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**AGENDA ITEM
REQUEST/JUSTIFICATION FORM**
(To be completed by requesting Department)
Forward all requests to Sharon Bourke, LC2 Civic Center
**DEADLINE SUBMITTAL IS 3:00 P.M. WEDNESDAY
BEFORE THE TUESDAY MEETING**

Agenda item: Consent Agenda
(i.e. Consent/Recognition-Proclamation/Presentation/Public Hearing/Committee, etc.)
Date to be on agenda: 6-17-14

Exact wording to be used for the agenda: Approval of agreement with UNMC
Physicians for Brenda Keller, MD, to care for long-term care residents of DCHC

Action requested: Approval of agreement

Amount requested: Unknown Object Code: _____

Is item in current year's budget? Yes X No _____

Does this item commit funds in future years? Yes X No _____

If yes, explain: Ongoing contract – we will pay UNMC Physicians for Dr. Keller's care of
LTC residents the rate of \$125 per hour for care of DCHC long-term care
residents and DCHC will bill third parties and capture reimbursement

If an agreement or contract, has the County Attorney reviewed and approved? Yes X No _____

Previous action taken on this item, if any: None

Recommendations and rationale or action: Approval

Will anyone speak on behalf of this item, if so who? Jim Tourville, DCHC Admin.

If this is a rush agenda item, please explain why: _____

Submitted by (Name & Dept.): Jim Tourville, DCHC Administrator Ext. #7314

Date submitted: 6-11-14

List Attachments: Resolution, Three copies of contract
(Attach resolution and all pertinent documentation; i.e. contract, agreement, memorandums, etc.)

Certified resolutions can be obtained at the County Clerk's website:
<http://www.douglascountyclerk.org/county-board-records/search-for-resolutions>

Completed by receiving office		
Received in Administrative Office:	Date <u>6/16/14</u>	Time _____

BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY, NEBRASKA

Resolved

WHEREAS, Douglas County, Nebraska is owner and operator of, Douglas County Health Center, (hereinafter referred to as "DCHC") in Omaha, Nebraska with the need for physician services for its long-term care resident population.

This CONTRACT is made and entered into by and between UNMC Physicians for the services of Brenda K. Keller, M.D. a provider of medical physician services located in Omaha, Nebraska (hereinafter referred to as "MEDICAL PROVIDER") and DOUGLAS COUNTY, NEBRASKA, Omaha, Nebraska (hereinafter referred to as "DOUGLAS COUNTY" or as "DCHC").

WHEREAS, MEDICAL PROVIDER provides medical services and is licensed, qualified and competent to provide medical care to DCHC long-term care residents, and

Now THEREFORE, for mutual consideration herein contained, the parties agree that MEDICAL PROVIDER will provide physician coverage at DCHC in accordance with the following terms and conditions:

NOW THEREFORE, BE IT RESOLVED BY THIS BOARD OF COUNTY COMMISSIONERS THAT this contract between UNMC Physicians for Brenda K. Keller, MD and Douglas County, Nebraska is hereby ratified and approved and that the Chair of this Board is authorized to sign said RESOLUTION and CONTRACTS on behalf of DOUGLAS COUNTY, NEBRASKA.

DATED this 17th day of June, 2014.

Douglas County

**UNMC PHYSICIANS
PROFESSIONAL SERVICES AGREEMENT
PHYSICIAN**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made effective and entered into as of the 1st day of July, 2013 ("Effective Date"), by and between UNMC Physicians, a Nebraska non-profit corporation ("UNMCP"), and Douglas County ("COUNTY") which owns and operates the Douglas County Health Center ("DCHC").

1. **Services and Compensation.** DCHC engages UNMCP and UNMCP accepts such engagement to make available to DCHC one or more physicians who are employees of UNMCP ("Physician(s)") to provide the health care services to DCHC as set forth in Schedule A.

2. **Term.** This Agreement shall begin on July 1, 2013, and terminate at midnight June 30, 2016, subject, however, to earlier termination as provided in this Agreement. This Agreement shall not automatically renew for any successive term.

3. **Termination.** This Agreement shall automatically terminate upon the expiration of the term provided above, in the event of the Physician's death, termination of Physician's employment with UNMCP, legal disqualification, long-term disability, resignation, voluntary retirement, loss of licenses to practice medicine, or upon thirty (30) days prior written notice by either party to this Agreement.

