

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2010, by and between Sedgwick County, Kansas, hereinafter referred to as "County," and Deborah Bergen, MD, hereinafter referred to as "Contractor."

WITNESSETH:

WHEREAS, County has established a community mental health center, which is commonly known as COMCARE, pursuant to the provisions of K.S.A. 19-4001 *et seq.*, and amendments thereto; and

WHEREAS, it is the intention of County to provide professional services to consumers of COMCARE; and

WHEREAS, County desires a physician to provide adolescent/child psychiatry services for COMCARE clients; and,

WHEREAS, County has been provided with the appropriate evidence of such qualifications of Contractor.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises hereinafter contained, the parties hereto agree as follows:

SECTION 1: SERVICES. Contractor agrees to provide professional adolescent/child psychiatric services at COMCARE Children's Services located at 7701 E. Kellogg Ste. 300, Wichita, KS.

SECTION 2: COMPENSATION. County agrees to pay Contractor for the above described professional services, professional fees at the rate of \$145.00 per hour for approximately 16 hours per week for a total not to exceed contract maximum of \$120,640.00. Contractor agrees to bill County on a monthly basis, and County agrees that such billing will be payable on a monthly basis.

SECTION 3: MALPRACTICE LIABILITY. It is further agreed that Contractor shall secure malpractice insurance pursuant to the provision of the Health Care Provider Insurance Availability Act (K.S.A. 40-3401 *et seq.*). Contractor shall provide County a copy of their current malpractice insurance certification upon initiation of the contract.

SECTION 4: TERM. This agreement shall be for a term August 1, 2010 and expiring upon July 30, 2011, unless terminated earlier in accordance with the terms of this agreement.

SECTION 5: ASSIGNMENT. Neither this agreement nor any rights or obligations under this agreement shall be assigned or transferred by either party without the prior written consent of the other.

SECTION 6: APPLICABLE LAW. This agreement shall be governed by the laws of the State of Kansas.

SECTION 7: INTEREST OF CONTRACTOR. Contractor and County agree that Contractor renders professional services under this agreement as an independent contractor and not as an officer, agent or employee of County.

SECTION 8: RECORD KEEPING. Contractor further covenants that appropriate and complete records of the services performed hereunder shall be maintained by Contractor and available to the Director of COMCARE, or the Director's designee, upon request, for the purpose of audit and review of Contractor's services provided hereunder.

SECTION 9: CONFLICT OF INTEREST. Contractor covenants that he shall not acquire any interest, direct or indirect, in any other professional capacity that would conflict in any manner or degree with the performance of services required to be performed under this agreement, and that he will not become an employee of County during the term of this agreement. Contractor further covenants to protect any privilege as required by state law or licensing regulations, except upon written authorization of the consumer to whom direct services are provided, or upon court order.

SECTION 10: CONFIDENTIALITY. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of eligible participant records.

SECTION 11: EQUAL EMPLOYMENT OPPORTUNITY.

A. Contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, or ancestry.

B. In all solicitations or advertisements for employees, Contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If Contractor fails to comply with the manner in which Contractor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by County.

D. If Contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by County.

E. Contractor shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions shall be binding upon such subcontractor or vendor.

F. Provisions A through E above shall not apply to the present agreement in the event that Contractor (1) employees fewer than four employees during the term of this agreement; or (2) whose contracts with County cumulatively total Five Thousand Dollars (\$5,000.00) or less during the fiscal year of County.

SECTION 12: TERMINATION

A. Termination for Cause. If Contractor shall fail to fulfill in a timely and proper manner its obligations under this contract, or if Contractor shall violate any of the terms, covenants, conditions, or stipulations of this contract, County shall thereupon have the right to terminate this contract by promptly giving written notice to Contractor of such termination and specifying the reasons for the termination and the effective date thereof. A breach shall include, but not be limited to, failure to comply with any or all items contained in this contract and any appendices, exhibits or amendments thereto, if any.

In the event of termination, such information prepared by Contractor to carry out this contract, including data, studies, surveys, records, drawings, maps and reports shall, at the option of County, become the property of the County and be immediately turned over to the County. Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Contractor shall not be relieved of liability to County by virtue of any breach of this contract by Contractor and County may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due County from Contractor are determined.

B. Termination of Contract on Other Grounds. Except for paragraph A above, this contract may be terminated in whole or in part by either party, upon thirty (30) days written notice to the other party, stating the reasons(s) for the termination and the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto. When this contract is terminated, Contractor shall not incur new obligations for the terminated portion after the effective date of the termination and shall cancel as many outstanding obligations as possible. County shall allow full credit to Contractor for the grant share of the non-cancelable obligations properly incurred by Contractor prior to termination. Whether this contract is canceled by County or Contractor as provided herein, Contractor shall be paid for work satisfactorily completed, so long as the provisions applicable to Billing and Payment have been met by Contractor.

SECTION 13: INDEMNIFICATION. Both parties hereby expressly agree and covenant that they will hold and save harmless and indemnify the other party, its officers, agents, servants, and employees from liability of any nature or kind connected with the work to be performed hereunder arising out of any act or omission of such party or of any employee or agent of that party to the degree such indemnification is allowed by law.

SECTION 14 AMENDMENTS TO AGREEMENT. To provide necessary flexibility for the most effective execution of this contract, whenever County and Contractor mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract.

SECTION 15: ENTIRE AGREEMENT. This agreement contains the entire agreement between the parties hereto; any agreement not contained herein shall not be binding on either party, nor of any force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above-written.

ATTEST:

SEDGWICK COUNTY

Kelly B. Arnold, County Clerk

Karl Peterjohn, Chairman
Sedgwick County Board of Commissioners

APPROVED AS TO FORM ONLY:

CONTRACTOR:

Jennifer Magaña, Deputy County Counselor

DBergen Aug 9/10
Deborah Bergen, MD