



COUNTY ATTORNEY

Fort Bend County, Texas

BRIDGETTE SMITH-LAWSON

County Attorney

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REVIEW FORM

On June 21, 2023, the County Attorney's Office reviewed the following pursuant to Contract Request No. 23-HHS-100856:

Memorandum of Understanding for between Fort Bend County Health and Humans Services Department and Texas Children's Hospital.

The purpose of this MOU is to provide a framework within which to identify, examine and implement in good faith the potential for possible future collaborations between Fort Bend County Health and Humans Services Department and Texas Children's Hospital.

The attached MOU has been acknowledged, reviewed, and approved as to legal form only.

BRIDGETTE SMITH-LAWSON
FORT BEND COUNTY ATTORNEY

A handwritten signature in black ink, appearing to be "B. O'Neal", written over a horizontal line.

Byron O'Neal,
Assistant County Attorney,
General Counsel Division

Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU"), is entered into this _____ ("Effective Date"), by and between **Texas Children's Hospital** (hereinafter referred to as "TCH"), **TCH Pediatrics Associates, Inc. d/b/a Texas Children's Pediatrics** (hereinafter referred to as "TCP") and **Fort Bend County Health and Human Services** (hereinafter referred to as "FBHHS") (each, individually, a "Party" and collectively, the "Parties").

R E C I T A L S

WHEREAS, TCH, organized as a non-profit corporation under the laws of the State of Texas that is exempt from federal income taxation under Section 501(c)(3) of the Code, owns and/or operates health care facilities for the provision of clinical services to patients;

WHEREAS, TCP, a non-profit corporation under the laws of the State of Texas, provides health care services to pediatric patients throughout the greater Houston area;

WHEREAS, FBHHS, a government agency tasked with promoting and protecting the health and well-being of the residents of Fort Bend County through disease prevention and intervention, community engagement and helping to assure the equitable provision of basic human needs; and

WHEREAS, TCH, TCP and FBHHS desire to collaborate on the development and implementation of various activities to further the provision and raising awareness of behavioral health care services and resources for residents in the Fort Bend County area.

NOW, THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions contained herein, TCH, TCP and FBHHS hereby agree to the terms and conditions set forth below.

T E R M S

1. AREAS OF COLLABORATION

The purpose of this MOU is to provide a framework within which to identify, examine and implement in good faith the potential for possible future collaborations between the Parties (each, a "Project" and collectively, the "Projects"). Possible Projects may be proposed by any Party and may include, but are not limited to, the following:

- a. Participation in pediatric mental health events;
- b. Participation in mental health task force meetings;
- c. Based on practice locations, collaboration on helping children that do not have medical homes; and
- d. Assistance as needed in the behavioral health needs of children.

2. RESPONSIBILITIES OF THE PARTIES

- a. The Parties agree to establish a Joint Committee (the “Steering Committee”) with representatives from TCH, TCP and FBHHS to oversee the ongoing collaboration of the Parties as contemplated pursuant to this MOU. The Steering Committee shall meet monthly to discuss any potential education and/or clinical Projects as well as the progress of the development and/or implementation of an approved Project, if any.
- b. In the event that the Parties mutually agree to go forward with the implementation of any Project or Projects discussed pursuant to this MOU, then the Parties shall set forth in a written agreement, statement of work or workplan the terms to govern the Project, including, but not limited to, timelines, roles, responsibilities, and costs.
- c. For avoidance of doubt, each Party agrees that there is no requirement under this MOU to proceed with any particular proposed Project or Projects. Only if the Parties reach a separate written, mutual agreement, statement of work or workplan signed by all Parties setting forth the terms and conditions surrounding the Project will a Project be binding.

3. TRANSFER OF FUNDS

- a. The Parties acknowledge and agree that this MOU does not create any financial or funding obligation on any Party, and that such obligations shall arise only pursuant to the joint execution of a subsequent agreement, statement of work or workplan that specifically delineates the terms and nature of such obligations and that references this MOU.

