

HEALTH AND WELLNESS SERVICES AGREEMENT

THIS HEALTH AND WELLNESS SERVICES AGREEMENT (this “Agreement”) is made and entered into on (the “Effective Date”), by and between **City of Tomball** (“Client”) and First Response Family Clinic, a LLC (“Company”) (Client and Company are referred to herein individually as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, Company operates a clinic, located at 3401 West Davis Street, Ste – H, Conroe, TX 77304 (the “Clinic”), in which it performs various services associated with health and wellness including but not limited to the specific services outlined in (“Services”), and

WHEREAS, Client wishes to procure the Services and desires to engage Company to render and perform the Services on behalf of the Company through one or more of the Company’s representatives and professionals who are licensed and/or legally authorized to render such Services to the extent any such authorization and/or licensing may be required in the State of Texas, and

WHEREAS, the Company agrees to perform the Services pursuant to the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated into this Agreement as an integral part hereof, and the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Client and Company, intending to be legally bound, hereby agree as follows:

1. Scope of Services

Company agrees to make available to the Client and provide such Services to the Client and its employees, contractors and representatives as directed by the Client.

2. Fees

The fees for furnishing the Services under this Agreement by the Company for the Client shall be based on the fee schedule which is attached Medical Work Order by this reference incorporated herein. Based upon the cost of providing such Services or requests for modified or different Services, the fee schedule (and any corresponding change to the Services to be provided) may be subject to adjustment and/or modification from time to time upon no less than thirty (30) days prior written notice to the Client and a corresponding amendment to the subject Exhibits.

3. Payment

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The fees for Services under this Agreement shall be due as set forth in the medical work order. Payment will be divided 50% upon signing of the Medical Work Order, 50% completion of scheduled medical exams within 30 days after receipt by Client of an invoice covering the service(s) rendered.

4. No Conflicts or Referrals

The Parties agree and acknowledge that the Services to be rendered by Company as contemplated by this Agreement shall constitute valuable and necessary services for the operation of Client's business, and that the amounts payable under Section 3 of this Agreement represent the fair market value of the items and services to be rendered by Company. The Parties further acknowledge that it is their intention that compensation payable under this Agreement shall be for actual services rendered and shall not represent, and is not intended to represent remuneration, direct or indirect, in consideration for the referral of patients or business generated between the Parties.

5. Term of Agreement

This Agreement shall commence on the Effective Date and continue until the last day of the 12th month following the Effective Date (the "Initial Term") and shall automatically renew for two additional terms (2 years) thereafter (each a "Renewal Term") (the Initial Term and each Renewal Term the "Term") unless until no less than ninety (90) days' prior written notice is provided by either Party of its intent to terminate the Agreement at the end of the then current Term, or the Agreement is terminated as provided in Section 6 below. Time is of the essence with respect to this Agreement.

6. Termination

(a) Termination for Cause by Company: Company may terminate this Agreement at any time for "Cause" (as hereinafter defined), effective immediately upon written notice to Client. As used herein, the term "Cause" shall mean a material and reoccurring material breach of this Agreement by the Client, which breach is curable, in the judgment of Company, and continues 30 days after receipt of written notice which states with particularity the nature of the breach. Failure to pay fees shall be considered "Cause" and shall be considered grounds for termination ten (10) days following the due date of the fees remaining unpaid in whole or in part.

(b) Termination Without Cause by Either Party: Company or Client may terminate this Agreement without cause, and for any reason or no reason, at any time after giving written notice of its intention to terminate to the other Party at least ninety (90) days prior to the intended date of termination. In the event of termination, the Company shall be paid for the Services performed to the date of termination in accordance with the terms of this Agreement.

(c) Change in Law: In the event there is a change or clarification in law, regulation, or policy by a court or governmental agency with regulatory jurisdiction over the Parties such that any of the terms or provisions of this Agreement could be deemed to be in violation or

contravention of applicable law or regulations, or either Party's right to compensation for its services will be affected materially and adversely by such changes or clarifications, the Parties agree to take such actions as may be necessary to modify this Agreement and to do such other things as they deem prudent or necessary to bring the affected provisions or terms into compliance while maintaining the Parties in substantially the same economic position. If the Parties are unable to mutually agree to amend the affected provisions of this Agreement after good faith negotiations, either Party may terminate the Agreement by providing not less than thirty (30) days advance written notice to the other, it being the express intent of the Parties that this Agreement comply at all times with applicable federal and Texas laws and regulations. The negotiation period shall be shortened as necessary to prevent either Party from operating in violation of applicable law.

