

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**SECOND AMENDMENT TO
AGREEMENT FOR EMPLOYEE HEALTH AND WELLNESS CLINICAL SERVICES
PURSUANT TO RFP 16-019**

This SECOND AMENDMENT of the AGREEMENT FOR EMPLOYEE HEALTH AND WELLNESS CLINICAL SERVICES PURSUANT TO RFP 16-019 is made and entered into by and between FORT BEND COUNTY, TEXAS, a body politic, acting herein by and through its Commissioners Court and Next Level Urgent Care, LLC (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

W I T N E S S E T H

WHEREAS, on or about October 27, 2015, the Parties entered into AGREEMENT FOR EMPLOYEE HEALTH AND WELLNESS CLINICAL SERVICES PURSUANT TO RFP 16-019, (attached hereto as Exhibit "One") and amended same on or about October 25, 2016 (attached hereto as Exhibit "Two "); both Exhibits incorporated by reference;

WHEREAS, the Parties agree that the first term expires December 31, 2017 and that both Parties would like to renew for an additional term.

- A. The Agreement is hereby renewed on the same terms and conditions, effective **JANUARY 1, 2018** and shall terminate on **DECEMBER 31, 2018**.
- B. Pursuant to Section 4C, Contractor's maximum compensation for the performance of services during the term of this Second Amendment will increase by 3% of the previous year's contract, for a total compensation not to exceed \$975,000.00.
- C. Except as modified herein, the Agreement and Amendment remain in full force and effect and has not been modified or amended.
- D. In the event there is a conflict, this Second Amendment shall prevail over any other document.

Execution page follows

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by County.

FORT BEND COUNTY:

CONTRACTOR:

Robert Hebert
County Judge

Signature

Printed Name and Title

Date

Date

Attest:

Laura Richard, County Clerk

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of _____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Edward Sturdivant, County Auditor

Exhibits:

Exhibit One: AGREEMENT FOR EMPLOYEE HEALTH AND WELLNESS CLINICAL SERVICES
PURSUANT TO RFP 16-019

Exhibit Two: FIRST AMENDMENT TO AGREEMENT FOR EMPLOYEE HEALTH AND WELLNESS
CLINICAL SERVICES PURSUANT TO RFP 16-019

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Exhibit One:

AGREEMENT FOR EMPLOYEE HEALTH AND
WELLNESS CLINICAL SERVICES PURSUANT TO RFP 16-019

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

**AGREEMENT FOR
 EMPLOYEE HEALTH AND WELLNESS CLINICAL SERVICES
 PURSUANT TO RFP 16-019**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Next Level Urgent Care, LLC (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide Employee Health and Wellness Clinic Services pursuant to and accordance with the requirements of RFP 16-019; and

WHEREAS, CONTRACTOR submitted a proposal in response to RFP 16-019 and Contractor represents that it is qualified and desires to perform such Services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section One. Services

- A. Contractor shall render on-site medical and wellness services to participating county employees, retirees and dependents (hereinafter "clinic patients") in accordance with the advertised specifications of RFP 16-019, attached as Exhibit A, specifically including those services enumerated in paragraphs 9 – 16, and the services described in Exhibit B to this Agreement. Contractor shall meet or exceed Exhibits A and B, unless requirements are modified by the written agreement of the Parties (hereinafter "Services").
- B. For purposes of this Agreement, these pages shall be considered deleted from Exhibit B and are not included in Contractor's Services: *Next Level Urgent Care After Hours Care Capitated Model* (2pages) and *Attachment C Scope of Services Onsite Pharmacy Turnkey Proposal* (5 pages).

11/02/2015 original returned to Norma @ Purchasing

- C. The Parties agree that the Primary Care services to be provided shall include, but are not limited to: health promotion, disease prevention, health maintenance, counseling, patient education, diagnosis and treatment of acute and chronic illnesses which may involve collaborating with other health professionals, and utilizing consultation or referral as appropriate.
- D. Contractor shall design its services to accommodate a minimum of 20 patient appointments each day the clinic is open.
- E. Contractor shall not bill or otherwise solicit payment from Clinic patients, County or from County's group health plan for Services, other than as provided for in the Compensation and Payment Section of this Agreement.
- F. Contractor shall communicate all requests for direction, factual or statistical information relating to Services to the Fort Bend County Risk Management Director. However, the Fort Bend County Risk Management Director shall not serve as the agent of Fort Bend County or the Commissioners Court for any purpose other than conveying factual or statistical information. Contractor may rely on all factual or statistical information supplied by the Fort Bend County Risk Management Director in response to these requests.

