# MEDICAL DIRECTOR AGREEMENT

This **MEDICAL DIRECTOR AGREEMENT** (the "**Agreement**") is entered into as of August 1, 2021 (the "**Effective Date**"), by and between **City of Mankato through its Department of Public Safety,** located at 710 South Front Street, Mankato, MN 56001 ("**Organization**"), and **Mayo Clinic Health System – Southwest Minnesota Region dba Mayo Clinic Health System – Mankato** a located at 1025 Marsh Street, Mankato, MN 56001 ("**Mayo**").

**WHEREAS**, Organization is an emergency medical response organization engaged in the business of providing medical response services and is in need of medical director services;

**WHEREAS**, Mayo has experience providing medical director services; and

**WHEREAS**, Organization desires to engage Mayo to provide the services according to the terms set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1.** **Term.** The term of this Agreement shall commence on the Effective Date and, unless sooner terminated as provided herein, shall remain in full force and effect for a period of one (1) year (the "**Initial Term**"). This Agreement shall be automatically extended and renewed for successive one (1) year terms (each, a "**Renewal Term**" and the Renewal Terms collectively with the Initial Term shall be referred to herein as the "**Term**"), unless either party provides written notice of non-renewal to the other party no less than thirty (30) days prior to the expiration of the Initial Term or the then current Renewal Term, as the case may be.

**Section 2.** **Services.**

(a) Mayo shall direct the Medical Director, as defined below, to perform the services described in **Exhibit A** (the "**Services**").

(b) Mayo agrees to make available to Organization the Services of **Paul Williams, D.O.** to serve as Organization's medical director ("**Medical Director**").

(c) In event that: (i) Medical Director's employment with Mayo terminates for any reason; (ii) Mayo notifies Organization in writing that the physician serving as Medical Director will no longer provide the Services due to disability or other reason; (iii) Organization notifies Mayo in writing of its reasonable concerns regarding the quality of the Services being provided by Medical Director; or (iv) Medical Director fails to satisfy the qualifications under Section 3, then, following such event or notice, Mayo and Organization will discuss their mutual concerns and attempt to reach written agreement on a different physician employee to serve as Medical Director. If the parties are unable to, in good faith, agree on a new Medical Director within thirty (30) days of the date of such event or notice, then either party may immediately terminate this Agreement with written notice to the other party.

**Section 3.** **Qualifications.** Mayo agrees that Medical Director shall satisfy all of the following minimum qualifications: (i) have a current and unrestricted license to practice medicine in each state where Services will be provided; and (ii) if necessary in order to provide the Services, be a member in good standing with appropriate privileges of the medical staff of the Organization, provided that Organization assist, at its cost, Mayo and Medical Director through any credentialing or medical staff privileging process as may be reasonably required by Organization..

**Section 4.** **Schedule.** The parties anticipate that the Medical Director shall devote approximately one (1) hour per month to the performance of such Services. The specific schedule of such Services shall be mutually agreed upon by Organization and Mayo from time to time. If the parties are unable to agree on the schedule of Services, either party may terminate this Agreement in the manner provided in Section 10.

**Section 5.** **Compensation.** Subject to termination under Section 10, the Services provided hereunder are being provided as a community benefit; and, therefore, the parties agree that no money will be exchanged between the parties during the term of this Agreement. The parties mutually agree to review this Agreement on an annual basis and modify the Agreement as needed to reflect the parties' obligations under law.

**Section 6.** **Taxes.** If applicable, Organization shall pay or reimburse Mayo for all applicable sales, use, transfer, privilege, excise, and all other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the performance by Mayo under this Agreement; excluding, however, income taxes on profits which may be levied against Mayo.

**Section 7.** **Independent Contractor.**

(a) It is mutually understood and agreed that the relationship between the parties is that of independent contractors. Neither party is the agent, employee, or servant of the other. Except as specifically set forth herein, neither party shall have nor exercise any control or direction over the methods by which the other party performs work or obligations under this Agreement. Further, nothing in this Agreement is intended to create any partnership, joint venture, lease, or equity relationship, expressly or by implication, between the parties. Organization shall have no authority to bind Mayo.

(b) Each party acknowledges that the other party will not withhold from any amounts paid pursuant to this Agreement any sums for the payment of federal or state income taxes, FICA, FUTA or SUTA. Each party shall have sole responsibility for the reporting and payment of these taxes for its own respective employees. In the event that the Internal Revenue Service or any other party should question the independent contractor status of the parties, each party hereto agrees that the other shall have the right to participate, at its own cost, in any discussions or negotiations regarding such status.

