



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

This First Amended and Restated Professional Services Agreement for Coronavirus Disease (COVID-19) Vaccine Administration Agreement ("Agreement") is entered into by and between the Williamson County, Texas, a political subdivision of the State of Texas (hereafter referred to as "County") and Family Emergency Room, LLC also dba Family Hospital System (hereafter referred to as "Provider"). Provider and County shall be referred to hereafter individually as a "Party", and collectively as the "Parties" to this Agreement.

I. PURPOSE

This Agreement states the terms of the engagement between the County and Provider. The purpose of this engagement is for Provider to leverage its expertise, vaccination infrastructure and vaccination site capacity to assist with the County's vaccination efforts against Novel Coronavirus 2019 (COVID-19).

Implementing the policies, procedures, and infrastructure for COVID-19 vaccination is a substantial logistical challenge that can be effectively addressed through public-private partnerships. In regions across the United States, the existing public health infrastructure has variable capacity to implement measures needed to rapidly vaccinate the population. The County has an urgent need for public-private partners to provide assistance with the vaccination effort and to ensure ongoing capacity to respond to COVID-19 in the County's geography.

Provider is a qualified provider and can securely report patient information directly into Immunization Registries in full compliance with HIPAA and can receive and warehouse publicly allocated doses of vaccine according to the guidelines set forth by the United States Center for Disease Control (CDC) and vaccine manufacturers.

Under this Agreement, Provider will proceed with hiring and managing vaccination teams and

acquiring the equipment necessary to deliver COVID-19 vaccination in the County's geography and in support of the County's plans for population-scale immunization against COVID-19.

II. TERM

The term of this Agreement is effective as of January 19, 2021 and shall commence immediately upon signature by all parties and terminate when all of the obligations under this Agreement are fully satisfied, but in any event no later than December 31, 2021, unless terminated or extended, in whole or in part, as provided herein.

III. PAYMENT

Provider may bill health insurance plans for insured patients for the vaccinations or bill Federal and/or State sources of funding (*i.e.* CARES Act funding and other available sources of State and/or Federal funding) for uninsured persons; provided, however, neither the County nor vaccine recipients will receive a bill for the balance of any unreimbursed individuals. Billing of patient insurance for the cost of vaccine administration shall be according to rates and guidelines set forth by the CDC, CMS, or other applicable law, statute, or regulation. Provider shall bear the risks incidental to performance hereunder and seek necessary insurance. Provider may avail itself of any funding assistance through the provider relief fund: <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/index.html>.

As reimbursement for Provider's actual costs associated with administering the vaccinations under this Agreement, which such costs may include, but not be limited to Personal Protective Equipment (PPE), staffing, data entry, vaccine storage and other supply costs necessary to administer the vaccines (the "Reimbursable Costs"), the County agrees to pay Provider \$20.00 per patient for the first 20,000 Williamson County patients and \$15.00 per Williamson County patient thereafter. The Reimbursable Costs shall include two doses of vaccine, if two doses are required. The Agreement shall not exceed 175,000 patients. Provider shall provide weekly reports containing number of patients vaccinated during the preceding week. Provider shall not bill the County under this Agreement for vaccination of Williamson County employees or FHS employees, nor shall Provider bill County for any costs that may not be reimbursed under applicable law, statute, or regulation.

Additionally, on a weekly basis, Provider shall invoice County for the Reimbursable Costs incurred during that week. County's payment of those invoices 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.

IV. DESCRIPTION OF SERVICES

A. PROVIDER RESPONSIBILITIES

Provider agrees to the terms of this Agreement and shall, during the term of this Agreement, commit to and perform the following duties to fulfill its obligations under this Agreement:

1. Provider shall make best efforts to perform its duties in accordance with all state and federal laws and regulations in order to maintain its Hub status;
2. Administer vaccines to citizens;
3. Coordinate vaccination sites, locations and/or clinics in accordance with medical, clinical, and best practices for the safety of patients and site personnel;
4. Deploy Provider's own software platform for scheduling clinics and managing patient information.
5. Coordinate with the County and the County's designees to develop a model for COVID-19 vaccination at fixed sites and, if possible, at mobile clinics. The parties shall mutually agree to vaccination sites.
6. Transfer of vaccines to other Providers shall be within Provider's sole discretion.
7. Provider's communication and outreach team will work with County to align messaging and communication efforts regarding this effort.
8. Participate in weekly, joint update meetings at a date and time agreed by the parties.

