

2020-5

SERVICES AGREEMENT
(Banner Health Contract #: 0340-03-95523)

THIS SERVICES AGREEMENT is entered into effective as of the last date of signature ("Commencement Date") by and between **KEITH COUNTY** ("Customer") and **BANNER HEALTH**, an Arizona nonprofit corporation, d/b/a **OGALLALA COMMUNITY HOSPITAL** ("Provider").

Recitals:

- A. Banner Health operates Ogallala Community Hospital, an acute care hospital facility located in Ogallala, Nebraska that employs registered nurses that are duly qualified and licensed in the State of Nebraska to provide the services described in **Exhibit A** (the "Services").
- B. The Keith County Jail is responsible for housing inmates and prisoners for Customer and Customer desires to engage Provider to provide the Services at the Keith County Jail, and Provider desires to be so engaged, as more particularly described in this Agreement.

THEREFORE, in consideration of the mutual covenants contained herein it is understood and agreed to by the parties as follows:

Agreement:

1. **Services and Fees.** Provider will provide the Services described in, and at the fees or other compensation set forth in **Exhibit A**, attached hereto, and incorporated herein by this reference. Provider shall supply all qualified personnel, and necessary equipment, materials and supplies needed to provide the Services, and shall devote its best ability and professional efforts in carrying out the Services.
2. **Term and Termination.** The term of this Agreement shall begin on the Commencement Date and shall continue for a period of three (3) years. The term may be extended annually upon mutual written agreement of the parties. This Agreement may be terminated by either party with or without cause with at least 30 days prior written notice to the other party. Either party may terminate this Agreement in the event of a material breach of the terms of this Agreement by providing written notice to the party in breach.
3. **Physician Ownership.** Customer expressly represents and warrants that **one of the following provisions applies:** (i) no physician, no physician organization and no member of any physician's immediately family owns or holds an ownership or financial interest in Customer, including any affiliated or related entity or person, that is not the subject of an exception or "safe harbor" under applicable law, such as the exception for publicly-traded securities under 42 C.F.R. §411.356(a); **or** (ii) that Customer is a publicly traded company and is the subject of an exception under 42 C.F.R. § 411.356(a)(1) and (a)(2); **or** (iii) one or more physicians or a member of a physician's immediate family own or have a financial relationship with Customer, and this Agreement is the subject of an arms-length negotiation and is for fair market value compensation, is not tied to or based on an expectation by Provider that Customer or Customer's physician owners shall refer patients to Provider, and that the volume or value of referrals by any physician is not a part of the consideration for this Agreement.
4. **Insurance.** During the term of this Agreement, each party agrees to secure and maintain in force, liability insurance with coverages of reasonably appropriate types and amounts. Each party agrees to produce upon request of the other party certificates of insurance evidencing such coverage.
5. **Mutual Indemnification.** Each party shall indemnify and save harmless the other party for, from and against all actions, liabilities, losses, damages, claims and demands whatsoever, including costs, expenses and attorneys' fees resulting, or claimed to have resulted, solely from the intentional or negligent acts or omissions of the indemnifying party or its employees, subcontractor or agents engaged in the work under this Agreement at the time of the events or occurrences upon which such actions, claims or demands are based.

6. **Compliance with Regulations and Policies.** Both parties shall comply with all standards applicable to the services described in this Agreement, as such standards may be amended from time to time, including, but not limited to, (a) the standards of The Joint Commission and other applicable accreditation agencies, (b) the standards, rulings and regulation of any federal, state and local governmental agency, corporate entity or individual having authority to administer, regulate, or otherwise set standards for healthcare facilities, and (c) third party payor standards and requirements.

7. **Compliance with Federal Employment Law.** Both parties agree to comply with federal, state, and local laws, regulations, ordinances, and orders governing immigration, equal employment opportunity, and affirmative action that are applicable to Vendor, including 42 U.S.C. Sec. 2000(e) et seq., the Civil Rights Act of 1964, the Civil Rights Act of 1991, Sections 503 and 504 of the Rehabilitation Act of 1973, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, the Immigration Reform Act of 1986, the Americans with Disabilities Act, Executive Order 11246 of September 24, 1965, Executive Order 13496 of January 30, 2009, and all amendments and applicable regulations pertaining to any of them, including 41 C.F.R. §§ 60.1.4(a)(7), 60-250.5, 60-300.5 and 60-741.5 (imposing anti-discrimination and affirmative action requirements) and 29 C.F.R. Part 471, appendix A to subpart A.