**Section 8.** **Insurance.**

(a) Each party agrees to maintain appropriate professional liability and general liability insurance to cover any liability of the party and/or its employees arising out of any acts its employees may perform in connection with this Agreement, which shall have limits of no less than $1,000,000 per claim and $3,000,000 annual aggregate.

(b) If such insurance is written on a claims-made basis, each party will obtain, at its expense, an extended reporting endorsement upon termination of this Agreement which provides continuing coverage under such insurance for claims based upon acts or omissions and alleged acts or omissions during the term of this Agreement.

(c) Upon request, each party will provide the other party with proof of the insurance required under this Section.

**Section 9.** **Indemnification.** Each party and its subsidiaries and affiliates, together with their respective officers, directors and employees (the "**Indemnifying Party**") shall indemnify, hold harmless, and defend the other party and its subsidiaries and affiliates, together with their respective officers, directors and employees (collectively, the "**Indemnified Party**"), from and against any and all losses, expenses, actions, claims, demands, suits, judgments, awards, damages, liabilities, costs, and reasonable attorneys' fees, the Indemnified Party may incur or suffer by reason of or arising out of any third party claim directly attributable to Indemnifying Party's failure to perform in accordance with this Agreement or the negligence or intentional acts or omissions of Indemnifying Party. In order to seek indemnification pursuant to this Section, the Indemnified Party shall notify the Indemnifying Party of a third party claim made against it within ten (10) days of knowledge of such claim. The Indemnifying Party shall have the right to undertake, conduct and control, through counsel of its own choosing, the defense and settlement of any such claim. The Indemnified Party shall have the right to be represented by counsel of its own choosing, but at its own expense. The Indemnified Party shall not pay or settle any such claim without the Indemnifying Party's prior written consent. The Indemnified Party shall provide reasonable assistance to the Indemnifying Party in the defense of such claim or action at the Indemnifying Party's request and reasonable expense.

**Section 10.** **Termination.** Except as otherwise specifically provided herein, this Agreement may only be terminated upon the occurrence of any of the following events:

(a) by mutual written agreement of the parties;

(b) by either party, without cause, and upon not less than sixty (60) days' prior written notice of such termination;

(c) by the non-defaulting party, upon a material breach of any other provision of this Agreement by the other party, if such breach is not cured within thirty (30) calendar days after written notice is provided to the alleged defaulting party;

(d) by either party, upon the filing by the other party of a voluntary petition or an answer, or the filing against it of an involuntary petition that is not dismissed within sixty (60) days seeking reorganization, arrangement, readjustment of its debts or any other relief under the United States Bankruptcy Code, as amended, or under any other insolvency act or law, state or federal, now or hereafter existing, or any other action of a party to this Agreement indicating its consent to, approval of, or acquiescence in any such petition or proceeding; or

(e) by either party, upon the dissolution of the other party to this Agreement.

**Section 11.** **Effect of Termination.** Upon termination, (i) neither party shall have any further obligations under this Agreement except for those accruing prior to the date of termination, and (ii) each party shall cease use of and return to the other all confidential information of the other party. If this Agreement is terminated for any reason during the Initial Term, the parties will not enter into another agreement for the same or similar Services during the remainder of such Initial Term.

**Section 12.** **Fair Market Value; Inducement of Referrals.** The parties acknowledge and agree that the fees and compensation to be paid by Organization to Mayo pursuant to this Agreement do and will represent the fair market value for the Services provided by Mayo, have been and will be negotiated in an arms-length transaction, and have not been and will not be determined in a manner that takes into account the volume or value of any referrals or other business otherwise generated between the parties. The parties to this Agreement specifically intend to comply with all applicable laws, rules and regulations, including the federal anti-kickback statute (42 U.S.C. 1320a-7b), the related safe harbor regulations and the Limitation on Certain Physician Referrals, also referred to as the "Stark Law" (42 U.S.C. 1395 (n)). Accordingly, no part of any consideration paid hereunder is a prohibited payment for the recommending or arranging for the referral of business or the ordering of items or services; nor are the payments intended to induce illegal referrals of business.

**Section 13.** **<u>Confidentiality of Medical Information</u>.** To the extent applicable, the parties shall abide by all applicable federal, state, and local laws, rules, regulations, and standards with respect to the confidentiality and the handling, storage, transmission and release of patient information. The parties agree to comply with the Health Insurance Portability and Accountability Act of 1996 as amended from time to time, the Health Information Technology for Economic and Clinical Health Act, and the implementing regulations to ensure the integrity and confidentiality of Protected Health Information.