Section Two. Personnel

- A. Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.
- B. All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by their conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.
- C. All persons (whether Contractor's employees or Contractor's contractors) providing services under this Agreement shall submit to a background investigation conducted by the County's Human Resources Department. County may accept a criminal background investigation consisting of a minimum of five (5) years state and federal inquiry conducted by Contractor if conducted within the ninety (90) days of hire by Contractor.
- D. At all times during the Agreement, Contractor shall ensure that Contractor's personnel maintain in good standing all professional license(s) and accreditation(s) applicable to Services. Contractor shall perform all acts necessary to ensure that Contractor's personnel maintain and improve their professional competence and training. Contractor

shall notify County within two (2) business days if any adverse action related to personnel professional license(s) or accreditation(s) occurs.

Section Three. Use of Clinic Space by Contractor

- A. Services shall be provided by Contractor at a County owned or leased building, hereinafter referred to as "the Clinic," as determined by County, which Contractor may use only for the purpose of providing health and wellness clinic operation services for County. The Clinic is located at 301 Jackson Street, Richmond Texas. Except as may be stated in writing provided to County, Contractor has inspected the Clinic and found it acceptable in "as is" condition for the performance of the Services.
- B. Any and all improvements of the Clinic, including any changes, modifications or additions, requested by Contractor shall be reviewed and approved in advance by County's Facilities Management & Planning Department Director and County's Risk Manager, and shall, if approved, be constructed by County and funded by County unless otherwise mutually agreed by the Parties. Any and all improvements to the Clinic shall become part of the Clinic and shall remain subject to this Agreement and shall be surrendered by Contractor upon termination of this Agreement. Personal property, furniture, and equipment removable without damage to the Clinic structure and paid for by Contractor shall remain the property of Contractor at all times.
- C. Contractor shall have the right to erect graphics or signs within or upon the Clinic, provided that: (1) Contractor shall bear the cost of all graphics or signs placed within the Clinic; and (2) all graphics and signs shall be approved in advance by County's Facilities Management & Planning Department Director and County's Risk Manager.
- D. County shall not be responsible for any loss or damage to any equipment or supplies of Contractor, its agents, employees or subcontractors, unless such loss or damage is proven to have been caused by the negligence of County. Contractor shall immediately report any and all lost items to County.
- E. Contractor shall be responsible for the lawful disposal of hazardous medical waste generated within the Clinic and those other items that the parties mutually agree to in writing after the commencement date of this Agreement. Contractor shall keep the Clinic in a clean, safe and attractive condition. County shall be responsible for utilities and facility maintenance of the Clinic to include the foundation, roof, exterior walls, main plumbing, central heating and cooling, utilities and custodial services.
- F. It is the responsibility of Contractor to promptly notify County's Facilities Department when maintenance/repair service is required including service for medical equipment. Contractor shall utilize the County Work Order system for all repairs and replacements which must be approved by County's Facilities Department prior to maintenance or repair service commencing.

Section Four. Compensation and Payment

A. Equipment and Supplies

1. Initial Set Up Fee: The County will make payment to Contractor within 30 days of receiving an approved invoice for the purchase of the items described in Exhibit B, Tab 4, Section 18.4 which are initially required by Contractor for the provision of Services. Any supplies or equipment purchased as part of initial set up or thereafter will be marked as County property and inventoried in accordance with County policy.
2. Contractor shall develop procedures whereby all supplies utilized at the Clinic are tracked and inventoried. Contractor shall include in monthly invoices the costs for supplies necessary for operation of the Clinic to be reimbursed by the County. Contractor shall not charge County any surcharge, handling charge or markup for any supply or equipment purchase or repair.

B. Contractor's fees shall be calculated in accordance with Exhibit B, Tab 4, and Section 18.0. The Maximum Compensation for the performance of service, which includes all staffing, fees, administrative and operating costs for all Services shall not exceed \$1,886,920, including start up fees, over the twenty-four month term plus any adjustments allowed in 4.C. This amount is generally payable monthly in the amount of \$73,580.00. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.

