable**
- Local Government Service Provider - **Electricity**
- Local Government Service Provider - **Gas**
- Local Government Service Provider - **Heat**
- Local Government Service Provider - **Internet**
- Local Government Service Provider - **Oil**

Local Government Service Provider - **Sewer**

Local Government Service Provider - **Water**

Local Government Service Provider - **Insurance**

Local Government Service Provider – **Maintenance and Repairs**

The Service Provider shall be responsible for a repair event whose cost is less than \$5,000. A repair event exceeding \$5,000 shall be the responsibility of the Local Government.

Local Government Service Provider – **Other:**

a. Compensation

In lieu of compensation to the Service Provider for its provision of Services, the Local Government will provide use of the Local Government-owned facility, as set forth in Section 2 of this Agreement, provided the Service Provider only uses the Local Government-owned facility for the provision of Services.

3. Scope of Work—Use of Property

The Local Government shall allow the Service Provider to use the Local Government-owned premises at 205 W. Victoria Street, Silver City, NM known as the “Senior Center” in exchange for the provisions of Senior Citizens Services identified in Exhibit A attached hereto and incorporated by reference. At all relevant times, the Local Government shall retain ownership of the Property and the Service Provider may use the Property only for the Senior Citizens Services.

If the Property is a vehicle or other equipment identified by a VIN or some type of government inventory number, please include that number in the space provided, above.

Check which Party is responsible for the following: N/A

Local Government Service Provider – **Maintenance and Repairs**

Local Government Service Provider - **Insurance**

Local Government Service Provider - **Fuel**

Local Government Service Provider – **Other**

a. Compensation

In lieu of compensation to the Local Government for its use of the Property, the Service Provider shall provide Senior Citizens Services to older adults deemed eligible by AAA to receive said Services. The minimum value of the Services provided by the Service Provider annually under this Agreement shall be the equivalent of the fair market lease value for a similar vehicle or equipment based on

the current Leased Cars, and Truck Index, Consumer Price Index—Urban, or other appropriate economic indicator as agreed to by the Parties.

b. Reporting

The Service Provider shall report quarterly on April 15, July 15, October 15 and January 15, the services provided in the immediately preceding quarterly on form attached Exhibit B (Reporting Form for Services Provided), attached here to and incorporated by reference. The Service Provider upon request of the Local Government shall make available any reports requested.

c. Base Rent

Rent is based on fair market value of \$3,000 per month for a 7,854 square-foot building, which is \$36,000 per year. The fair market rental value of the Premises is set forth in Exhibit C, attached hereto. The rent shall be provided as an in-kind contribution and shall be due by August 30th of each year during the term of this Lease.

d. Services in Lieu of Cash Rent

By August 30th of each year, Service Provider shall submit to Local Government its budget of in-kind services prepared for Non-Metro Area Agency on Aging that reflects the in-kind services required of Lessee under the seniors' program, reflecting the total value of in-kind services being contributed to the seniors' program. Service Provider shall also submit a statement itemizing those in-kind services and values that it desires to credit against its rental obligations. Such statement shall be in a format and contain such information as Local Government may reasonably require. Service Provider shall exclude from the value of any non-cash item or service the amount of any governmental subsidy or other payment received by the Local Government for the item or service, such as payments or donations made by recipients of the services, private or governmental insurance reimbursements for the services, or state, local or federal subsidies or grant funding for provision of the services.

Service Provider will provide services as per the Area Agency on Aging requirements of the program, and any and all additional services (e.g. socialization activities) will be at the discretion of the Service Provider.

e. Acceptable In-kind Services

Service Provider may meet its in-kind obligations by providing senior services to the community, including but not limited to congregate meals (\$8.8671 per unit), home delivered meals (\$8.8935 per unit), senior transports (\$11.6893 per unit), volunteer hours (\$19.91 per hour, based on independentsector.org (NM 2015)), maintenance and repairs for the leased premises (actual), preapproved improvements to the leased premises (actual), out-of-pocket costs such as insurance or utilities (actual), vehicle maintenance (actual) and any other in-kind services (actual) that are not paid for or reimbursed by any other sources.

4. Term of Agreement

a. For Use of Premises

This Agreement will begin on the 1st day of July 2017 and will remain in full force and effect until the completion of the Services. This Agreement may be extended by mutual written agreement of the Parties on an annual basis. Performance of this Agreement (including any extension) is contingent upon sufficient authority and appropriation granted by the New Mexico State Legislature.