4. **Independent Contractor Status.** UNMCP specifically acknowledges that it and Physician(s) providing the services under this Agreement will be acting as independent contractors.

- a. UNMCP and Physician(s) shall not be employees of DCHC for any purposes including, but not limited to, the payment or withholding of social security withholding tax or any other federal, state, or local taxes. UNMCP shall pay and/or be responsible for all such taxes related to all services provided by Physician(s) under this Agreement.
- b. UNMCP and Physician(s) shall not be entitled to participate in any plans, agreements or benefits maintained by DCHC relating to retirement, health, disability life insurance or any other related benefits.
- c. All services provided by UNMCP through Physician(s) shall be such services that Physician(s) shall deem reasonably necessary to provide adequate medical care to the patients of DCHC scheduled to be seen by Physician(s).
- d. Physician(s) shall provide the services under this Agreement as Physician(s), in their sole and absolute discretion, deem necessary or reasonable.

4. **Insurance.** UNMCP shall provide Physician(s) who maintain general professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each person and Three Million Dollars (\$3,000,000) for each occurrence and participate in the Nebraska Hospital Medical Liability Act. UNMCP shall annually furnish appropriate evidence of the existence of such insurance to DCHC upon request. UNMCP shall also maintain comprehensive General Liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each person and Three Million Dollars (\$3,000,000) for each occurrence and shall provide proof thereof.

5. **UNMCP's Warranties.** UNMCP represents and warrants that Physician(s) are duly licensed to practice medicine at the location(s) set forth in Schedule A and have all customary narcotics and controlled substances licenses.

6. **DCHC's Obligations.** DCHC shall furnish at its expense all supplies, personnel and equipment as reasonably necessary for the proper operation and conduct of the DCHC to support the services of the Physician(s). Such personnel shall be employees of DCHC, and DCHC shall be solely responsible for the compensation and benefits of such personnel, including, but not limited to, applicable professional liability insurance and any workers' compensation insurance.

7. **Indemnification.** Each Party will indemnify, defend and hold harmless the other Party from any and all liability, expense, cost, attorney's fees, claim, judgment, suit and / or cause of action (whether or not meritorious), settlement, or demand for personal injury, death or damage to tangible property which may accrue against the other Party to the extent it is caused by the negligent acts or omissions of the Indemnifying Party, its officers, employees, agents, or subcontractors while performing their duties under this Agreement, provided that the other Party gives the Indemnifying Party prompt, written notice of any such claim, suit, demand or cause of action. The other Party shall cooperate in the defense or settlement negotiation of such claim, suit, demand or cause of action. The provisions of this section shall survive expiration or termination of this Agreement. These Indemnification provisions are not intended to waive a Party's sovereign immunity. A Party's liability is governed by and limited to the extent provided by the Nebraska Political Subdivision Tort Claims Act or other applicable provisions of law.

8. **Business Information, Patient Files, and Medical Records.** All DCHC business information not available to the public, including DCHC's policies, financial data, employee information, patient information, charts, non-medical patient data, patient correspondence, records and files of any patients of UNMCP or Physician(s) providing services under this Agreement shall be the property of DCHC, and UNMCP and Physician(s) shall not remove such records or copies of such records at any time before, during or after termination of this agreement, with the exception of copies of patient medical information as required by law or pursuant to a specific request in writing from a patient treated by the Physician(s). Research data may be taken by UNMCP if written permission is obtained from the DCHC. The provisions of this paragraph will survive the termination of this Agreement.

9. **Access to Records.** To the extent required by Section 1861(v)(1)(I) of The Social Security Act as amended, each party shall permit, and shall ensure that any subcontractor permits, upon proper request, the United States Department of Health and Human Services, the Comptroller General of the United States, and their duly authorized representatives, access to this Agreement and to all books, documents, and records necessary to verify the nature and extent of the costs of services provided by either party under this Agreement, at any time during the term of this Agreement and for an additional period of four (4) years following the last date services are furnished under this Agreement. If either party carries out any of its duties under this Agreement through an agreement between it and an individual or organization related to it, any party to this Agreement shall require that a clause be included in such agreement so that the related organization shall notify UNMCP immediately of the nature and scope of any request for access to books and records described above and shall provide copies of any books, records, or documents to UNMCP prior to the provision of same to any governmental agent to give UNMCP an opportunity to lawfully oppose such production of documents. In addition, DCHC shall indemnify and hold UNMCP harmless from any liability arising out of any refusal by DCHC or its subcontractors to grant access to books and records as required above. Nothing herein shall be deemed to be a waiver of any applicable privilege (such as attorney-client privilege) by UNMCP.