8. **Compliance with HIPAA.** Under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Provider is required to comply with the Standards for Privacy and Security of Individually Identifiable Information contained in 45 CFR Parts 160--164 (the "HIPAA Privacy and Security Standards"). If this Agreement must be amended to secure compliance with the HIPAA Privacy and Security Standards, as currently in effect or as may be amended or modified from time to time, the parties shall meet in good faith to agree upon such amendments. If the parties cannot agree upon such amendments, then either party may terminate this Agreement upon 30 days' prior written notice to the other party.

9. **Confidentiality.** Both parties shall keep confidential all knowledge, information and documents entrusted to their care by the other party. Neither party, their respective employees nor agents shall disclose any knowledge, information or documents entrusted to it by the other party to any person, firm or corporation other than the person, firm or corporation designated by disclosing party.

10. **No Federal Exclusion.** Provider hereby represents and warrants that Provider and all personnel providing services under this Agreement are not and at no time have been excluded from participation in any federally funded health care program, including Medicare and Medicaid.

11. **Independent Contractor Status.** Both parties shall at all times be deemed to be independent contractors. Neither party's employees shall not be regarded as employees or agents of the other party for the payment of any employer taxes such as FICA, unemployment, and worker's compensation; neither party shall not be responsible for those taxes or any fringe benefits for the other party's employees. Further, neither party's employees shall be regarded as employees of the other party with respect to any intentional or negligent activity in which they may be involved, or for any other purpose.

12. **Compliance with Applicable Third-Party Standards.** Provider shall comply with all third-party standards applicable to the Services, as such standards may be amended from time to time, including, but not limited to: (i) the standards of the Joint Commission and other accreditation agencies, (ii) the standards, rulings and regulations of any federal, state and local governmental agency, corporate entity or individual having authority to administer, regulate, or otherwise set standards for healthcare facilities, and (iii) third party payor standards and requirements. If any of the Services provided under this Agreement are services which Customer may, directly or indirectly, obtain compensation or reimbursement from any governmental health program (e.g. Medicare, Medicaid, Arizona Health Care Cost Containment System (AHCCCS), or TRICARE), Provider shall comply with all government requirements, and shall assist Customer in completing documents as reasonably necessary to evidence the performance of the Services and to enable Customer to obtain any reimbursement which Customer is entitled to receive for the Services.

13. **Change in Law; Regulatory Termination.** If any law, regulation or rule is enacted or modified or there is any substantial change in the judicial or administrative interpretation of an existing law, regulation or rule, in either case in a manner that materially and adversely affects a party's ability to perform under this Agreement or to realize the intended benefits of this Agreement, or if any governmental entity determines that this Agreement is illegal or jeopardizes Provider's tax exempt status, then either party may, in lieu of giving a notice of termination, give written notice of such event to the other party and the parties shall thereafter use their best efforts to modify this Agreement in a manner that mitigates the effect of the change or removes the illegality or jeopardy to tax exempt status. If no modification can be agreed upon by the parties within a reasonable period following the notice (not to exceed 30 days), then either party, in its discretion, may terminate this Agreement immediately by written notice to the other party.

14. **Non-Exclusive Agreement.** This Agreement is not exclusive. Accordingly, both parties shall have the right to enter into one or more agreements relating to the same or similar matters as are covered by this Agreement, and execution by either party of such Agreements shall not constitute a breach of this Agreement.

15. **Access to Records for Government Inspection.** Provider agrees until the expiration of four (4) years (or such longer period of time as may be required by applicable law) after the furnishing of services to be provided under this Agreement, to make available upon written request, to the Secretary of Health and Human Services or upon request, to the Comptroller General of the United States of America or any of their duly authorized representatives, the contracts, books, documents and records that are necessary to certify the nature and extent of reimbursable costs under the Medicare laws.

16. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party. If consent to an assignment is obtained, this Agreement is binding on the successors and assigns of the parties to this Agreement. Notwithstanding any provision of this Agreement to the contrary, both parties shall have the right to assign or otherwise transfer its interest under this Agreement to any "related entity." For the purposes of this section, a related entity shall be deemed to include a parent, subsidiary, any entity that acquires all or substantially all of that party's assets or operations relating to this Agreement, and the surviving entity of any merger or consolidation involving that party. Any assignment to a related entity shall not require the consent or approval of the other party in order to be effective.

17. **Corporate Authority.** The individual(s) executing this Agreement on behalf of, or as a representative for a corporation or other person, firm, partnership or entity, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the corporation, person, firm, partnership or other entity and that this Agreement is binding upon the entity in accordance with its terms.

18. **Waivers.** No waiver of the enforcement or breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of the enforcement of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts. This Agreement may only be amended by a written document signed by all parties hereto.

19. **Severability.** If any provision of this Agreement, or any application thereof to any person, shall be invalid or unenforceable to any extent, the remainder of this Agreement, and the application thereof to other persons or circumstances, shall not be impaired, and shall be enforced to the fullest extent permitted by law.