C. Upon each anniversary of this agreement the fees will increase in accordance with the seasonally adjusted, consumer price index – all urban consumers, medical care services. The contract renewal increase will be a minimum of three percent (3%) not to exceed six percent (6%) of the previous year's contract fees. All other pricing and discounts will remain the same.

D. All performance of Services by Contractor, including any changes in the Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

E. County will pay Contractor based on the following procedures: Contractor shall invoice County no more frequently than monthly by submitting to County two (2) original copies of invoices showing the amounts due for Services performed in a form acceptable to County and invoices for purchases. County shall review such invoices and approve them with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days of receipt of the invoice. County reserves the right to withhold payment of all or part of an invoice pending verification of satisfactory work performed and actual cost for items purchased.

- F. Travel and mileage expenses incurred in the performance of required Services will be compensated only when approved in advanced by County and provided that expenses comply with the County's Travel Policy, a copy of which is attached as Exhibit D to this Agreement.

Section Five. Limit of Appropriation

- A. Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum certified as available by the Fort Bend County Auditor, specifically allocated to fully discharge any and all liabilities County may incur.
- B. Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed the amount certified as available by the Fort Bend County Auditor.

Section Six. Term

The term of this Agreement shall be for a period of twenty-four (24) months, commencing on January 1, 2016, and ending at the close of business on December 31, 2018, with two (2) additional one-year renewal options on the same terms and conditions at County's sole discretion. Either party shall have the right to terminate this Agreement as provided herein.

Section Seven. Termination

- A. Termination for Non-Appropriation: County shall have the right to terminate this Agreement in the event of non-appropriation of funds by the County's governing body. County shall provide Contractor with sixty (60) days advanced written notice of such non-appropriation termination. County shall compensate Contractor, in accordance with the fee schedule as provided in Exhibit B, for Services provided proper to the date of termination specified in the notice. Contractor shall not be entitled to lost or anticipated profits should County choose to exercise its option to terminate for non-appropriation of funds.
- B. Termination for Convenience: After the initial twelve (12) months of the twenty-four (24) month term Either Party may terminate this Agreement at any time upon 150 days written notice.
- C. Termination for Default
 - 1. This Agreement may be terminated in whole or part for cause in the following circumstances:

- a. If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;
 - b. If either party materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to the other Party's reasonable satisfaction within a period of thirty (30) calendar days after receipt of notice specifying such breach or failure.
- 2. If, after termination, it is determined for any reason whatsoever that a party was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience in accordance with Section 7A above.
- D. Upon termination of this Agreement, County shall compensate Contractor in accordance with the Compensation and Payment Section above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in the Compensation and Payment Section above.
- E. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section Eight. Modifications and Waivers

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section Nine. Inspection of Books and Records

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and non-patient identified records of Contractor for the purpose of verifying

the amount of work performed under the Scope of Services. County may review any and all of the Services performed by Contractor pursuant to this Agreement, along with the use and occupancy of the Clinic authorized under this Agreement. County's right to inspect survives the termination of this Agreement for a period of four years.

Section Ten. Medical Records

- A. Contractor shall maintain complete and accurate electronic medical records (hereinafter "EMR") for each Clinic patient. For purposes of this Agreement, an EMR is a real-time transaction processing database of medical information. Records will be kept in a professional and legally compliant manner consistent with the accepted practices of the professional medical community.
- B. All medical records maintained by Contractor in connection with this Agreement shall be property of each individual patient and Contractor shall be the custodian of the records and data during the term of this Agreement. Contractor shall comply with all federal and state medical record requirements including but not limited to the Health Insurance Portability and Accountability Act. Contractor will at all times comply and require that any subcontractor comply with all applicable provisions of such laws, regulations and policies. The confidentiality of personal health information, as defined by HIPAA, that may be shared between Contractor and County's Third Party Administrator is covered and governed by a Business Records Associate Agreement.
- C. County understands and agrees that all of the medical records and other protected health information maintained by Contractor will be held in the strictest confidence. County is not entitled to access to the patient identified medical records or protected health information of Clinic patients without the appropriate written authorization from the patient unless medical records are a result of occupational medical services provided (i.e. Worker's Compensation or Pre-Employment Physicals) or as otherwise permitted by law.
- D. The retention of all medical records shall be in compliance with applicable State and Federal laws and it is the responsibility of Contractor to ensure compliance. Contractor shall develop and implement policies, standards and procedure to protect the confidentiality and security of the medical records and ensure that all employees are trained to adhere to security requirements similar to Exhibit B, Attachment I.
- E. Upon termination of this Agreement, Contractor shall provide notice to all patients and facilitate the transfer of patient medical records to a provider as designated by each patient. Upon request of any patient at any time and payment of a reasonable copy fee, Contractor shall provide patient a copy of patient's medical record. At no time shall the County be the custodian of any medical records and/or data of any patient.