10. **HIPAA.** The parties shall maintain and safeguard the privacy, security, and confidentiality of all individually identifiable health information in accordance with applicable Nebraska law and provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, and in accordance with all applicable federal, state, and local statutes, regulations and policies regarding the confidentiality of patient health information.

11. **USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION.** The Parties acknowledge the requirements of the Health Insurance Portability and Accountability Act (HIPAA) and

that DCHC is a Covered Entity as defined by the Act. When operating under this Agreement, UNMCP acknowledges that COUNTY may disclose to UNMCP protected health information (PHI) as defined under HIPAA and its Regulations (45 CFR Parts 160 and 164), as amended. The permitted and required uses and disclosures of PHI are specifically limited to that necessary for UNMCP to perform under this Agreement. UNMCP agrees to comply with applicable requirements of law relating to PHI and with respect to any task or other activity UNMCP performs on behalf of COUNTY, to the extent COUNTY would be required to comply with such requirements. UNMCP and its employees shall access, use and disclose PHI of COUNTY only as permitted under the COUNTY'S HIPAA Compliance Plan and shall be subject to sanction, including exclusion from COUNTY'S facilities upon violation.

In addition, UNMCP agrees to:

- a. Use and disclose PHI only as permitted or required by this Agreement or as otherwise required by law.
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of PHI other than as provided for in this Agreement.
- c. Report to COUNTY without unreasonable delay but in no event more than three (3) business days after discovery, any unauthorized use or disclosure of PHI not otherwise provided for by this Agreement of which UNMCP becomes aware, including any breach of PHI and any security incident of which it becomes aware, together with any remedial action taken or proposed to be taken by UNMCP with respect to such unauthorized use or disclosure.
- d. Cooperate with COUNTY to mitigate any harmful effects of such unauthorized use or disclosure. In the case of a breach as determined to exist in the sole discretion of COUNTY which was due to a violation of this Agreement by UNMCP, UNMCP shall pay for the reasonable costs of investigation and mitigation and the reasonable costs of notification to the affected individuals.
- e. Require any subcontractors and agents that create, receive, maintain, or transmit PHI on behalf of UNMCP in connection with this Agreement, to agree in writing to the same restrictions and conditions on the use and/or disclosure of PHI that apply to UNMCP. Such agreement shall include a provision requiring the subcontractor and/or agent to notify UNMCP of any instances or unauthorized use or disclosure of PHI provided by UNMCP.
- f. Disclose to UNMCP's subcontractors, agents or other third parties only the minimum necessary PHI to perform or fulfill their obligations under this Agreement.
- g. Comply with patient rights conferred by HIPAA, to include allowing patients' access to their own PHI, making PHI available for amendment and incorporating any amendments to PHI in accordance with HIPAA and accounting for disclosures of PHI as required under HIPAA.
- h. Make its internal practices, books and records relating to the use and disclosure of PHI received from or created or received by it on behalf of COUNTY available to the Secretary of the Centers for Medicare and Medicaid Services (CMS) for purposes of determining COUNTY's compliance with HIPAA. UNMCP shall immediately notify COUNTY upon receipt by UNMCP of any such request, and shall provide COUNTY with copies of any such materials.
- i. At termination of this Agreement, return to COUNTY or destroy all PHI received from, or created or received by UNMCP on behalf of COUNTY which UNMCP or its subcontractor/agent still maintains in any form and retain no copies of such PHI. If UNMCP is unable to return or destroy such PHI, the terms of this section shall apply to such PHI for as long UNMCP or its

subcontractor/agent has possession or access to PHI.

Notwithstanding any other provision of this Agreement, and in addition to any other remedies COUNTY may have, COUNTY may immediately terminate this Agreement without penalty or recourse by UNMCP if it determines, in its sole discretion that UNMCP has violated a material term of this section. The Parties agree to amend this Agreement as necessary to comply with HIPAA and any regulations that may be promulgated there-under. The Parties agree to execute such other agreements as may be required by law. The Parties' obligations and rights under this section shall survive termination of this Agreement.

12. **No Waiver.** This Agreement shall not be modified or amended except by a further written document signed by UNMCP and the DCHC. No provision hereof may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.