4. MEDIA

Neither Party shall use another Party’s name, logos, designs or other proprietary interests (“Proprietary Interests”) in advertising or promotions without the express written approval of the other Party, including, the language proposed to be used. Each Party shall retain all right, title, and interest in and to its Proprietary Interests and may revoke and terminate the other Party’s permission to use such Proprietary Interests at any time with written notice. The Parties agree that ownership rights to any intellectual property developed by, though or arising from any Project shall be mutually determined and agreed to by the Parties in a separate written agreement detailing the terms of such Project.

5. USE OF INTELLECTUAL PROPERTY

This MOU does not grant a Party the right to use any of the intellectual property of another Party.

6. TERM

This MOU shall become effective on the Effective Date and shall continue for a period of one (1) year (the “Term”), unless sooner terminated in accordance with the terms of this MOU. The Term will automatically renew for additional one year terms unless a Party notifies the other Parties within thirty (30) days from the end of the original Term of its intent not to renew.

7. TERMINATION OF MOU

- a. Either TCH, TCP or FBHHS may terminate this MOU without cause by delivering written notice to the other Parties not less than thirty (30) days prior to the date on which termination is to be effective.
- b. Upon termination of this MOU, the Parties shall not have any further rights or obligations hereunder except for: (i) obligations accruing prior to termination; and (ii) obligations, promises or covenants contained herein which are expressly made to extend beyond the term of this MOU.

8. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other, on execution and while this MOU is in effect, as follows:

- a. It is not bound by any agreement or arrangement that would prevent that Party from entering into, or from fully performing its obligations under this MOU; and
- b. Where a license to operate a business or other regulated profession is required, its applicable licenses have never been denied, suspended, revoked, terminated, voluntarily relinquished under threat of disciplinary action, or restricted in any way.

9. CONFIDENTIALITY

- a. Except as set out herein, Confidential Information means all non-public, confidential or proprietary information disclosed before, on, or after the Effective Date, by a Party a (“Disclosing Party”) to another Party a (“Recipient”) or its affiliates, or to any of such Recipient’s or its affiliates’ employees, officers, directors, partners, shareholders, agents, attorneys, accountants or advisors collectively, (“Representatives”), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,”. Confidential Information shall include the terms of this MOU. Confidential Information does not include information that (a) is or becomes generally available to the public other than as a result of Recipient’s breach of this MOU; (b) is obtained by Recipient on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; (c) Recipient establishes by documentary evidence, was in Recipient’s possession prior to the Disclosing Party’s disclosure hereunder; or (d) was or is independently developed by Recipient without using any Confidential Information.
- b. The Recipient shall:
- i. protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
 - ii. not use the Disclosing Party’s Confidential Information, or permit it to be accessed or used, for any purpose other than in furtherance of this MOU, or otherwise in any manner to the Disclosing Party’s detriment, including without limitation, to reverse engineer, disassemble, decompile or design around the Disclosing Party’s proprietary services, products and/or confidential intellectual property;
 - iii. not disclose any such Confidential Information to any person or entity, except to the Recipient’s Representatives who:
 - A. need to know the Confidential Information to assist the Recipient, or act on its behalf, in relation to the Purpose or to exercise its rights under the MOU;
 - B. are informed by the Recipient of the confidential nature of the Confidential Information; and
 - C. are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this MOU; and

- D. be responsible for any breach of this Agreement caused by any of its Representatives.
- c. In the event that a Party is legally compelled by a court of competent jurisdiction or by a governmental body to disclose any Confidential Information, such Party shall give the other Party prompt written notice of such requirement, together with a copy of such demand, to enable the other Party to seek a protective order or other remedy.
- d. At any time during or after the term of this Agreement, at the Disclosing Party's written request, Recipient shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Notwithstanding the foregoing, Recipient may retain Confidential Information:
 - A. as may be required to comply with any applicable federal, state or local law, regulation or regulatory authority to which Recipient is subject; or
 - B. that is maintained as an archive copy on the Recipient's disaster recovery and/or information technology backup systems. Such copies will be destroyed upon the normal expiration of Recipient's backup files.