B. COUNTY RESPONSIBILITIES

The County agrees to the terms of this Agreement and shall commit to and perform the following duties to fulfill its obligation under this Agreement:

1. County shall make best efforts to perform its duties and coordination of support services in accordance with all state and federal laws and regulations in order that Provider may maintain its Hub status;
2. Coordinate with Provider to provide support services for Provider's COVID-19 vaccination efforts throughout the term of this Agreement, including wi-fi, registration, and call support as may be needed as the efforts to expand vaccination and assistant services grow.
3. Maintain a clear channel of communication with Provider to address status or needs which arise with COVID-19 vaccine management.
4. Provide support with a communication plan that includes assistance in disseminating information to the public which may include a multi-faceted approach using social media, press releases, and web site communications, as well as creating and maintaining a dashboard to track the number of vaccines administered, sites where vaccines are available, and links to Provider's online appointment system.
5. Work with Provider to develop a model for COVID-19 vaccination at fixed sites and, if possible, at mobile clinics.

V. DESIGNATION OF RESPONSIBLE PARTIES

All notices hereunder shall be in writing, personally delivered, sent by certified mail, return receipt requested, or by confirmed email, addressed to the other party as follows: The following persons, identified by position and title, have been designated as the responsible parties for all communications, including required notices, related to the Agreement:

1. County:

Williamson County Judge
710 Main Street, Suite 101
Georgetown, Texas 78626
Email: ctyjudge@wilco.org
Phone: (512) 943-1550

With copy to:

Williamson County Office of Emergency Management
Attn: Michael Shoe, Director/EM Coordinator
911 Tracy Chambers Lane
Georgetown, TX 78626
Email: michael.shoe@wilco.org
Phone: (512) 864-8267

2. Provider:

Family Emergency Room, LLC
c/o Henry Higgins, Chief Executive Officer
3620 E Whitestone Blvd.
Cedar Park, TX 78613
Email: hhiggins@familyemergencyroom.com

With copy to: Family Emergency Room, LLC
ATTN: Legal Department
1464 E Whitestone Blvd., Suite 1101
Cedar Park, TX 78613
Fax: (512) 628-3428
Email: nsnyder@familyemergencyroom.com

VI. LIMITATION OF LIABILITY, INDEMNIFICATION, AND INSURANCE

Warranty: Provider represents that all protected health information (PHI) will be encrypted and protected within Provider's systems in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and implementing regulations and will use PHI solely for the Services provided for herein and in accordance with each individual's authorization/consent

Limitation of Liability: Except as otherwise set forth in the Agreement, Provider makes no other warranties, express or implied, with respect to Services and all other warranties are hereby disclaimed. To the maximum extent provided by law, in no event shall either party be responsible for any special, indirect, consequential, exemplary damages of any kind, including loss of profits and/or indirect economic damages whatsoever, costs of cover, and regardless of whether such damages arise from claims based upon contract, negligence, tort or other.

Indemnity:

Provider acknowledges and agrees that under the Constitution and the laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless any other party, including but not limited to Provider; therefore, all references of any kind to County indemnifying, holding or saving harmless any other party, including but not limited to Provider, for any reason whatsoever are hereby deemed void and deleted.

IN NO EVENT SHALL ANY PROVISION IN THIS Agreement BE CONSTRUED AS A WAIVER OF STATUTORY IMMUNITY PROVIDED TO PROVIDER UNDER THE PREP ACT See 85Fed. Reg. 15,198 (March 17, 2020); see also Pub. L. No. 109-148, Public Health Service Act § 319F-3, 42 U.S.C. § 247d-6d and 42 U.S.C. § 247d-6e.

Furthermore, 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, 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.

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.

County hereby certifies that it is a political subdivision of the State of Texas; and, since claims against County are subject to the liability and damage limitations of the Texas Tort Claims Act, County has chosen to self-insure rather than to obtain insurance coverage for its residual liability. County's full faith and credit, therefore, stands behind any lawful claims against it, its officials, employees, or agents.