13. **Governing Law and Venue.** Parties to this Agreement shall conform to all existing and applicable city ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement. Venue for any non-federal legal proceeding under this Agreement shall be in the State of Nebraska, District Court of Douglas County and for any federal legal proceeding in the United States District Court for the State of Nebraska located in Omaha Nebraska.

14. **Assignment.** This Agreement shall not be assignable by one party without the prior written consent of the other party, except that UNMCP may assign or transfer this Agreement to its successor or to an entity which is in control of, controlled by, or under common control with UNMCP (control shall include the power to elect or approve a majority of the governing board), without DCHC's prior written consent.

15. **Amendments.** This Agreement may be modified only by written amendment, duly executed by authorized officials of the Parties. No alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Every amendment shall specify the date on which its provisions shall be effective.

16. **Funding Out Clause.** Due to possible future reductions in County, State and/or Federal appropriations, COUNTY cannot guarantee the continued availability of funding for this Agreement, notwithstanding the consideration stated in this Agreement. In the event funds to finance this Agreement become unavailable either in full or in part due to such reduction in appropriations, COUNTY may terminate the Agreement or reduce the consideration upon notice in writing to UNMCP. The notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. COUNTY shall be the final authority as to the availability of funds. The effective date of such Agreement termination or reduction in consideration shall be specified in the notice as the date of service of the notice or the actual effective date of the County, State and/or Federal funding reduction, whichever is later. Provided, that reduction shall not apply to payments made for services satisfactorily completed prior to the effective date. In the event of a reduction of consideration, UNMCP may cancel this Agreement as of the effective date of the proposed reduction upon the provision of advance written notice to COUNTY.

17. **Nondiscrimination.** Both Parties agree that in accordance with the Nebraska Fair Employment Practice Act, Neb.Rev.Stat. §48-1122, they will not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment because of the age, race, color, religion, sex, disability, or national origin of the employee or applicant. None of the Parties shall, in the performance

of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances.

18. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect.

19. **New Employee Work Eligibility Status.** UNMCP is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

20. **Public Benefits.** With regard to Neb.Rev.Stat. §§4-108-113, neither Party is an individual or sole proprietorship. Therefore, neither Party is subject to the public benefits attestation and related requirements of Neb.Rev.Stat. §§4-108-113.

21. **Drug Free Policy.** UNMCP assures COUNTY that it has established and maintains a drug free workplace policy.

22. **Notices.** Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and mailed by certified mail to the principal office of the party to be notified.

23. **Entire Agreement.** This Agreement and the attached Schedule A embody the entire agreement between UNMCP and the DCHC. There are no promises or representations other than those expressly set forth in this Agreement and Schedule A. The Agreement and attached Schedule A supersede all prior agreements between the parties for the specific services and Physician(s) identified herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

UNMC PHYSICIANS

DOUGLAS COUNTY

By: _____

By: _____

Name/Title: _____

Name/Title: _____

SCHEDULE A

**UNMC PHYSICIANS
PROFESSIONAL SERVICES AGREEMENT
PHYSICIAN**

SERVICES AND COMPENSATION

1. Services. UNMCP employee Brenda Keller, M.D. shall provide health care services to the Short Term Rehabilitation Unit residents and the Long Term Rehabilitation Unit residents at DCHC. In the event Dr. Keller is unavailable, UNMCP will provide another of its employed physicians or APRNs to provide the services. Dr. Keller and UNMCP shall negotiate hours of service and appointments with DCHC.
2. Compensation. DCHC shall pay UNMCP One Hundred-Twenty Five Dollars (\$ 125.00) per hour for services provided by a physician under this Agreement. For services provided by an APRN, DCHC shall pay UNMCP Sixty-five Dollars (\$65.00) per hour. UNMCP will submit a monthly invoice to DCHC for services provided. DCHC shall make payment to UNMCP no later than thirty (30) days after DCHC's receipt of the invoice.
3. Billing. All services for patient care provided by Physician(s) pursuant to this Agreement shall be billed and collected through the DCHC.
4. Location(s) of Service. The following locations are authorized as locations for Physician(s) to provide medical service on behalf of UNMCP:

Douglas County Health Center
4102 Woolworth Avenue
Omaha, NE 68105

UNMC PHYSICIANS

DCHC

By: _____

By: _____

Name/Title: _____

Name/Title: _____