Section Eleven. Insurance

- A. Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
1. Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 2. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 3. Professional Liability insurance with limits not less than \$1,000,000.
 4. Medical Malpractice Liability Insurance: Medical Malpractice Liability Insurance shall be maintained with limits of no less than \$1,000,000 per occurrence and \$3,000,000 in aggregate.
- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability.
- C. All Liability policies written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
- D. If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.

- E. Contractor shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- F. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
- G. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the Contractor.

Section Twelve. Indemnity

CONTRACTOR AGREES TO HOLD HARMLESS COUNTY, ITS AGENTS AND EMPLOYEES FROM ANY AND ALL CLAIMS, ACTIONS, LAWSUITS, DAMAGES, JUDGMENTS OR LIABILITIES OF ANY KIND WHATSOEVER ARISING OUT OF THE OPERATION AND MAINTENANCE OF THE AFORESAID PROGRAM OF HEALTH CARE SERVICES AS CONDUCTED BY CONTRACTOR, ITS EMPLOYEES OR AGENTS, IT BEING THE EXPRESS UNDERSTANDING OF THE PARTIES HERETO THAT CONTRACTOR SHALL PROVIDE THE ACTUAL HEALTH CARE SERVICES, AND HAVE COMPLETE RESPONSIBILITY FOR SUCH HEALTH CARE SERVICES PROVIDED BY ITS EMPLOYEES AND AGENTS AND ANY LAWSUIT ARISING SOLELY OUT OF SUCH DELIVERY OF HEALTHCARE.

Section Thirteen. Confidential and Proprietary Information

- A. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.
- B. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor

shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

- C. Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.
- D. Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section Fourteen. Independent Contractor

The relationship of the parties under this Agreement is that Contractor is an independent contractor. To the extent Contractor performs Services under this Agreement, it shall do so solely in the capacity of an independent contractor in its relationship with County. Contractor shall exercise independent judgment in making all medical decisions with respect to its patients and in managing and operating the Clinic pursuant to this Agreement, and is solely

responsible for making medical decisions, scheduling, prioritizing, staffing clinic operations, and determining how Clinic operations are to be performed. No term or provision of this Agreement or act of Contractor during the term of this Agreement shall be construed as making Contractor the agent, servant or employee of County, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which County provides to its employees. No term or provision of this Agreement or act of Contractor in performing under the terms of this Agreement shall be construed as creating a partnership, joint venture, or joint enterprise, or making Contractor the agent, servant, employee, partner or joint venturer of County.

Section Fifteen. Notices

- A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County Attn: County Judge 401 Jackson Street Richmond, Texas 77469
With a copy to:	Fort Bend County Risk Management Attn: Director 301 Jackson, Ste. 224 Richmond, TX 77469
Contractor:	Next Level Urgent Care, LLC 2415 Town Center # 300 Sugar Land ,TX 77478

- C. Notice is effective only if the party giving or making the Notice has complied with subsections 15 (A) and 15 (B) and if the addressee has received the Notice. A Notice is deemed received as follows:

1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section Sixteen. Compliance with Laws

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section Seventeen. Performance Warranty

- A. Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
- B. Contractor shall endeavor to meet the Performance Indicators/Objectives described in Exhibit C beginning January 1, 2016. Contractor guarantees that it will achieve the Performance Indicators/Objectives beginning May 1, 2016 or as noted in the Exhibit and agrees to place up to eleven percent (11%) of its administration fee at risk as outlined in Exhibit C. Contractor will prepare a monthly report stating its performance by Performance Indicator. The report will be provided to Fort Bend County Risk Manager with a copy to Fort Bend County Purchasing Agent within 15 days after the end of the month covered in the report. While performance will be monitored monthly, liquidated damages, if any, will be the percentage of Contractor's administration fee based on the annual performance results upon a final determination that a performance standard has not been met. Any payment from Contractor will be paid to County, if due, annually by Contractor, or offset at County's option, from payments due in the following month's invoice after liquidated damages have been determined.

