



**WILLIAMSON COUNTY
RESTATED AND AMENDED
PROFESSIONAL SERVICES AGREEMENT
FOR
CORONAVIRUS DISEASE (COVID-19) TESTING**

This Restated and Amended Professional Services Agreement (“Agreement”) is entered into between Williamson County, Texas (“County”) and Family Emergency Room, LLC (“Provider”), for the purpose of providing medical testing services for the Coronavirus Disease (COVID-19), which the Commissioners Court finds to be a professional service that serves a public purpose and serves the public welfare of the citizens of Williamson County.

**I.
GENERAL SCOPE OF AGREEMENT**

- A. Service.** Provider shall acquisition, schedule and provide Coronavirus Disease (COVID-19) tests and related PPE and shall provide medical services through its qualified medical professionals for testing Williamson County, Texas residents for the (COVID-19) pursuant to the terms set out herein.
- B. Locations.** Provider agrees to provide the testing services at Provider’s managed facilities as Provider determines feasible. Testing is currently being provided at locations located at 3620 E Whitestone Blvd, Cedar Park, TX 78613, Cedar Park, Texas and at 1925 A.W. Grimes Blvd, Round Rock, TX 78664, Round Rock, Texas, and may extend to any other Provider managed facility that may be designated as feasible by Provider (“Facilities”). Provider locations will be available for testing Monday through Sunday 9am through 9pm, subject to tests and PPE being available.
- C. Tests to be Used.** All testing provided hereunder shall be acquired by Provider from a vendor that Provider determines commercially reasonable, reliable and has tests available in a quantity that can meet the County testing needs; including consideration of minimal turnaround times for results. Provider shall arrange for shipping of all tests and for

collecting all results.

- D. Standard.** All services by Provider shall be performed according to the regularly accepted standards of medical care in the State of Texas. Provider may, in its sole discretion, but will be under no obligation, to provide any inpatient care, hospitalization, or other medical services which are beyond performance of testing Williamson County, Texas residents for the Coronavirus Disease (COVID-19).
- E. Results and Data.** Provider shall inform all patients, the County, and the Williamson County & Cities Health District of the results of each test performed.
- F. Notices and Communications.** Each party will set up points of contact within each organization for data exchange, billing, legal assistance, and other matters as deemed necessary.

II.

TESTING CRITERIA AND TESTING REQUISITION PROCEDURE

- A. Requisition of Tests and PPE.** COVID-19 tests and PPE will be ordered by the Provider and Provider will distribute to participating Provider Facilities.
- B. Scheduling Testing Appointments.** Provider shall be responsible for setting up an online system for scheduling appointments for County residents to be tested at a participating Provider Facility. County will provide a weblink on its website directing patients to Provider's online scheduling system. Provider will require patients to sign HIPAA disclosure forms allowing Provider to share test results with the County and the Williamson County & Cities Health District, and will provide information to the patient concerning medical treatment that may be required or requested that exceeds the COVID-19 test. County will provide Provider with a list of streets in Williamson County for verifying residency. Provider will verify addresses in Cedar Park, Leander, and Austin to ensure they are located in Williamson County, Texas.
- C. Testing Criteria and Billing of Insured Patients.** Provider will test all patients who have been scheduled. Additionally, Provider shall bill the patients' insurance company, if the patient has insurance. The County shall be billed for those Williamson County resident patients who do not have insurance.
- D. Payment for Services Beyond Scope of Testing.** County and Provider agree that Provider may bill insurance providers or arrange for patient self-pay for any services beyond the free COVID-19 test paid for by the County and County shall not be obligated to pay for any services beyond the testing provided by the County. Provider and County will agree on language to use for advertising the testing to inform the public of any costs that may be associated with obtaining the COVID-19 test.
- E. Post-Testing Procedures.**

1. Provider will provide each tested person with post-test instructions to minimize the risk of exposure to COVID-19 prior to receiving test result.
2. Provider shall inform County and the Williamson County & Cities Health District of the positive test results as such results are received on a daily basis.
3. Provider shall inform the patients of the results directly and any additional health instructions based on the results.

III. TERM AND TERMINATION

- A. **Term.** This Agreement shall become effective as of the date of the last party's execution below ("Effective Date") and shall expire on September 30, 2020, unless renewed by written agreement of the parties.
- B. **Termination for Convenience.** Either party may terminate this Agreement for convenience and without cause or further liability upon thirty (30) days written notice to the other party. In the event of such termination, it is understood and agreed that only the amounts due to Provider for services provided up to and including the date of termination will be due and payable.

