



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

This First Amended and Restated Professional Services Agreement For Coronavirus Disease (COVID-19) Vaccination Services ("First Amended and Restated Agreement") is entered into between Williamson County, Texas, ("County"), and Family Emergency Room, LLC ("Provider"), for the purpose of providing vaccination services for the Coronavirus Disease (COVID-19) for Williamson County emergency services personnel and other Williamson County employees, 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, Texas and to which the Commissioners Court finds necessary to preserve the health and safety of the residents of Williamson County, Texas.

**I.
GENERAL SCOPE OF AGREEMENT**

A. Service. Provider shall provide medical services through its qualified medical professionals for administering COVID-19 vaccinations pursuant to the terms set out herein.

B. Initial Recipients of Vaccinations. The initial recipients of the COVID-19 vaccinations under this First Amended and Restated Agreement shall be County's Emergency Services Personnel. For purposes of this First Amended and Restated Agreement, County's "Emergency Services Personnel" shall include, but not be limited to County's Emergency Medical Services personnel, law enforcement and corrections personnel, victim services personnel, Mobile Outreach Team personnel, Department of Emergency Management personnel (Emergency Communications personnel, Emergency Management personnel, etc.) and other County personnel that are supporting the County's response to the COVID-19 pandemic.

C. Designated Williamson County Staff and Personnel. In addition to providing vaccination services to the above-described County's Emergency Services Personnel, Provider agrees to provide vaccination services to Williamson County employees who meet the eligibility requirements for vaccination as set by the State of Texas, which shall not exceed 1900 employees.

D. Municipal, Emergency Services District and Volunteer Fire Department Personnel.

In the event that CARES Act funding that has been allocated to the County can be used for funding Provider's services hereunder, County will notify Provider that it may also provide such vaccination services to emergency services personnel of municipalities having their city council chambers located within Williamson County, Texas, Emergency Services Districts (ESDs) that have a majority of their districts within Williamson County, Texas, Volunteer Fire Departments (VFDs) that have a majority of their districts within Williamson County, Texas and any other emergency services personnel the County authorizes for vaccination under this First Amended and Restated Agreement. For purpose of this paragraph, emergency services personnel of municipalities, ESDs and VFDs shall mean and be limited to fire services personnel, emergency medical services personnel, law enforcement personnel (including victim services personnel), mental health services personnel, emergency management and operations personnel (emergency communications personnel, emergency management personnel, etc.) and other emergency services personnel that are directly supporting emergency response efforts to the COVID-19 pandemic in Williamson County, Texas, as determined by County.

E. Locations. Provider agrees to provide the vaccination services at the following facilities ("Facilities"):

1. Family Emergency Room Cedar Park
3620 E. Whitestone Blvd
Cedar Park, TX 78613
2. Family Emergency Room Lakeline
1860 S. Lakeline Blvd
Cedar Park TX 78613
3. Family Emergency Room Round Rock
1925 A.W Grimes
Round Rock, TX 76644
4. Family Emergency Room Georgetown
1210 W. University Ave
Georgetown, TX 78628
5. Other locations that Provider may designate and establish, as necessary, in Williamson County.

F. Vaccinations to be Used. County will coordinate with Provider to obtain vaccinations that are made available through the State of Texas, federal government and/or private parties for use pursuant to the terms of this First Amended and Restated Agreement.

G. 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

vaccinations described herein. Provider maintains cold storage capabilities that will be utilized if such vaccinations require it.

H. Notices and Communications. Each party will set up points of contact within each organization for scheduling, data exchange, billing, legal, other logistics as deemed necessary and exchange such information at least 24 hours prior to launching the County funded and supported vaccinations operation.

II. VACCINATION PROCEDURE AND CRITERIA

A. Scheduling Vaccination Appointments. County and Provider will coordinate with one another in order to set up a system for scheduling appointments for County's Emergency Services Personnel and County Employees to be vaccinated at a participating Provider Facility. Provider shall not bill County Employee's insurance for vaccination services. Provider shall not provide vaccination services to anyone that is not a County Employee with a valid identification under the terms of this First Amended and Restated Agreement. Non-County employees (such as spouses, children, etc.) that are covered by County insurance may have their insurance billed for vaccination services.

