



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

This First Amended and Restated Professional Services Agreement (“Agreement”) is entered into between Williamson County, Texas, (“County”), and Baylor Scott & White Health (“Provider”), for the purpose of providing medical testing services for the Coronavirus Disease (COVID-19) for Williamson County Emergency Services Personnel, which the Williamson County 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 provide medical services through the qualified medical professionals of its affiliated entities for expedited Coronavirus Disease (COVID-19) testing of Williamson County’s Emergency Services Personnel pursuant to the terms set out herein.

B. County’s Emergency Services Personnel. For purposes of this Agreement, County’s “Emergency Services Personnel” shall include, but not be limited to County’s Emergency Medical Services personnel, law enforcement personnel, Mobile Outreach Team personnel, Department of Emergency Management personnel and other County personnel that are supporting the County’s response to the Coronavirus Disease (COVID-19).

C. Locations. Provider agrees to provide the testing services at Provider’s facilities located at 425 University Blvd., Round Rock, Texas 78665 and other locations as directed by Provider’s point of contact (“Facilities”). Timing of testing will be coordinated with the County’s Emergency Services Personnel by the parties’ points of contact.

D. Tests to be Used. Provider shall use the COVID-19 reverse transcriptase polymerase

chain reaction (RT-PCR) nasal swab (CPT Code U0003).

E. Standard. All services by Provider shall be performed according to the regularly accepted standards of medical care in the State of Texas. Provider will be under no obligation to provide any inpatient care, hospitalization, or other medical services which are beyond performance of testing County's Emergency Services Personnel for the Coronavirus Disease (COVID-19).

F. Results and Data. Provider shall inform the affected personnel of the results of each test performed within 48-72 hours from administering each test.

G. Notices and Communications. Following execution of this Agreement, each party will set up points of contact within each organization for scheduling, data exchange and other logistics as deemed necessary and exchange such information.

H. Not Billing Insurance. The parties acknowledge and agree that County is providing the testing to County's Emergency Services Personnel as a benefit and will be paying Provider directly for the testing services provided under this Agreement. Except as otherwise set out herein, Provider will not bill the insurance provider of the County's Emergency Services Personnel for such services. Provider may bill the insurance provider for any inpatient care, hospitalization, or other medical services which are provided to such employees beyond the performance of testing.

II. TERM

This Agreement shall become effective as of the date of the last party's execution below ("Effective Date") and continue for one (1) year thereafter, unless terminated earlier as set out herein. The parties acknowledge and agree that Provider performed tests for the Coronavirus Disease (COVID-19) on County's Emergency Services Personnel beginning May 18, 2020 and County shall pay Provider for such tests prior to the Effective Date in accordance with the terms of this Agreement. The parties hereto agree this Agreement may be extended, by mutual agreement, in writing following the expiration of the above stated term.

III. COSTS AND PAYMENT TERMS

A. Costs. County shall pay Provider \$100 per test provided pursuant to the terms of this Agreement. The total amount to be paid by County under this Agreement shall not exceed \$50,000.00 in a particular County fiscal year (October 1st to September 30th). In the event the said not-to-exceed amount of \$50,000.00 in a particular County fiscal year is exceeded, provider may bill the individual employee's insurance provider for any testing.

B. Payment Terms. County's payment for costs incurred hereunder shall be governed by Chapter 2251 of the Texas Government Code. Invoices shall 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.

IV. 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.

V. 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.

VI. 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.

**VII.
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.

**VIII.
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.

**IX.
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.

**X.
TERMINATION**

This Agreement may be terminated, with or without cause, by either party by providing written notice to the other party at least ten (10) days prior to the intended date of termination.

**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: Baylor Scott & White Health
c/o Jay Fox
300 University Blvd.
Round Rock, TX 78665

Cc:
Baylor Scott and White Health
Legal Department
Attn: Michael Anderson
4005 Crutcher St., Suite 300
Dallas, Texas 75246

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 Williamson County, 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 or 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. 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.

C. 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.

D. 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.

E. RESERVED

F. 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.

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:

Baylor Scott & White Health

By: _____
Jay Fox
President, Austin-Round Rock Region

Date: July 20_____, 2020