**Section 14.** **<u>Confidentiality</u>.** Both parties acknowledge and agree that in the course of performance under this Agreement, they may have access to certain confidential information belonging to the other party, including but not limited to, trade secrets, policies, procedures, operating manuals, utilization and quality assurance programs, software, marketing techniques, contractual arrangements, price lists, pricing policies, and other business and financial information (collectively, "**Confidential Information**"). As used herein, a party disclosing Confidential Information shall be defined as the "**Disclosing Party**" and the party to whom the Disclosing Party discloses such information shall be defined as the "**Recipient**." Both parties shall maintain the confidentiality of all such Confidential Information and shall not divulge such information to any third parties, except as otherwise provided for under this Agreement and under law. Both parties shall take reasonable precautions against disclosure of any of the Confidential Information to unauthorized persons by any of its officers, directors, employees, or agents. Upon termination of this Agreement for any reason, both parties shall cease all use of any of the Confidential Information and shall return to the other party any copies thereof.

**(a)** This Agreement imposes no obligation upon Recipient with respect to Confidential Information that Recipient can establish:

(i) was at the time of receipt, publicly available;

(ii) after its receipt, becomes available to the public through no fault of the Recipient or its representatives;

(iii) was in the possession of the Recipient before its receipt from the Disclosing Party or its representatives;

(iv) is independently developed by Recipient without reference to Confidential Information received hereunder, as established by competent proof; or

(v) is disclosed pursuant to a requirement or request of a government agency, subpoena, or other legal proceeding, provided that in the event that the Recipient becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigation demand, other demand or request by government agency or the application of statutes, rules and regulations under the federal securities laws or similar process) to disclose any of the Confidential Information. The Recipient shall provide the Disclosing Party with prompt written notice of such requirement prior to such disclosure to allow the Disclosing Party to seek a protective order or other remedy. In the event that a protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions hereof, the Recipient agrees to furnish only the portion of the Confidential Information which the Recipient reasonably believes is legally required to be furnished.

**Section 15. Exclusion from Governmental Programs.** Each party represents that neither it nor any of its directors, trustees, officers, employees, or providers have been convicted of a criminal offense related to healthcare, barred, suspended, declared ineligible, or excluded from participating with Medicare, Medicaid or any other governmental plan or program that provides health benefits, whether directly through insurance or otherwise, which is funded directly, in whole or in part, by the United States Government or any State health care program. This shall be an ongoing representation during the Term of this Agreement, and each party shall notify the other of any change in the status of the representations set forth in this Section. A party may terminate this Agreement immediately upon the occurrence or notification of any of the above.

**Section 16. Not Exclusive.** This Agreement is not intended to be exclusive as to either party. Mayo may provide similar or identical Services to any other entity, and Organization may receive similar or identical Services from any other entity.

**Section 17. Access to Records.** To the extent required by law, until the expiration of four (4) years after the furnishing of Services pursuant to this Agreement, each party agrees to make available upon receipt of written request from the Secretary of Health and Human Services or the U.S. Comptroller General or any of their duly authorized representatives, this Agreement and the books, documents and records that are necessary to certify the nature and extent of costs of Services provided by Mayo hereunder.

**Section 18. Force Majeure.** Neither party shall be liable or be deemed in default of this Agreement for any delay or failure to perform caused by acts of God, war, disasters, strikes, pandemic, or any similar cause beyond the control of either party.

**Section 19. Governing Law and Venue.** This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Minnesota except that no Minnesota conflicts of law or choice of law provision shall apply to this Agreement. Each party agrees unconditionally that it is personally subject to the jurisdiction of such courts. This Agreement is made and performed in the State of Minnesota.

**Section 20. Supervening Law.** This Agreement is at all times subject to applicable state, local and federal laws and regulations. It is the intent of both parties to comply in all aspects with such laws. If (a) any legislation, regulations, rules or procedures are promulgated, adopted or implemented by any federal, state or local governmental or legislative body, or by any private agency which (i) materially and adversely affect the parties' abilities to meet their respective obligations, (ii) invalidate the terms of this Agreement, or (iii) which materially limit or restrict the amount of reimbursement or payment for Services either party is able to receive; or (b) either party receives notice of an actual or threatened decision, finding or action by any governmental or private agency, court or other third party which, if implemented, would have the effect of (i) revoking or jeopardizing either parties' health related licenses, (ii) revoking or jeopardizing Mayo's tax exempt status or the exempt status of its property or tax exempt financings and obligations, (iii) prohibiting or restricting the provision of Services or financial arrangements in this Agreement, or (iv) subjecting either party to civil or criminal prosecution or other adverse proceedings on the basis of this

Agreement; then either party may terminate this Agreement upon ninety (90) days written notice to the other party. The notice must specify the relevant legislation, regulation or action that serves as the basis for the notice of termination. During the ninety (90) day notice period, the parties shall negotiate in good faith to accomplish an amendment(s) to the Agreement that resolves the issue specified. If agreement on the amendment(s) is not reached within such ninety (90) day period as evidenced by a writing signed by both parties, or if resolution is not possible in order to comply with any law or regulation, the termination shall take effect.