B. Payment for Services Beyond Scope of Vaccinations. County and Provider agree that Provider may bill insurance providers or arrange for patient self-pay for any services beyond the COVID-19 vaccinations provided by the County under this First Amended and Restated Agreement and County shall not be obligated to pay for any services beyond the vaccinations provided by the County.

C. Post-Vaccination Procedures. Provider will provide each vaccinated person with any necessary post-vaccination procedures and instructions.

III. TERM

This First Amended and Restated Agreement shall be effective as of November 24, 2020, which is the date of the execution of the original Agreement ("Effective Date") and continue until December 31, 2021, or the date the parties mutually agree to terminate this First Amended and Restated Agreement, whichever comes first.

IV. COSTS AND PAYMENT TERMS

A. Costs. County shall pay Provider **\$70.00** for each vaccination performed hereunder. The said vaccination fee shall provide payment for Provider's administration of the vaccine and all other related costs associated with administering the vaccination, which shall include, but not be limited to any Personal Protective Equipment ("PPE"), staffing, data entry, vaccine storage and other supply costs necessary to administer the vaccine.

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 First Amended and Restated 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 First Amended and Restated 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 First Amended and Restated 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 First Amended and Restated Agreement without the prior written consent of the other party. This First Amended and Restated 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 First Amended and Restated Agreement may bring a cause of action pursuant to this First Amended and Restated Agreement as a third-party beneficiary. This First Amended and Restated Agreement may not be interpreted to waive the sovereign immunity of any party to this First Amended and Restated 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 First Amended and Restated 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.
TERMINATION

This First Amended and Restated 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.

**XII.
NOTICE**

Any notice or other writing required by this First Amended and Restated 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 Marc Daniel, Chief Laboratory Officer 3620 E Whitestone Blvd. Cedar Park, TX 78613 Email: mdaniel@familyemergencyroom.com

**XIII.
SEVERABILITY**

If any provision of this First Amended and Restated 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 First Amended and Restated 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 First Amended and Restated 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 First Amended and Restated Agreement and be deemed to be validated and enforceable.

**XIV.
VENUE AND GOVERNING LAW**

Each party to this First Amended and Restated 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 First Amended and Restated 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 First Amended and Restated Agreement is governed by the laws of the United States, this First Amended and Restated Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

XV.
NO WAIVER OF IMMUNITIES

Nothing in this First Amended and Restated 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.

XVI.
PATIENT INFORMATION; REGULATORY COMPLIANCE.
HIPAA COMPLIANCE

A. Records. Records will be maintained and managed by Provider for all vaccinations 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 vaccinations for all purposes permitted or required by law, including for clinical research. The provisions of this section shall survive the termination of this First Amended and Restated Agreement.

B. Access to Records and Orders. Provider shall make available to AIT all physician orders, medical records or other information related to any requisition submitted by Provider to AIT that AIT is required to provide in any regulatory or accreditation audit or review. Provider shall provide such documents to AIT as promptly as possible, but not later than twenty-four (24) hours after a request by AIT.

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 First Amended and Restated 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 First Amended and Restated 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 First Amended and Restated 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 First Amended and Restated Agreement, or any investigation which commences subsequent to the date of this First Amended and Restated 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 First Amended and Restated Agreement and the books, documents and records of Provider that are necessary to certify the nature and extent of the costs incurred under this First Amended and Restated 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 First Amended and Restated Agreement.

H. During the term of this First Amended and Restated 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.

**XVII.
ENTIRE AGREEMENT**

This First Amended and Restated Agreement represents the entire understanding of and between the parties and supersedes all prior representations and prior agreements between the parties. This First Amended and Restated 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 First Amended and Restated Agreement on the date set forth below, to be effective as of the date set out herein.

County:

Williamson County, Texas

Bill Gravell, Jr.
Williamson County Judge

Date: _____, 20____

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 Higgins
Henry Higgins (Jan 7, 2021 16:50 CST)

Henry L. Higgins, Managing Member

Date: Jan 7, 2021, 2021

1st Amd Restated Professional Services Agreement - FER - COVID-19 Vaccination Services (Final)

Final Audit Report

2021-01-07

Created:	2021-01-07
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"1st Amd Restated Professional Services Agreement - FER - COVID-19 Vaccination Services (Final)" History

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