IV. COSTS AND PAYMENT TERMS

- A. **Costs.** Provider shall bill and County shall pay \$125.00 per test in exchange for the services and costs associated with the services provided by Provider pursuant to this Agreement. The total amount to be paid to Provider hereunder shall not exceed \$350,000.00 unless the parties agree, in writing, to increase the said not-to-exceed amount prior to the expiration of this Agreement.
- B. **Payment Terms.** County's payment for costs incurred hereunder shall be governed by Chapter 2251 of the Texas Government Code. Invoices shall be submitted to the Williamson County Auditor, Attn: Finance Director, 710 Main Street, Suite 301, Georgetown, Texas 78626 and shall be paid by County within thirty (30) days from the date of the Williamson County Auditor's receipt of the invoice. Interest charges for any late payments shall be paid by County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. In the event that a

discrepancy arises in relation to an invoice, such as an incorrect amount on an invoice or a lack of documentation that is required to be attached to an invoice to evidence the amount claimed to be due, County shall notify Provider of the discrepancy. Following County's notification of any discrepancy as to an invoice, Provider must resolve the discrepancy and resubmit a corrected or revised invoice, which includes all required support documentation, to the Williamson County Auditor. County shall pay the invoice within thirty (30) days from the date of the Williamson County Auditor's receipt of the corrected or revised invoice. County's payment of an invoice that contains a discrepancy shall not be considered late, nor shall any interest begin to accrue until the thirty-first (31st) day following the Williamson County Auditor's receipt of the corrected or revised invoice.

V. RIGHT TO AUDIT

Subject to and in accordance with HIPAA regulations, Provider agrees that County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Provider which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Provider agrees that County shall have access during normal working hours to all necessary Provider facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. County shall give Provider reasonable advance notice of intended audits. In no circumstances will Provider be required to create or maintain documents not kept in the ordinary course of Provider's business operations, nor will Provider be required to disclose any information, including but not limited to product cost data, which it considers confidential or proprietary.

VI. AGENCY-INDEPENDENT CONTRACTOR

Neither the County nor any employee thereof is an agent of Provider and neither Provider nor any employee thereof is an agent of the County. This agreement does not and shall not be construed to entitle either party or any of their respective employees, if applicable, to any benefit, privilege, or other amenities of employment by the other party.

VII. INSURANCE

Provider agrees to maintain professional liability insurance and general liability coverage, at its own expense, for the entire period in which claims could arise for services performed under this Agreement, in amounts that Provider deems necessary. In no event shall either party be responsible for punitive damages other than with respect to claims of third parties, or any

consequential, incidental, or special damages (including lost profits or revenue) of the other party.

VIII.
ASSIGNMENT; SUCCESSORS AND ASSIGNS

Neither party may assign, in whole or in part, any interest it may have in this Agreement without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of parties hereto and their respective successors and assigns.

IX.
THIRD PARTY BENEFICIARY EXCLUDED

No person not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third-party beneficiary. This Agreement may not be interpreted to waive the sovereign immunity of any party to this Agreement to the extent such party may have immunity under Texas law.

X.
FORCE MAJEURE

If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.

XI.
NOTICE

Any notice or other writing required by this Agreement shall be deemed given when personally delivered or mailed by certified or registered United States mail, postage prepaid, addressed as follows:

County:	Williamson County Judge Bill Gravell, Jr. (or successor) 710 Main Street Suite 101 Georgetown, Texas 78626
Provider:	Family Emergency Room, LLC c/o Dr. Henry Higgins

3620 E Whitestone Blvd.
Cedar Park, TX 78613

XII.
SEVERABILITY

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

XIII.
VENUE AND GOVERNING LAW

Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Williamson County, Texas or in the Austin Division of the Western Federal District of Texas. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

XIV.
NO WAIVER OF IMMUNITIES

Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

XV.
PATIENT INFORMATION; REGULATORY COMPLIANCE.
HIPAA COMPLIANCE

- A. **Records.** Records will be maintained and managed by Provider for all tests performed by it. Each party will comply with all applicable laws and regulations related to the

maintenance, uses and disclosures of protected health information, including without limitation the Health Insurance Portability and Accountability Act of 1996 and the regulations issued thereunder. Subject to full compliance with all laws and regulations relating to the use and disposition of protected health information, each party will have the right to use, reproduce, display, distribute, modify and disclose data generated from these tests for all purposes permitted or required by law, including for clinical research. The provisions of this section shall survive the termination of this Agreement.

