

**FY 2022 (2021-2022) Annual Bid Contract Between
Webb County and Diamond Drugs, Inc. dba Diamond Pharmacy
For Pharmaceutical Supplies**

2021 SEP -9 PM 1:21

WEBB COUNTY, TEXAS

WHEREAS, at a Webb County Commissioner's Court Meeting held on July, 26th, 2021, the Court approved and awarded Bid No. 2022-12, entitled Pharmaceutical Supplies, to Diamond Drugs, Inc. dba Diamond Pharmacy (hereinafter "Vendor").

NOW, THEREFORE, IT IS AGREED between the **County of Webb**, acting by and through its Commissioners Court, hereinafter referred to as "County" and **Diamond Drugs, Inc. dba Diamond Pharmacy**, hereinafter referred to as "Vendor" that Vendor shall provide "County" with the products/goods as more particularly described and attached herein as Exhibit A Bid Pricing.

Effective Date and Termination Date of Annual Contract:

The effective date of this Agreement is October 1, 2021, and shall terminate September 30, 2022.

1. Vendor

It is hereby covenanted and agreed by the parties that the products/goods to be provided to County by the Vendor, as awarded under Bid No. 2022-12, entitled Diamond Drugs, Inc. dba Diamond Pharmacy and listed in the attached "Exhibit A Bid Pricing", incorporated herein by reference for all intents and purposes, shall be new and unused, unless otherwise specified.

2. Price Matching

If the Purchasing Agent is able to identify a significantly lower price of any product/good provided by Vendor and determines that it's in the best interest of Webb County; the Purchasing Agent shall first notify the Vendor either in writing or via email and provide Vendor with the opportunity to match the lower price of any product/good that County is seeking. In the event that the Vendor is not able to match the lower price Vendor shall notify the Purchasing Agent either in writing or via email no later than next working day. Once notification is received within the required timeline specified in this section the Purchasing Agent is authorized to go outside of the annual contract to obtain the product/good in accordance with the Webb County Purchasing manual rules and regulations.

3. Compensation

The County of Webb shall pay the Vendor for products/goods provided which have been authorized by an Official Purchase Order signed by the Webb County Purchasing Agent. The County Auditor will only authorize payment for the goods/services described on the Official Purchase Order unless otherwise permitted by law or the Webb County Purchasing Policy. Further, compensation for unauthorized change orders will not be paid by Webb County. Only change orders authorized by the Purchasing Agent through an Official Purchase Order will be paid once all goods are received and/or services completed. No other County Official, employee, officer or Elected Official is authorized to approve purchases and/or changes to purchase orders unless approved by the Webb County Purchasing Agent.

4. Billing Address

All invoices must be submitted to the Webb County Business Office in electronic format and/or delivered to the following address:

Webb County
1110 Washington Street, Ste. 203
Laredo, Texas 78040
Attn: Business Office

Or email to: apinvoices@webbcountytexas.gov

ALL invoices must reference a Purchase Order Number.

5. Vendor

In supplying products/goods required of the Vendor whether one or more, under this Agreement, it is mutually understood, and agreed, that Vendor is, at all times, acting and performing as an independent contractor. Webb County's sole interest is to assure that the Vendor shall supply products/goods in a competent, efficient, and satisfactory manner. The Vendor hereby agrees to supply the products/goods in a timely efficient manner and which comply with County's expectation, or reasonable commercial expectation, of the product supplied.

6. Ethical Standards

The Bidder warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Bidder for the purpose of securing business. For breach or violation of this warranty, the County shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

7. No Conflicts

Vendor represents and warrants that contractor has no actual or potential conflicts of interest in providing services to County under this contract and the contractor's provision of services under this contract would not reasonably create an appearance of impropriety.

8. Additional Services and Expenses

Any and all additional services, parts, costs, fees or expenses, not included in this agreement, shall require both a written request by the Vendor to the County and prior formal approval by a quorum of the Webb County Commissioner's Court at either a regular, special and/or emergency called meeting of the "County". The County shall not be responsible for and/or shall not compensate the Vendor for these costs without both a written request and prior approval by the County.

