

Avera St. Mary's Hospital
and
Hughes County Jail
Personnel Services Agreement

This Agreement is made and entered into this 1st day of January 1, 2015, by and between Hughes County Jail, South Dakota and Avera St. Mary's Hospital, a South Dakota nonprofit corporation of Pierre, South Dakota.

RECITALS

WHEREAS, Hughes County Jail, Hughes County, South Dakota purpose is to serve the citizens of Hughes County and patients of Hughes County and the surrounding region by providing correctional services including healthcare services to the Hughes County jail inmate population, in Hughes County, South Dakota area; and

WHEREAS, Avera St. Mary's has personnel to provide for family medicine services;
and

WHEREAS, Hughes County Jail is authorized to contract for the services necessary and appropriate to perform healthcare services; and

WHEREAS, it is the intent of Hughes County Jail to contract with Avera St. Mary's on an arms-length and fair market value basis for personnel services to be provided to Hughes County Jail by Avera St. Mary's;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, Hughes County Jail and Avera St. Mary's agree as follows:

Section 1. Services. Hughes County Jail agrees to purchase, and Avera St. Mary's Hospital agrees to provide, personnel to Hughes County Jail. A description of such personnel is included in Exhibit "A", which is incorporated by this reference. Each nurse practitioner listed on Exhibit "A" shall hereinafter be referred to as a "Listed Provider".

Section 2. Term. The term of this Agreement shall be for an initial term from January 1, 2015 through December 31st, 2015, and subject to termination provisions under this Agreement, may renew for successive one (1) year terms thereafter.

Section 3. Compensation. As full compensation for all services rendered under this Agreement, Avera St. Mary's shall bill Hughes County correctional services monthly the direct cost of salary and benefits at \$85.00 per hour for six hours per week for Listed Provider and staff provided to Hughes County Jail. Hughes County Correctional Jail will only be billed for dates on which services have been provided.

Section 4. Independent Contractor. The parties agree that the personnel furnished by Avera St. Mary's at all times shall act and perform as independent contractors. Hughes County Jail shall neither have nor exercise any control or direction of the methods by which the personnel furnished by Avera St. Mary's shall perform their duties, professional work and functions, except that the personnel furnished by Avera St. Mary's are expected to perform their

professional work and functions at all times in strict accordance with the currently approved and accepted methods in the medical community. Avera St. Mary's shall indemnify Hughes County Jail for any liability that results from the application of this Section, including, without limitation, liability with respect to withholding taxes.

Section 5. Insurance and Indemnity. Both parties shall keep in force and effect during all times material to this Agreement insurance to provide general liability and property and comprehensive professional liability coverage. Such insurance shall be in a sum of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate during any calendar year. Each party shall furnish to the other proof of such coverage upon request and shall provide notice to the other within three days of any change in such coverage.

Avera St. Mary's hereby expressly agrees to indemnify and hold Hughes County Jail and each of its Members harmless from any and all damages to persons or property or from any other claims, liabilities, costs or expenses (including attorney's fees), resulting from the acts or omissions, including default or negligence, of Avera St. Mary's or its employees (whether or not such persons may be treated as leased employees of Hughes County Jail for any purpose), principals, agents, successors or assigns arising from or as a result of the performance of this Agreement.

Hughes County Jail hereby expressly agrees to indemnify and hold Avera St. Mary's harmless from any and all damages to persons or property or from any other claims, liabilities, costs or expenses (including attorney's fees), resulting from the acts or omissions, including default or negligence, of Hughes County Jail or Hughes County Jail employees, principals, agents, successors or assigns (but not persons who are employed by Avera St. Mary's arising from or as a result of the performance of this Agreement).

Section 6. Confidentiality. All information, instruments, documents and details obtained by Avera St. Mary's and relating to Hughes County Jail business (other than information that is already available to the public) shall be held in the strictest confidence and shall not be disclosed to any third party without Hughes County Jail prior written consent, except where such disclosure is required by law and Avera St. Mary's has taken all reasonable measures to present or minimize such disclosure. This provision shall survive the termination of this Agreement.

Section 7. Termination.

(a) This Agreement shall terminate immediately upon the first to occur of the following events:

- (1) Upon the written notification to the other party, provided at least 60 days prior to termination, with or without cause; or
- (2) Upon the expiration of the term of this Agreement; or
- (3) Upon the permanent cessation or abandonment of the business of Hughes County correctional services; or
- (4) Upon the dissolution or liquidation of either party.