VII. CONFIDENTIALITY

(a) Confidential Information: Provider and County acknowledge that they may gain access to the confidential business information of the other and/or its affiliates in the course of performing their obligations under this Agreement. Except as required by law or legal process, Provider and County each agrees that it will hold in confidence, safeguard, and not use (except as required by those employees, officers, directors, or consultants, acting pursuant to this Agreement or as required by law or legal process) or disclose, disseminate or make available to third parties, except the County's affiliates, information related to proprietary research techniques and technology, types of supplies, pricing for supplies, patient information (including but not limited to, social security numbers, addresses, insurance information, results, and diagnosis information), and any other confidential information of the disclosing party and/or its affiliates at the time of disclosure (together "Confidential Information"). Provider and County each agrees to treat such Confidential Information it receives from or on behalf of the other with the same degree of care that it treats its own proprietary information, but with no less than a reasonable degree of care.

(b) Exceptions to Confidential Information: Notwithstanding subsection (a) above, information shall not be deemed Confidential Information if it (i) is or becomes generally known to the public through no unlawful act of the recipient; (ii) was known to the recipient at the time of disclosure; (iii) is disclosed with the prior written approval of the disclosing party; (iv) was independently developed by the recipient without any use of the disclosing party's Confidential Information; (v) becomes known to the recipient from a source other than the disclosing party without breach of this Agreement and otherwise not in violation of the disclosing party's rights; or (vi) is required to be disclosed in accordance with law or court order.

(c) Return of Confidential Information: Each party shall promptly return or destroy all

Confidential Information of the other party it holds in written form and all copies of it, in any format, upon the other party's written demand or the expiration or termination of this Agreement, except for Confidential Information that may be incorporated in any information that the recipient is required to maintain by law to verify the work that it performed, which may be retained by the recipient subject to the restrictions contained in this Section. For the avoidance of doubt, retention of electronic back-up and archival copies of Confidential Information maintained pursuant to regular data archiving and record retention policies and practices shall not be deemed to be a violation of this Agreement.

(d) Confidential Health Information. The Parties acknowledge that, in the performance of the Services under this Agreement, they may have access to certain sensitive or private information related to the health or well-being of an individual or individuals ("Confidential Health Information") which is stored by or accessible to the other Party. Each of the Parties agrees to: (i) use or disclose the Confidential Health Information only as such Party is required to use or disclose such information in connection with the matters referred to in this Agreement; (ii) safeguard such information to the same extent as it does its own Confidential Health Information and proprietary information; (iii) limit the making of any copies, extracts or reproductions of Confidential Health Information to those occasions which are necessary to carry out the duties under this Agreement and safeguard the copies, extracts or reproductions made of such information; (iv) not use such information after termination of this Agreement for any reason unless otherwise agreed; and (v) access only the Confidential Health Information which is necessary to perform the duties under this Agreement.

(e) HIPAA/Protected Health Information. Except as required by law to report certain data pertaining to COVID-19 vaccinations. In the event that any PHI within the meaning of the Health Insurance Portability and Accountability Act of 1996, and its amendments thereto, including 45 CFR Parts 160 and 164, as amended by the Health Information Technology for Economic and Clinical Health Act and the Final Omnibus Rules (collectively "HIPAA") is received by Provider, Provider shall comply with all applicable requirements under HIPAA to safeguard such PHI and prevent the use or disclosure of such PHI other than as provided for under this Agreement. Each of the Parties will, and will cause their respective personnel to, comply with its own applicable obligations under HIPAA and other guidelines, policies and regulations pertaining to using patient samples and PHI.

VIII. RECORDS MAINTENANCE

Provider shall maintain accurate and complete records of its activities and operations and, if legally required, with reasonable advance notice from County, during Provider's normal business hours, allow County access to examine or audit these activities and operations. These records shall be maintained by Provider and made available to County during the term of this Agreement and for a period of three years thereafter. If an audit of Provider is conducted by a Federal or State Auditor,

Provider shall provide a copy of the report to County within thirty days.

IX. RECORDS INSPECTION

If applicable to Provider and required by law, in accordance with State or Federal law and pursuant to this Agreement, at any time with reasonable advance notice to Provider, during normal business hours and as often as either the County, its designees, the Federal or State government may deem necessary, Provider must make available for examination all of its records with respect to all matters covered by this Agreement. The County, or its designees, or the Federal or State government each have the authority to audit, examine and make excerpts or transcripts from records and other data covered by this Agreement. Provider agrees to provide any reports requested by the County or County regarding performance of this Agreement.