Section Eighteen. Assignment and Delegation

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they

are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

- B. Neither party may delegate any performance under this Agreement.
- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section Nineteen. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section Twenty. Successors and Assigns

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section Twenty-One. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section Twenty-Two. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section Twenty-Three. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section Twenty-Four. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section Twenty-Five. Entire Agreement

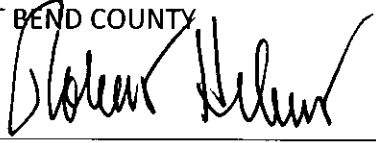
This Agreement contains the entire Agreement among the parties and supercedes all other negotiations and agreements, whether written or oral. Attached hereto is Exhibit A: *RFP 16-019*; Exhibit B: *NEXT LEVEL URGENT CARE, LLC RESPONSE TO RFP 16-019*; Exhibit C: *Supplemental Negotiated Terms*; Exhibit D *County Travel Policy*; all of which are incorporated by reference as if set forth herein verbatim for all purposes.

Section Twenty-Six. Conflict

In the event there is a conflict, the following have priority with regard to the conflict: first: this document titled *Agreement for Health and Wellness Clinical Services Pursuant to RFP 16-019*, second: Exhibit C, *Supplemental Negotiated Terms* third: Exhibit A, *RFP 16-019* fourth: Exhibit D *County Travel Policy*; fifth: *Exhibit B, NEXT LEVEL URGENT CARE, LLC RESPONSE TO RFP 16-019*.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the ____ day of _____, 2015.

FORT BEND COUNTY


Robert E. Hebert, County Judge

10-27-15
Date

ATTEST:


Laura Richard, County Clerk

NEXT LEVEL URGENT CARE, LLC


Authorized Agent- Signature

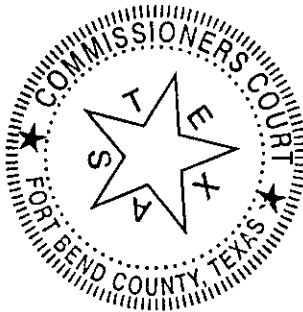
Juliet Brown MD
Authorized Agent- Printed Name

CEO
Title

10/22/2015
Date

Reviewed:


Wyatt Scott, Director
FBC Risk Management



Approved as to legal form:


Assistant County Attorney

Attachments

Exhibit A: RFP 16-019
Exhibit B: NEXT LEVEL URGENT CARE, LLC RESPONSE TO RFP 16-019
Exhibit C: Performance Indicators/Objectives
Exhibit D: County Travel Policy

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$1,886,220.⁰⁰ to accomplish and pay the obligation of Fort Bend County under this contract.


Robert Edward Sturdivant, County Auditor

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Exhibit Two:

FIRST AMENDMENT TO AGREEMENT FOR EMPLOYEE HEALTH AND
WELLNESS CLINICAL SERVICES PURSUANT TO RFP 16-019

STATE OF TEXAS §
 §
 COUNTY OF FORT BEND §

**FIRST AMENDMENT TO
 AGREEMENT FOR
 EMPLOYEE HEALTH AND WELLNESS CLINICAL SERVICES
 PURSUANT TO RFP 16-019**

This FIRST AMENDMENT of the AGREEMENT FOR EMPLOYEE HEALTH AND WELLNESS CLINICAL SERVICES PURSUANT TO RFP 16-019 is made and entered into by and between FORT BEND COUNTY, TEXAS, a body politic, acting herein by and through its Commissioners Court and Next Level Urgent Care, LLC (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