9. Terms and Conditions

The Vendor certifies, and affirms, that he/she/company is not legally, or professionally, disqualified from the performance of the duties under this Agreement. Vendor shall advise the

County, in writing, of any change in status of the Vendor which may materially affect the ability of Vendor to legally, or professionally, carry out the duties herein.

10. Access to Criminal History Record and Termination of Contract or Disqualification of Bid for Cause

Please be advised that Webb County is entitled to obtain the criminal history information of any person and/or business owner who contracts with the County in accordance with Section 411.1295 of the Texas Government Code. In the event that any criminal history of a person or business owner who contracts with Webb County is discovered, then in that event, Webb County at its sole discretion reserves the exclusive right and shall be entitled to immediate termination of the contract and/or immediate disqualification of bid submittal in the event that such criminal history is discovered, by providing notice to the person and/or business owner of such termination and/or disqualification of bid submittal in accordance with the Notice provisions set forth in Section 13 herein-below.

11. Termination for Convenience

Termination for convenience, also known as a no-fault termination, allows the County to terminate any contract, in whole or in part, at any time in its sole discretion, if it is determined that the termination is in the best interest of the County. As notified by the Purchasing Agent through a 15 day written notice/via email of such intent to terminate contract for convenience.

Purchasing provides the Vendor a written notice specifying the extent of termination and the effective date, providing as much notice as possible. The Vendor is generally paid for allowable costs incurred up to the effective date of termination. The County is not liable for payment to the Vendor related to the terminated portion of the work or any work performed or costs incurred after the effective date of the termination.

12. Termination for Default

A contract may be terminated for default when (a) the County concludes that the Vendor fails to perform, make progress, or in any way breaches the contract and continues to do so after receiving written notice/email notice of such default/issues and fails to cure such default/issues within 10 working days (b) Termination for default should be used as the last resort. The County should do everything practicable to assist the Vendor in curing a default. Factors to consider before making a decision to terminate for default include: (1) The provisions of the contract and applicable regulations, (2) The specific contractual failure(s) and the explanation provided for the failures, (3) The urgency of the need for the contracted supplies or services, (4) Actions the County may have taken that aggravated the problems, (4) The availability of the supplies or services from other sources and the time required to obtain them, and (5) Availability of funds or resources to re-purchase if the costs cannot be recovered from the defaulting Vendor.

13. Notices

All notices called for, or contemplated, hereunder shall be in writing, and shall be deemed to have been duly given, when personally delivered and/or via e-mail, or seventy-two (72) hours after mailed to each party by certified mail, return receipt requested, postage prepaid.

Any notices required to be sent hereunder shall be sent as follows:

TO: Vendor

Mark J. Zilner
Chief Executive Officer, Owner
Diamond Drugs, Inc.
dba Diamond Pharmacy
645 Kolter Drive
Indiana, PA, 15701
(800) 882-6337
E-Mail: mzilner@diamondpharmacy.com

TO: Webb County

Jose Angel Lopez III, CTPM
Webb County Purchasing Agent
1110 Washington Street, Ste. 101
Laredo, Texas 78040
(956) 534-4125
E-Mail: joel@webbcountytexas.gov

14. Severability

Each paragraph, and provision, hereof is severable from the entire Agreement, and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

15. Prohibitions against Assignment.

No assignment or transfer of this Agreement can be made without written consent of both parties, hereto.

16. Indemnity and Hold Harmless

The Vendor shall indemnify and hold Webb County harmless from all claims for personal injury, death and/or property damage resulting directly or indirectly from Vendor's performance. Vendor shall procure and maintain, with respect to the subject matter of this Contract, appropriate insurance coverage including, as a minimum, public liability and property damage with adequate limits to cover Bidder's liability as may arise directly or indirectly from work performed and goods or services sold and under the terms of this Contract. Certification of such coverage must be provided to the County upon request.

17. Venue/Laws of Texas

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, and the exclusive venue for any and all legal disputes between the parties shall be enforced and shall lie in the Webb County, Texas.