(b) Either party may terminate this Agreement:

- (1) Upon a breach by the other of any of its obligations hereunder, unless such breach is cured within 30 days following notice thereof by the other party;
- (2) Upon an amendment, modification or change in any law, rule, regulation or relevant medical ethical standard applicable to either party in any way subsequent to the date of this Agreement or any order or judgment of any court or other agency of government applicable to either party entered subsequent to the date of this Agreement such that any of such laws, rules, regulations, orders or judgments would be violated if the parties were to continue the contractual arrangements set forth in this Agreement; or
- (3) If the performance by either party of any term of this Agreement jeopardizes the ability of Hughes County Jail to participate in any federal, state or other reimbursement or payment programs or any licensure of Avera St. Mary's or Hughes County Jail.

Section 8. Documentation. Avera St. Mary's shall provide documentation of all services rendered hereunder adequate to document hours worked and duties performed. This documentation shall be provided to any of Hughes County Jail members upon request.

Section 9. Notices. All notices, demands, requests, consents, or other communications required by this Agreement may be sent by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by facsimile addressed as follows:

If to Hughes County Corrections: Hughes County Jail
3200 E. Hwy. 34
Pierre, SD 57501

If to Avera St. Mary's: Avera Medical Group Pierre
D/B/A Avera St. Mary's Hospital
100 MAC Lane
Pierre, SD 57501

With copies to: Avera Health
Attn: General Counsel
3900 W. Avera Drive,
Sioux Falls, SD 57108

Section 10. Severability. If any provision of this Agreement or any other agreement, document, or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining provision of said agreement.

Section 11. Benefits and Obligations. The covenants and agreements contained herein shall inure to the benefit of and be binding upon the parties and their respective legal successors. Any persons succeeding to the interest of a party shall succeed to all such party's rights, interest and obligations hereunder, subject to and with the benefit of all terms and conditions of this Agreement, including the restricted conditions contained herein. No party may succeed to the interests of the named parties unless agreed to in writing by all parties.

Section 12. Amendment. This Agreement shall not be amended, altered, or modified except by an instrument in writing duly executed by the parties.

Section 13. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the transactions contemplated herein, and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein.

Section 14. Assignment. This Agreement shall not be voluntarily or involuntarily sold, transferred or assigned by either party without the prior written consent of the other party.

Section 15. Governing Law. This Agreement, the rights and obligations hereunder and any claims or disputes pertaining hereto shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to its conflict-of-law rules.

Section 16. Patient Referrals. No portion of this Agreement shall include or encourage the referral of patients. The parties understand and agree that they are entering into this Agreement (and into any subsequent agreements) as part of an arm's-length transaction and that under no circumstances is the referral of patients to Avera St. Mary's by Hughes County correctional services or to Hughes County Jail by Avera St. Mary's:

- (a) A precondition to the execution or consummation of this Agreement (or any subsequent agreements);
- (b) The consideration, in whole or in part, for the execution or consummation of this Agreement (or any subsequent agreements).

No payment under this Agreement shall be in return for the referral of patients or in return for the purchasing, leasing or ordering of any products for services from each other.

Section 17. Safe Harbor Regulations. The parties acknowledge that this Agreement and the business relationship created satisfies the "safe harbor" provisions for management contracts set forth in 42 C.F.R. § 1001.952(d).

Section 18. Books and Records.

(a) Pursuant to and in compliance with Section 952 of the Omnibus Reconciliation Act of 1980, Avera St. Mary's covenants, promises and agrees to maintain, for a period of at least four years after the rendering of services hereunder, all books, documents and records of Avera St. Mary's as the same pertain to Avera St. Mary's actual cost of providing the services hereunder contemplated herein and, additionally, to make said documents available to the Secretary of the United States Department of Health and Human Services ("HHS"), the

Comptroller General of the Government Accounting Office ("GAO"), or any of their duly authorized representatives upon written request from said officials, their designees or Hughes County correctional services or a Member thereof. Additionally, Avera St. Mary's agrees to maintain and make the above mentioned documents available to duly authorized representatives of HHS and GAO upon written request from said officials, their designees or Hughes County correctional services or a Member thereof. Such documents shall be available to such officials or their designees for a minimum period of four years, or for a greater period if so prescribed by applicable law. This provision of this Agreement shall continue effective between the parties notwithstanding the termination or rescission of all or part of the remainder of this Agreement. The availability of such books, documents and records as aforesaid shall be subject at all times to such criteria and procedures for seeking or obtaining access as may be set forth in the lawful rules and regulations published by HHS in the Code of Federal Regulations, and in other applicable laws.