RECITALS

WHEREAS, on or about October 27, 2015, the Parties entered into AGREEMENT FOR EMPLOYEE HEALTH AND WELLNESS CLINICAL SERVICES PURSUANT TO RFP 16-019 attached hereto as Exhibit "One" and incorporated by reference;

WHEREAS, the Parties now desire to amend a certain portion of the Agreement; and

NOW THEREFORE, for and in consideration of the mutual benefits to be derived by the parties hereto, County, and Contractor agree as follows:

I. Amendments

Section One, Services, is amended as follows:

- C. The Parties agree that the Primary Care services to be provided shall include, but are not limited to all of the following:
 - 1. Health promotion, disease prevention, health maintenance, counseling, patient education, diagnosis and treatment of acute and chronic illnesses which may involve collaborating with other health professionals, and utilizing consultation or referral as appropriate.
 - 2. Laboratory Testing and Integration/Coordination such as phlebotomy, specific "quick tests" as determined by the health care providers at the Clinic (such as tests for strep or flu), urinalysis, finger stick glucose, and other testing to be determined.
 - a. Specimens shall be obtained and processed through County's designated network laboratory supplier. County's designated network laboratory supplier shall bill the applicable party for any testing performed by such laboratory supplier.

- b. These labs shown in the attached and incorporated Exhibit E shall be performed or collected by Contractor at the Clinic at no charge to the clinic patients. Contractor shall submit itemized, patient de-identified invoices on a monthly basis in accordance with Section 4E of this Agreement; however payment of such invoices is not calculated as part of Contractor's fee for service.
- 3. Tobacco Cessation Services.
 - A. Services may include hypnotherapy, but only as prescribed by Clinic treating personnel.
 - B. Hypnotherapy services must be approved in advance by the Risk Management Director and be submitted in a patient de-identified manner. Payment for hypnotherapy services shall not exceed \$225.00 per hour and shall be submitted to County for reimbursement in accordance with Section 4E of this Agreement. Payment of such invoices is not calculated as part of Contractor's fee for service.

Section Twenty-Five, Entire Agreement, is amended as follows:

This Agreement contains the entire Agreement among the parties and supercedes all other negotiations and agreements, whether written or oral. Attached hereto is Exhibit A: *RFP 16-019*; Exhibit B: *NEXT LEVEL URGENT CARE, LLC RESPONSE TO RFP 16-019*; Exhibit C: *Supplemental Negotiated Terms*; Exhibit D *County Travel Policy*; and Exhibit E: *County Lab Formulary*; all of which are incorporated by reference as if set forth herein verbatim for all purposes.

Section Twenty-Six, Conflict, is amended as follows:

In the event there is a conflict, the following have priority with regard to the conflict: first: this document titled *Agreement for Health and Wellness Clinical Services Pursuant to RFP 16-019*, second: Exhibit C, *Supplemental Negotiated Terms* third: Exhibit A, *RFP 16-019* fourth: Exhibit D *County Travel Policy*; fifth: Exhibit E: *County Lab Formulary*; sixth: Exhibit B, *NEXT LEVEL URGENT CARE, LLC RESPONSE TO RFP 16-019*.

- II. The terms of this First Amendment shall be effective upon execution of both Parties.
- III. Except as modified herein, any prior executed document remain in full force and effect and has not been modified or amended. In the event of conflict, the contents of this First Amendment shall prevail.

IV. Execution

IN TESTIMONY OF WHICH, THIS AMENDMENT shall be effective upon execution of all parties.

County
FORT BEND COUNTY

By: _____

Robert E. Hebert, County Judge

Date: _____

10-25-16

ATTEST:

Laura Richard

Laura Richard, County Clerk



Contractor

NEXT LEVEL URGENT CARE, LLC

By: _____

Name: _____

Title: _____

Date: _____

CEO

10/13/2016

ATTEST:

Name

Date: _____

Attachments:

EXHIBIT ONE: AGREEMENT FOR EMPLOYEE HEALTH AND WELLNESS CLINICAL SERVICES
PURSUANT TO RFP 16-019

EXHIBIT E: COUNTY LAB FORMULARY

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 35,000.00 to accomplish
and pay the obligation of Fort Bend County under this contract.

A handwritten signature in black ink, appearing to read "Robert Ed Sturdivant", is written over a horizontal line.

Robert Ed Sturdivant, County Auditor

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