18. Entire Agreement

This Agreement incorporates all the agreements, covenants, and understandings between the parties herein concerning the subject matter hereof; and all such covenants, agreements, and understandings have been merged into this written Agreement. No other prior agreement, or understandings, verbal or otherwise, of the parties, or their agents, shall be valid, or enforceable, unless signed by both parties, and attached hereto, and/or embodied herein.

19. Amendment

This Agreement may be modified, only in writing, executed by both parties, and approved by a majority of a quorum of the Webb County Commissioner's Court.

20. Confidentiality

Any confidential information provided to, or developed by, Vendor in the performance of the Agreement shall be kept confidential, unless otherwise provided by law, and shall not be made available to any individual, or organization without the prior approval of COUNTY. All work products, whether in draft or final form is the sole property of Webb County and may not be used by VENDOR for any purpose without written consent of COUNTY.

21. Headings

The headings used herein are for convenience only, and shall not constitute a part hereof, or affect the construction or interpretation hereof.

22. Counterparts

This Agreement may be executed in any number or, and by, the different parties hereto on separate counterparts, each of which when so executed, shall be deemed to be an original, and such counterparts shall, together, constitute but one and the same document.

23. Terminology and Definitions

All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural, and the plural shall include the singular.

24. Authority to Sign

As an inducement to the County to execute this Agreement, the undersigned officer of Vendor represents that he/she is expressly authorized to execute this Agreement and to bind Vendor to the terms and conditions hereof and acknowledges that the County is relying on this representation, authorization and execution.

25. Effective Date

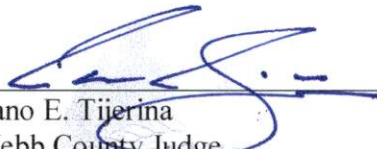
This Agreement becomes effective on October 1, 2021.

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WEBB COUNTY

VENDOR

Diamond Drugs, Inc. dba Diamond Pharmacy

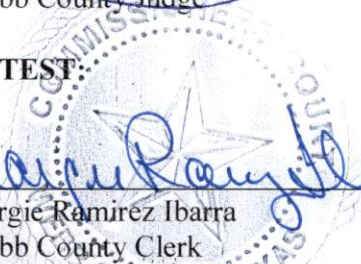



Tano E. Tijerina
Webb County Judge




Mark J. Zilner
Chief Executive Officer, Owner

ATTEST:

Margie Ramirez Ibarra
Webb County Clerk

APPROVED AS TO FORM:



Nathan Bratton

Webb County Civil Legal Division Director*

*By law, this office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

Exhibit A
To contract with
Diamond Drugs, Inc. dba Diamond Pharmacy
for
Pharmaceutical Supplies

Bid 2022-12 Annual Contract for Pharmaceutical Supplies	Diamond Pharmacy Services c/o LouAnn Bowser 645 Kolter Drive Indiana, PA 15701 (800) 882-6337 proposal@diamondpharmacy.com	
<i>Contract Term:</i> October 1, 2021 to September 30, 2022		
ITEM DESCRIPTION	AWP - % Discount	Additional Charges
Item # 1		
Prescribed (Brand Name)	-24.50%	N/A
Prescribed (Generic)	-95.00%	N/A
Item # 2		
Non- Prescribed (Brand Name)	-24.50%	N/A
Non-Prescribed (Generic)	-95.00%	N/A
Item # 3		
Non-Captive Medical Supplies	50%	Catalog Price
Item # 4		
Unit Dose System		No Additional Charge
Item # 5		
Vivitrol DS 380 MG	Flat Rate of \$1,118.08 per kit	N/A
Susp Kit	N/A	N/A
Fluval Quadrivalaet (NDC): 1951581852		
Price per vial	pack of 10	\$179.00
Price per pack	box of 10 syringes	\$192.00
Shipping		\$0.00
Returns		
At What Percentage of the amount billed will be credited to Webb County for unused/unopened medication?	100%	
AAC= Actual Acquisition Cost		
AWP= Average Wholesale Price		