During the term of the Agreement, the Local Government shall retain the following rights:

- To enter and inspect the Premises; and
- Grants discretion and permission to the Service Provider for the use of the Premises for all other activities.

b. For Use of Property

This Agreement will begin on the Effective Date and will remain in full force and effect for two years. This Agreement may be extended by mutual written agreement of the Parties on an annual basis. This Agreement shall not exceed eight years from the Effective Date, including its initial term and any renewal term. Performance of this Agreement (including any extension) is contingent upon sufficient authority and appropriation granted by the New Mexico State Legislature.

5. Termination

In the event either Party seeks termination of this Agreement at the end of any annual renewal period, such terminating Party must provide a 30-day written notice to the other Party.

In addition, **for use of Property**, upon termination of this Agreement, the possession of the Property shall revert back to the Local Government, which shall either use the Property or dispose of it pursuant to the requirements set forth in the New Mexico Procurement Code. Under no circumstances may the Service Provider or its designee continue to use the Property after the termination of this Agreement or benefit from its sale or disposition in any way.

6. Independent Contractor

The Service Provider is acting as an independent contractor in providing the Services under this Agreement, not as an employee. The Parties agree that this Agreement does not create a joint venture or a partnership between them.

7. Modification of Agreement

Any modifications or amendments to this Agreement will be binding if evidenced in writing signed by each Party.

8. Notice

All notices or demands required or permitted by the terms of this Agreement shall be given in writing and delivered to the Parties.

9. Time is of the Essence

No extension or variation of this Agreement will operate as a waiver of this provision. Time is of the essence in this Agreement.

10. Integration

This Agreement contains the entire agreement and understanding by and between the Parties and no representations, promises, agreements or understandings, written or oral, not herein contained shall be of any force or effect.

11. Severability

The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the other provisions hereof.

12. Supersede

This Agreement constitutes the sole and entire agreement of the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between the terms of this Agreement and any of the other documents specified in this Section 12, the terms of this Agreement shall govern.

13. Rights and Obligations

The rights and obligations created under this Operating and Use Agreement shall not be assigned to any successor of HMS without the express written consent of the Town.

14. Indemnification

HMS shall indemnify and hold the Town harmless from any loss, damage or liability, incurred directly or indirectly from the operation and use of the herein described facility, and for any claim made against the Town based upon HMS' alleged negligence in said operation or use thereof.

15. Compliance

HMS warrants that it shall operate and use the herein described facility in compliance with all local, state, and federal environmental laws, rules, and regulations.

16. Litigation

In the event of dispute which leads to litigation, costs, and reasonable attorneys' fees shall be awarded to the prevailing Party.

IN WITNESS WHEREOF the Parties have duly affixed their signatures under hand and seal on this ____ day of _____, 20____.

Town of Silver City
Alex C. Brown
Town Manager / Finance Director

Hidalgo Medical Services

Exhibit A
List of Agreed Upon Services

The Local Government and the Service Provider agree that all units of service provided and reported by the Service Provider under this Agreement are to be credited net of partial or full compensation/reimbursement received for those units of service.

<i>Services that may be provided by the Service Provider in lieu of cash</i>	<i>Description of Service</i>	<i>Agreed upon unit value of service to be used in lieu of cash</i>	<i>Basis for unit value of service</i>
Congregate Meals for Grant County, to include Silver City	Meals served in a congregate setting	\$8.8671 28500 units annually	Service and Reimbursement Methodology
Home Delivered Meals for Grant County, to include Silver City	Meals delivered to homebound clients with no caregiver	\$8.8935 31000 units annually	Service and Reimbursement Methodology
Transportation for Grant County, to include Silver City	Transportation services for clients who no longer drive	\$11.6893 8000 units annually	Service and Reimbursement Methodology

**Exhibit B
Reporting Form for Services Provided**

Quarterly Reporting Period:	Start Date: _____ End Date: _____		
Person responsible for completing report on behalf of the Service Provider:	Name: _____		
	Title: _____		
	Telephone #: _____		
Services:	Unit Value of Service:	Number of Service Units Provided During the Reporting Period:	Value of Services Provided During the Reporting Period:
Total Value of Services Provided During the Reporting Period			
Net of any partial or full compensation/ reimbursement to be received by the Service Provider for those units of service			
Total Services Provided in Lieu of Cash for the Period Net of Compensated/ Reimbursed Services:			

Exhibit C

Fair Market Value

April 6 2017



SILVER CITY

575-538-0404 Office
575-538-0406 Fax
866-538-0404 Toll Free
120 E. 11th Street
Silver City, NM 88061
www.BetterSilverCity.com

To the Town of Silver City:

It is my opinion that the Senior Center in its entirety (kitchen, equipment, dining and recreation area) could potentially rent for \$2,500-\$3,000/ month.

Sincerely,

Tracy Bauer

Better Homes and Gardens Real Estate Silver City