(b) If the services hereunder provided under this Agreement are in turn in part or in full provided or furnished by organizations related to the Avera St. Mary's by common ownership or common control (as such terms are defined in the regulations), the Secretary of HHS or his or her duly authorized representatives, and the Comptroller General of the United States or his or her duly authorized representatives, all shall have similar access to the books, documents and records of such related organization, and Avera St. Mary's agrees that a clause or clauses providing for such access shall be inserted in any agreements, arrangements or understanding between Avera St. Mary's and such organization related to Avera St. Mary's.

(c) It is further understood and agreed between the parties that all provisions of this Section shall be enforceable by the Comptroller General of the United States or his or her duly authorized representatives, or by the Secretary of HHS or his or duly authorized representatives, and that each party hereto agrees to perform all terms, provisions and requirements of Section 952 of the Omnibus Reconciliation Act of 1980, as hereinafter amended or modified or superseded, together with all lawful regulations and rules promulgated thereunder. This Section shall survive the termination of this Agreement.

Section 19. Authorization. The parties acknowledge and agree that they are authorized to execute this Agreement.

Section 20. Headings: Captions. The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.

Section 21. Privacy Regulations.

21.1 Obligations and Activities of Business Associate

(a) For purposes of this Section 21, Avera St. Mary's shall be referred to as "Business Associate" and Hughes County Jail shall be referred to as "Covered Entity". Business Associate agrees to not use or disclose Protected Health Information (term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity) other than as permitted or required by this Section 21 or as Required By Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Section 21.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Section 21.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Section 21 of which it becomes aware.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Section 21 to Business Associate with respect to such information.

(f) Business Associate agrees to make internal practices, books, and records, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary or designated personnel by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(g) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

(h) Business Associate agrees to provide to Covered Entity, in timely manner, information collected in accordance with paragraph (g) of this Section 21, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.

(i) To the extent that Business Associate creates, receives, maintains, or transmits PHI through one or more electronic media, Business Associate agrees to:

(1) Implement administrative, physical, and technical safeguards that reasonably and appropriately protected the confidentiality, integrity, and availability of the PHI;

(2) Ensure that Business Associate's agents and subcontractors that receive electronic PHI from Business Associate meet the standards set forth above;

(3) Report to Covered Entity immediately any security incidents of which Business Associate becomes aware regarding electronic protected health information.

21.2 Permitted Uses and Disclosures by Business Associate

(a) General Use and Disclosure. Except as otherwise limited in this Section 21, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement.

(b) Specific Use and Disclosure Provisions

(1) Except as otherwise limited in this Section 21, Business Associate may disclose Protected Health Information for the proper management and administration or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(2) Except as otherwise limited in this Section 21, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. 164.504(e)(2)(i)(B).

(3) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(1).

(4) Business Associate may de-identify any and all Protected Health Information created or received by Business Associate under this Section 21; provided, however, that the de-identification conforms to the requirements of the Privacy Rule. Such resulting de-identified information would not be subject to the terms of this Section 21.

(5) Business Associate may create a Limited Data Set and use such Limited Data Set pursuant to a Data Use Section 21 that meets the requirements of the Privacy Rule.

21.3 Miscellaneous Provisions

(a) Termination and Survival.

(1) Except as provided in paragraph (a)(2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make it infeasible. Upon notice from Business Associate that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Section 21 to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

(3) The respective rights and obligations of Business Associate under this section shall survive the termination of this Section 21.

(b) Interpretation. Any ambiguity in this Section 21 shall be resolved to permit Covered Entity to comply with the Privacy Rule.

(c) Construction of Terms. The terms of this Section 21 shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Regulation issued by HHS or the Office of Civil Rights ("OCR") from time to time.

(d) No Third Party Beneficiaries. Nothing in this Section 21 shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

(e) Contradictory Terms. Any provision of the Underlying Services that is directly contradictory to one or more terms of this Section 21 ("Contradictory Term") shall be superceded by the terms of this Section 21 as of the Effective Date of this Section 21 to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity's compliance with the Privacy Rule and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Section 21.