7. Force Majeure

Except for the duty to make payments hereunder when due, neither Party shall be liable for any delays or nonperformance directly or indirectly resulting from circumstances or causes beyond its reasonable control, including acts of God, earthquake, flood, freeze, explosion, fire, epidemic or other natural causes, riots, war, national emergency, invasion, insurrection, rebellion, strike, lockout, sabotage, acts of terrorism, civil strife, acts of public enemies, any laws, rules, regulations, orders, directives, or requirements of, or interference by any and acts of governmental authorities whether federal, state or local government, governmental agency, or officials, or agents thereof, or other circumstances, whether similar or dissimilar, foreseen or unforeseen. Delays due to the above causes, or any of them, shall not be deemed to be a breach of or failure to perform under this Agreement.

8. Relationship Between the Parties

It is expressly understood that in the performances of the Services, the Company, and the agents and employees of the Company, shall act in an independent capacity and as an independent Company and contractor and not as officers, employees or agents of the Client.

9. Confidential Information

During the Term of this Agreement and at any time thereafter, either Party (each, the "Receiving Party") who comes into possession of any Confidential Information (defined below) of the other (the "Disclosing Party"), will not disclose such Confidential Information to any other person or entity, without the Disclosing Party's consent. The term "Confidential Information" as used in Agreement includes, but is not limited to, the identities of clients and business partners, the names, addresses, phone numbers, email addresses, or other financial or personal information pertaining to clients or business partners, knowledge of the Disclosing Party's prospective clients, knowledge of actual or prospective business partners, affiliates, suppliers or vendors, methods of operation, processes, trade secrets, business plans, financial condition, profits, sales, net income, indebtedness, as the same may exist from time to time, and any other information, however documented, that is a trade secret within the meaning of the Texas Business & Commerce Code, the Texas Uniform Trade Secrets Act (TUTSA), and/or any similar

applicable law. Disclosing Party shall use at least the same degree of care as it employs in maintaining in confidence its own Confidential Information of a similar nature, but in no event less than a reasonable degree of care. The Disclosing Party hereby consents to the Receiving Party disclosing such information: (i) permitted expressly in the Agreement; (ii) to contractors providing administrative infrastructure, and other support services to the Receiving Party and subcontractors providing services in connection with this Agreement, in each case, whether located within or outside of the United States, provided that such contractors and subcontractors have agreed to be bound by confidentiality obligations similar to those in this Section as may be required by law or regulation, or to respond to governmental inquiries, or in accordance with applicable professional standards or rules, or in connection with litigation or arbitration pertaining hereto; or (iv) to the extent such information (a) is or becomes publicly available other than as the result of a disclosure in breach hereof, (b) becomes available to the Receiving Party on a nonconfidential basis from a source that the Receiving Party believes is not prohibited from disclosing such information to the Receiving Party, (c) is already known by the Receiving Party without any obligation of confidentiality with respect thereto, or (d) is developed by the Receiving Party independently of any disclosures made to the Receiving Party hereunder.

10. Assignment

This Agreement shall not be assignable, in whole or in part, by either Party without the written consent of the other Party which due to the highly personal nature of the Services may be withheld, conditioned or delayed as determined in the sole discretion of the consenting Party. Notwithstanding the foregoing, in the event specialized Services are requested by the Client, the Company shall have the right to procure those services as a subcontractor from outside professionals with written notice to the Client in the event that the professional standards for providing those services would support such subcontracting.

11. Access to Records

The Parties agree to comply with the federal privacy and security laws and regulations enacted pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). Company shall document all services rendered during the term hereof in accordance with the policies and procedures of Client. Company shall ensure that its representatives prepare and submit such interpretive reports, forms, and documents as reasonably requested by Client to document the services rendered pursuant to this Agreement. Company may retain copies of all interpretive reports prepared by its representatives in connection with the Services. Client shall maintain and retain the interpretive reports, as required by Texas law and 45 C.F.R. §164.530(j)(2) of HIPAA. Company shall have access to and may copy, at its own expense, interpretive reports rendered by its representatives at all times throughout the term of this Agreement and for the applicable retention period thereafter. The Parties shall comply with all laws and regulations relating to the confidentiality and security of clinical records. Unless required by service of process, Company shall not provide access to or copies of records to any person other than on behalf of and at the request of Client. Company shall promptly advise Client upon receipt of any request for records.

Notwithstanding any other provision of this Agreement, in the event the access to records provisions of 42 U.S.C. §1395x(V)(I) are applicable to this Agreement, until the expiration of four (4) years after the termination of this Agreement, each Party shall make available, upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Controller General of the United States General Accounting Office, or any of his or her duly authorized representatives, a copy of this Agreement and such books, documents, or records as are necessary to certify the nature and extent of the costs of the services provided by each Party under this Agreement. In connection with the foregoing, (a) the Parties acknowledge and agree that any privileges for documents or information under applicable attorney-client, accountant-client, or other legal privilege, if any, are not waived by this Section 11, or by any other provision of this Agreement; (b) subject to the other provisions of this Agreement regarding confidentiality, any Party may examine the records of the other Party and make copies of those records at the expense of the Party seeking the copies (the records are to be available during normal business hours at the principal place of business of the Party owning the records); and (c) the provisions of this Section 11 shall survive the termination of this Agreement.