X. TERMINATION

Either party may terminate this Agreement at any time upon ten (10) days prior written notice for any reason; provided, however, during this ten (10) day period Provider shall use its reasonable efforts to complete any books and records relating to the services of Provider relating to the services of this Agreement. Termination of this Agreement shall not relieve the Parties of their reporting and auditing obligations and any other provisions set forth in this Agreement.

XI. MISCELLANEOUS

Assignment: Without the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld, neither Party may assign any of its rights or obligations hereunder. Notwithstanding anything to the contrary herein contained, either Party may assign its rights or obligations hereunder in the entirety (i) to its parent or any subsidiary or successor corporation without prior written consent and (ii) in connection with a merger, reorganization, consolidation, change of control, or sale of all or substantially all of the assets to which this Agreement pertains; provided, however, that nothing contained herein shall release the assigning Party from its obligations hereunder. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the successors and assigns of the parties hereto.

Entire Agreement: This Agreement, including Exhibits, contains the entire understanding between County and Provider and supersedes any and all prior agreements, understandings, and arrangements between them relating to the subject matter hereof. No amendment, change, modification or alteration of the terms and conditions hereof shall be binding unless in writing and signed by the Parties to be bound.

Choice of Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas with venue in Williamson County, Texas.

Waiver: The failure of either Party to this Agreement to exercise or enforce any right conferred upon it hereunder shall not be deemed to be a waiver of any such right nor operate to bar the exercise or performance thereof at any time or times thereafter, nor shall a waiver of any right hereunder at any given time be deemed a waiver thereof for any other time.

Severability: It is the intention of the Parties that the provisions of this Agreement shall be enforceable to the fullest extent permissible under applicable laws, and that the invalidity or unenforceability of any provisions under such laws will not render unenforceable, or impair, the remainder of the Agreement. If any provisions hereof are deemed invalid or unenforceable, either in whole or in part, this Agreement will be deemed amended to modify, or delete, as necessary, the offending provisions and to alter the bounds thereof in order to render it valid and enforceable.

Non-Exclusive Arrangement: Provider acknowledges that this is a non-exclusive arrangement and that this Agreement places no restrictions on County's ability to use other service providers and that County does not guarantee any minimum number of vaccinations to be referred to Provider for Services under this Agreement.

Relationship of the Parties: Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment relationship between the Parties. Neither Party is an agent of the other and neither Party has any authority whatsoever to bind the other Party, by contract or otherwise.

Force Majeure: Either Party shall be excused from non-performance or delay in performance to the extent that such non-performance or delay in performance arises out of causes beyond the control and without the fault or negligence of the non-performing Party. Such cases include, but are not limited to, acts of God, the public enemy or terrorism, laws or acts of any government in either its sovereign or contractual capacity, fires, floods, epidemics, pandemics (including COVID-19), strikes or freight embargo. Written notice of a Party's failure or delay in performance due to force majeure must be given to the other Party no later than five (5) business days following the force majeure event commencing, which notice shall describe the force majeure event and the actions taken to minimize the impact thereof.

Section Headings: Section headings contained in this Agreement are for reference purposes only and shall not affect, in any way, the meaning and interpretation of this Agreement.

Execution in Counterparts: This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

Third Parties. Nothing in this Agreement, whether express or implied, is intended to confer any

rights or remedies under or by reason of this Agreement on any person other than the Parties to it.

Effect on Other Agreements. As of the execution of this Agreement, County and Provider are currently parties to an agreement for the vaccination of County's Emergency Services Personnel, County's employees who meet the eligibility requirements for vaccination as set by the State of Texas and potentially Williamson County Municipal, Emergency Services District and Volunteer Fire Department Personnel. This Agreement shall not supplant, affect or otherwise amend the Parties' aforementioned agreement or amendments to any existing agreement for vaccination services.

IN WITNESS HEREOF, the parties hereto have executed this Agreement to be effective on the date set out herein.

COUNTY

WILLIAMSON COUNTY, TEXAS

Name: Bill J. Smully
Position: As Presiding Officer of the
Williamson County Commissioners Court

Date: February 2, 20 21

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 (Feb 2, 2021 05:50 CST)
Henry L. Higgins, Managing Member

Date: February 2, 2021