Section 22. General Conditions. In addition to the specific duties of each Listed Physician, the following general conditions govern Avera McKennan and each Listed Physician's performance of services as required under this Agreement:

(a) Treatment Policies. Avera McKennan agrees to cause each Listed Providers to abide by St. Mary's treatment policies and specifically agrees that Listed Providers shall provide all necessary diagnosis and care strictly without regard to ability to pay and to provide all necessary services without regard to race, color, sex, age, handicapping condition or other factors unrelated to the patient's need for services and St. Mary's and each Listed Provider's ability to provide such service subject to physician's license and state laws and regulations.

(b) Compliance. All professional services provided hereunder shall be provided and documented as required for Medicare, Medicaid or other payer reimbursement, and qualified provider must participate in any applicable compliance training and adhere to administrative policies of St. Mary's, including those relating to St. Mary's compliance program.

(c) Quality of Care. Avera McKennan shall cause the Listed Provider's to provide services consistent with prevailing medical standards of care in accordance with safe and accepted patient care practices and in accordance with each provider's best skill and judgment.

(d) Relationships. Avera McKennan, through the Listed Providers, shall make its best efforts to establish and maintain positive working relationships with patients, family members, personal representatives, employees, Medical Staff members at St. Mary's and with outside referring practitioners and agencies. Listed Providers shall cooperate with other physicians and mid-level practitioners employed by or under contract with Hughes County correctional services.

(e) Hospital and Medical Staff Policies. Listed Provider's shall comply with applicable bylaws, rules and regulations of the Medical Staff and with the policies and standards of performance of St. Mary's in delivering services under this Agreement.

(f) Current Knowledge and Ethics. Avera McKennan shall require the Listed

Provider's to maintain and demonstrate a current working knowledge of all aspects of medicine relevant to their responsibilities under this Agreement. This shall include requiring attendance at programs of continuing medical education, compliance with licensure requirements and maintenance of board certification, if applicable. All professional services provided hereunder shall be in accordance with medical ethics in the Listed Providers's specialty and in a professional manner.

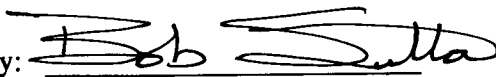
(g) Regulatory Certifications and Information. Avera McKennan agrees not to knowingly utilize any provider or other personnel in the performance of services hereunder who are themselves excluded from participation under Medicare, Medicaid or any other state health care program.

(h) Program Defaults. Avera McKennan represents that neither Avera McKennan nor any Listed Provider is in default under, and upon execution and performance of this Agreement, will not be in default under, the National Health Service Corp Scholarship program, the Physician's Shortage Area Scholarship program, the Health Education Assistance Loan program, or any other program that would permit off-set of delinquent or defaulted obligations against payments due Avera McKennan or any Listed Provider (and reassigned to St. Mary's hereunder) under the Medicare program or any other reimbursement program relevant to this Agreement or that would be a sanctionable violation under the Medicare program.

(i) Joint Ownership of Records. Any and all patient records and charts produced as a result of any party's performance under this Agreement shall be and remain the joint property of Avera McKennan and Hughes County correctional services. Each party shall be entitled to obtain and retain copies of all records produced under the terms of this Agreement. This provision shall also apply to records of patients that treated with Julie Cox, CNP other than at Hughes County correctional services but who receive treatment at Hughes County correctional services by Julie Cox, CNP pursuant to the terms of this Agreement.

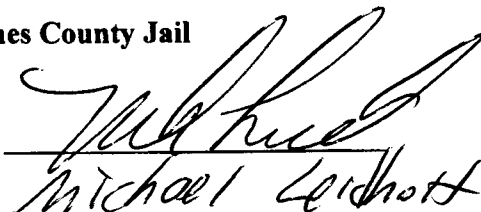
IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed on their behalf, the date and year first above written.

Avera St. Mary's Hospital

By: 

Its: President and CEO

Hughes County Jail

By: 
Michael L. Liddell

Its: Sheriff

EXHIBIT “A”

I. PERSONNEL SERVICES

A. Certified Nurse Practitioner:

1. Full-time practice of Julie Cox, CNP, at St. Mary’s Healthcare Center.