12. Binding Effect; No Third-Party Beneficiaries

This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Subject to the immediately preceding sentence, nothing in this Agreement creates or will be deemed to create any third-party beneficiary rights in any person or entity not a party to this Agreement.

13. No Waiver of Rights

If Company fails to require Client to perform any terms of this Agreement, that failure does not prevent Company from later enforcing that term. If Company waives the Client's breach of a term, that waiver is not treated as waiving a later breach of the term.

14. Severability

If any term is held invalid or unenforceable by a court of competent jurisdiction, that shall not affect the validity of any other terms and same shall be deemed to be severed from the Agreement.

15. Costs of Enforcement

In any dispute arising under or relating to this Agreement, the Prevailing Party (defined below) shall be entitled to recover reasonable attorneys' and paralegals' fees and expenses incurred. For this purpose, the term "Prevailing Party" shall mean the Party whose position is substantially sustained in the settlement or in the final judgment rendered in any litigation.

16. Headings

The headings appearing in this Agreement are for convenience and reference only and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

17. Entire Agreement

This Agreement expresses the entire understanding between the Parties with respect to the subject matter hereof and may not be changed, modified, or terminated except in writing. If any provision of this Agreement is adjudged to be void or unenforceable, same shall not affect the validity of this Agreement or of any other provision hereof.

18. Amendment

This Agreement may be amended or modified only by written agreement of all parties.

19. Jurisdiction and Venue

This Agreement shall be construed in accordance with the laws of the State of Texas and the parties hereto agree that venue shall be in Harris County, Texas.

20. Notices

All notices, consents, approvals and requests required or permitted hereunder shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) certified United States mail, postage prepaid, return receipt requested or (b) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, addressed as follows (or at such other address and person as shall be designated from time to time by any Party hereto, as the case may be, in a notice to the other parties hereto in the manner provided for in this Section:

If to Client: Tomball Fire Department
Attn: Chief Sykora
401 W. Market St.
Tomball, TX. 77375

If to Company: First Response Family Clinic
Attn: Jerry Bittner
3401 W. Davis Street, Suite H
Conroe, Texas 77304
E-mail: jerrybittner@frfclinic.com

A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery or refusal of delivery; in the case of certified mail, when delivered or the first attempted delivery on a business day; or in the case of expedited prepaid delivery, upon the first attempted delivery on a business day.

21. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original binding document but all of which shall constitute a single agreement. By signing below, the parties hereby acknowledge and agree that a signed, faxed, scanned copy or electronic signature of this Agreement shall be treated as an original document and signature binding to the terms and conditions contained herein.

22. Survival

All provisions of this Agreement which by their sense and context are intended to survive the termination of this Agreement shall survive the termination of this Agreement for all purposes.

23. Arbitration

As a matter of course the parties shall bring problems or potential problems to the attention of each other as soon as possible and discuss them. The parties shall attempt to resolve any dispute arising out of or relating to this Agreement promptly by good faith negotiations between the appropriate representatives of the parties.

If the dispute is not resolved within twenty (20) days of the initiation of negotiations, either Party may initiate arbitration of the dispute under the auspices and procedures of the Commercial Arbitration Rules of the AAA through the Houston Office of the AAA. Initiation of class action arbitration is expressly forbidden. The arbitration shall be conducted by a single arbitrator (the "Expert") at a location in Montgomery County, Texas agreeable to the Parties. AAA will appoint the expert to serve as the Expert for the arbitration. Each Party will be responsible for paying one-half (1/2) of the fees charged by the AAA for the services provided in connection with this section. The arbitrator shall be governed by this Agreement and may not change it. The arbitrator may not award punitive damages. The award of the arbitrator shall finally resolve the dispute, and judgment upon the award may be entered by any court with jurisdiction to do so. The arbitration proceedings and any awards shall be confidential between the parties as evidenced by a nondisclosure agreement to be entered into between the parties as a condition precedent to receipt of any award. The procedures specified here shall be the sole and exclusive methods for the resolution of disputes between the Parties arising out of or relating to this Agreement.

24. Waiver of Jury Trial

THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM RELATING TO THIS AGREEMENT.

[Remainder of page intentionally left blank, signatures to follow]

The Parties have executed this Agreement on the day and year first above written.

[CLIENT NAME]:

By: _____

Name: _____

Title: _____

FIRST RESPONSE FAMILY CLINIC:

By: _____

Name: Jerry Bittner

Title: Manager