- B. **Access to Records and Orders.** Provider shall make available to those required by law to have access to all physician orders, medical records or other information related to any requisition submitted by Provider as promptly as possible.
- C. **Regulatory Compliance.** Each party agrees that the intent of this relationship is to parties intend to conduct this relationship in full compliance with all applicable laws and regulations, including, without limitation, the fraud and abuse provisions of 42 U.S.C. § 1320a-7 et seq., the physician self-referral prohibitions of 42 U.S.C. § 1395nn and HIPAA (defined below). Should either party reasonably conclude that any portion of this Agreement is or may be in violation of such requirements or subsequent enactments by federal, state or local authorities, the parties agree to negotiate written modifications to this Agreement as may be necessary to establish compliance with such authorities or to reflect applicable changes.
- D. **HIPAA Compliance.** Unless otherwise permitted by applicable law, each party to this Agreement shall not use or disclose certain confidential, proprietary, and nonpublic financial and other information concerning patients (“Protected Health Information”) in violation of the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA” and The Health Information Technology for Economic and Clinical Health (“HITECH”), each as amended. Each party agrees to use their best efforts to comply with HIPAA and HITECH, including the implementation of all necessary safeguards to prevent such disclosure and the assurance that any subcontractors or agents to whom either party provided Protected Health Information agree to the same restrictions and conditions imposed on the parties hereto under HIPAA and HITECH.
- E. **Federal Exclusion.** Each party represents that neither that party nor any entity owning or controlling that party is excluded from any federal health care program including the Medicare/Medicaid program or from any state health care program. Each party further represents that it is eligible for Medicare/Medicaid participation. Each party agrees to disclose immediately any material federal, state, or local sanctions of any kind, imposed subsequent to the date of this Agreement, or any investigation which commences subsequent to the date of this Agreement, that would materially adversely impact the parties' obligations hereunder.

- F. **Billing for Services.** County shall not provide any billing or coding advice to Provider in the event Provider bills any third-party for services. The billing of services to any third-party shall be done in the sole discretion of Provider. Provider shall be responsible for compliance with all applicable state and federal laws. Provider shall be responsible for adhering to all applicable pass through billing laws, including, but not limited to, any applicable antimarkup and disclosure requirements in an applicable state, and applicable payor policies.
- G. **Access to Books and Records.** If the services to be provided by Provider hereunder are subject to the disclosure requirements of 42 U.S.C. 1395x (v)(1)(I), Provider shall make available, upon written request of the Secretary of Health and Human Services, or upon request to the Comptroller General, or any of their duly authorized representatives, a copy of this Agreement and the books, documents and records of Provider that are necessary to certify the nature and extent of the costs incurred under this Agreement for the period required by law. If Provider provides any services through a subcontract with a value or cost of \$10,000.00 or more over a twelve (12) month period, then, in addition, with respect to any applicable subcontract, such subcontract shall contain a clause to the effect that, should the subcontractor be deemed a related organization, for the period required by law, the subcontractor shall make available upon written request of the Secretary of Health and Human Services, or upon request to the Comptroller General, or any of their duly authorized representatives, a copy of the contract, and the books, documents and records of such third party that are necessary to verify the nature and extent of the costs incurred under this Agreement.
- H. During the term of this Agreement, upon reasonable prior written request and during normal business hours, Provider shall allow County reasonable access to Provider's records concerning the services provided hereunder. Provider warrants and represents that it has obtained any necessary written authorization from Provider patients for the release of such records. Such authorization shall satisfy all applicable laws and regulations including but not limited to the privacy regulations of HIPAA.

XVI.

ENTIRE AGREEMENT

This Agreement represents the entire understanding of and between the parties and supersedes all prior representations and prior agreements between the parties. This Agreement may not be varied orally but must be amended by written document of subsequent date duly executed by these parties.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement on the date set forth above, to be effective as of the date of the last party's execution below.

County:

Williamson County, Texas

Bill Gravell, Jr.

Williamson County Judge

Date: _____, 2020

Provider: FAMILY EMERGENCY ROOM, LLC

By: H and K Higgins Family Limited Partnership

Its: Managing Member

By: H and K Higgins Management Company, LLC

Its: General Partner

By: _____



Henry L. Higgins, Managing Member

Date: 06/24/2020, 2020