20. **Force Majeure.** Neither party shall be liable for any delay in performance or any failure in performance hereunder caused in whole or in part by reason of force majeure, which shall be deemed to include the occurrence of any event beyond the control of the parties, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot and other acts of civil disobedience, action of a public enemy, laws, regulations or acts of any national, state or local government (or any agency, subdivision or instrumentality thereof), judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God.

21. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Signatures submitted via facsimile or electronic signature shall have the same force and effect as originals.

22. **Governing Law.** This Agreement shall be governed by the internal substantive law of the State in which Services are performed, without regard for conflicts of laws.

23. **Integration.** This Agreement contains the entire agreement between the parties. All prior negotiations between the parties are merged in this and there are no understandings or agreements other than those incorporated herein. This Agreement may not be modified except by written instrument signed by both parties.

24. **Conflict of Interest.** Customer represents and warrants that, to the best of its knowledge, it is not aware of any information bearing on the existence of any actual or potential conflict of interest where any Provider employee or any physician who is a member of the medical staff of any Provider facility has a financial interest in Customer or in the Services that (i) may compromise or bias the judgment or objectivity; (ii) appear to compromise that person's objectivity in the performance of his/her responsibilities in respect to this Agreement; or (iii) creates an excess benefit for such person. Customer agrees that if it identifies any such actual or potential conflict of interest then Customer will immediately make a full disclosure in writing to Provider. Upon discovery of any such actual or potential conflict of interest after the execution of this Agreement, Provider may terminate this Agreement immediately if it deems such termination necessary and appropriate. If Customer was aware of an actual or potential conflict of interest prior to the execution of this Agreement, or discovers an actual or potential conflict after execution and does not disclose it or misrepresents relevant information to Provider, Provider may terminate the contract for breach and may also pursue other remedies for breach of contract.

25. **No Inducement of Referrals.** This Agreement is not intended to induce either party to refer patients to the other party.

26. **Notice.** Any notice required to be given under this Agreement shall be in writing, and shall be deemed delivered when personally delivered or three days after the same is sent by certified mail, postage prepaid as follows:

Intended to Provider: Banner Health d/b/a Ogallala Community Hospital
2601 N. Spruce Street
Ogallala, NE 69153
Attn: Chief Executive Officer

With a copy to: Banner Health
2901 N. Central Avenue, Suite 160
Phoenix, Arizona 85012
Attn: Chief Legal Officer/General Counsel

Intended to Customer: Keith County
511 N. Spruce Street
Ogallala, NE 69153
Attn: Keith County Commissioner

[The remainder of this page was intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the last date written below.

PROVIDER:

By: Timothy M. Gullingsrud
Name: Timothy M. Gullingsrud
Title: CEO
Signature Date: January 31, 2020 | 10:14 AM MST

CUSTOMER:


By: 
Name: Anthony Gratefosca
Title: Com Keith County Bd. of Comm.
Signature Date: 1-29-2020

EXHIBIT A
Services and Fees
(Banner Health Contract Number: 0340-03-95523)

Services. Provider shall provide, through its employed registered nurses, nursing services to the inmates of the Keith County Jail, to include triaging inmates' level of need for medical assistance and providing nursing care within the registered nurse's scope of practice if needed, reviewing inmates' medications and contacting other jails where inmates are housed to ensure that other jails' medical staff do not prescribe medications that are not allowed in the Keith County Jail, refilling inmates' medications before medication cards are empty and send orders to pharmacy for filling, be available once a week for at least one hour to meet with inmates onsite, auditing medical records, documenting the visit with the inmates, and consulting with a Provider physician if needed. A Keith County Jail officer will escort Provider's registered nurse at all times while interacting with inmates.

The Services shall be provided onsite at the Keith County Jail on an as-needed basis on a designated day or days and times as agreed to in advance by Keith County Jail key personnel and Provider. On days or at times that a Provider's registered nurse is not scheduled to be onsite at the jail, Provider's registered nurse will be available by telephone seven days a week, 24 hours a day to answer questions from Keith County Jail personnel regarding an inmate's medical condition or if designated medical protocols are unable to be carried out. In the event of an emergency or Keith County Jail personnel's inability to reach Provider's registered nurse, the protocol is for Keith County Jail personnel to initiate the transfer of the inmate to Ogallala Community Hospital or other medical clinic of Keith County Jail personnel's choice. Transportation of the inmate will be determined by the Keith County Jail personnel and the costs of such transportation will be the sole responsibility of Keith County.

Fees. Customer shall pay Provider \$1,200.00 per month for Services provided hereunder. Provider shall invoice Customer monthly and Customer shall pay all validated invoices within 30 days of receipt.