**Section 21. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of each party, its successors and assigns.

**Section 22. Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party; provided, that Mayo may assign this Agreement without the prior written consent of Organization to any Mayo affiliate or other entity that controls, is controlled by or is under common control with Mayo. Any purported assignment in violation of this Section is void. Such written consent, if given, shall not in any manner relieve the assignor from liability for the performance of this Agreement by its assignee.

**Section 23. Entire Agreement; Amendment.** This Agreement and the attached Exhibits constitute the entire agreement between the parties and supersede all prior oral and written agreements relating to the same subject matter. This Agreement and the Exhibits may be amended only in a writing signed by each of the parties.

**Section 24. Severability.** In the event any part or parts of this Agreement are held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect as if the invalid or unenforceable provision had never been a part of this Agreement.

**Section 25. Waiver.** The failure of either party to complain of any default by the other party or to enforce any of such party's rights, no matter how long such failure may continue, will not constitute a waiver of the party's rights under this Agreement. No waiver of any provision of this Agreement shall constitute a waiver of any other provision or a waiver of the same provision at any later time.

**Section 26. Headings.** Section headings are provided solely for the convenience of the parties and shall not affect the interpretation of this Agreement.

**Section 27. Notice.** Any notice, demand, request, or other communication shall be in writing and shall be deemed to have been duly given on the date of service, if personally served or sent by facsimile; on the business day after notice is delivered to a courier or mailed by express mail, if sent by courier delivery service or express mail for next day delivery; and on the third day after mailing, if mailed to the party to whom notice is to be given by first class mail, certified with return receipt requested, and addressed as follows:

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| If to Organization: | Mankato Department of Public Safety<br>City of Mankato<br>Attn: City Manager<br>10 Civic Center Plaza<br>Mankato, MN 56001 |

| | |
|---|---|
| With a copy to: | _________________<br>Attn: ___________<br>_________________<br>_________________<br>_________________ |
| If to Mayo: | Mayo Clinic Health System – Mankato<br>Attn: Operations Administrator<br>1025 Marsh Street<br>Mankato, MN 56001 |
| With a copy to: | Mayo Clinic<br>Attn: General Counsel<br>200 First Street S.W.<br>Rochester, Minnesota 55905 |

**Section 28.** **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement, except as otherwise expressly provided herein.

**Section 29.** **Use of Name.** Neither party will use the names or trademarks of the other party or any of the other party's affiliated entities in any news release, advertising, publicity, endorsement, promotion, or commercial communication without the prior written approval of the other party for the particular use contemplated. All requests for approval for the use of Mayo's name pursuant to this Section must be submitted to the Mayo Clinic Public Affairs Business Relations Group, at the following E-mail address: BusinessRelations@mayo.edu at least ten (10) business days prior to the date on which a response is needed.

**Section 30.** **Counterparts.** This Agreement may be executed in any number of counterparts which, when taken together, will constitute one original, and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original.

**Section 31.** **Survival.** The rights and obligations of the parties relating to confidentiality, indemnification, insurance, use of name, availability of medical records, and access to records, along with any other rights and obligations that expressly or by operation of law extend beyond this Agreement, shall survive the termination, expiration, non-renewal, or rescission of this Agreement

(SIGNATURE PAGE TO FOLLOW)

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below.

**MAYO CLINIC HEALTH SYSTEM – SOUTHWEST MINNESOTA REGION DBA MAYO CLINIC HEALTH SYSTEM – MANKATO**

By: ___________________________

Name: ___________________________

Its: ___________________________

Date: ___________________________

**CITY OF MANKATO THROUGH ITS DEPARTMENT OF PUBLIC SAFETY**

By: ___________________________

Name: ___________________________

Its: ___________________________

Date: ___________________________

**Exhibit A**
**SERVICES**

Medical Director shall provide the following Services:

1. approve standards for training and orientation of personnel who impact patient care;

2. approve standards for purchasing equipment and supplies that impact patient care;

3. participate in the development and operation of continuous quality improvement programs including case review and resolution of patient complaints;

4. maintain the quality of care according to the standards and procedures outlined above