Recipient shall continue to be bound by the terms and conditions of this Agreement with respect to any such Confidential Information retained in accordance with this Section.

- e. Each Party under this MOU agrees to comply, to the extent required, with the applicable provisions of the Administrative Simplification Section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d through d-8; and the requirements of any applicable regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations as contained in 45 CFR Part 164 (the "Federal Privacy Regulations"), the Federal Security Regulations as contained in 45 CFR Part 164 (the "Federal Security Regulations") and Title XIII of the American Recovery & Reinvestment Act of 2009 (the "HITECH Act"), as well as all pertinent current and future regulations issued by the Department of Health and Human Services ("HHS") thereunder (collectively "HIPAA"). Each Party under this MOU agrees not to use or disclose any protected health information, as defined in 45 CFR § 164.504, or individually identifiable health information (collectively, "Protected Health Information"), concerning a patient other than as permitted by this MOU and the requirements of HIPAA. Each Party will

promptly report to the other Party upon knowledge and verification, any use or disclosure of a patient's Protected Health Information not provided for by this MOU, or in violation of any applicable local, state or federal law of which that party becomes aware. Notwithstanding the foregoing, no attorney-client, accountant-client, provider-patient or other legal privilege shall be deemed waived by a Party by virtue of this Subsection.

10. NOTICES

All notices hereunder shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered or when deposited in the United States mail, postage prepaid, addressed as follows:

If to FBHHS:

Fort Bend County Health and Human Services
4520 Reading Rd – Suite A-100
Rosenberg, TX 77471

If to TCH:

Texas Children's Hospital
6701 Fannin St.
Houston, Texas 77030
Attention: Director, Ambulatory Services & Clinical Business Operations

With a copy to (which shall not constitute Notice):

Texas Children's Hospital
Meyer Building
1919 S. Braeswood, Suite 2244
Houston, Texas 77030
Attention: Legal Department

If to TCP:

Texas Children's Pediatrics
1919 S Braeswood, Suite M530.06
Houston, Texas 77030
Attn: Director, Regional Operations

With a copy to (which shall not constitute Notice):

Texas Children's Pediatrics
Attn: Director Legal Operations, Contracts

1919 S. Braeswood Blvd.
Houston, TX 77030

or to such other persons or places as a Party may from time to time designate by written notice to the other Parties.

11. NO EXCLUSION FROM HEALTH PROGRAM

Each Party hereby represents and warrants that it, is not, and at no time has been, excluded from participation in any state or federally-funded healthcare program, including Medicare and Medicaid. Each Party hereby agrees to immediately notify the other Parties in writing of any threatened, proposed, or actual exclusion of it or its employees, directors, contractors or agents rendering services pursuant to this MOU from any state or federally-funded healthcare program, including Medicare and Medicaid. In the event that a Party is excluded from participation in any federally-funded healthcare program during the term of this MOU, or if any time after the date of this MOU it is determined that such Party is in breach of this Section, this MOU shall automatically terminate as of the date of such exclusion.

12. ARM'S LENGTH NEGOTIATION

The Parties hereto acknowledge and agree that (i) the arrangement contemplated hereunder was negotiated at arm's length and reflects the conclusion of the Parties that this MOU is in the best interest of all Parties hereto, and of the communities served by the Parties; (ii) the services contemplated under this MOU do not involve the counseling or promotion of a business or activity that violates state or federal law, and (iii) nothing in this MOU requires a Party to refer patients to another Party.

13. COMPLIANCE WITH MEDICARE/MEDICAID STATUTES AND REGULATIONS; CHANGE IN LAW, REGULATION AND/OR INTERPRETATION

The Parties to this MOU shall comply with, and have therefore structured this MOU in an effort to ensure that this MOU complies with, all applicable federal and state laws ("Laws") rules and regulations ("Regulations").

If at any time this MOU, or any material provision of this MOU, is found to violate the Laws or Regulations or if a Party has a reasonable belief that this MOU creates a material risk of violating the Laws or Regulations, or the federal government, through an agency, department, or other bureau, implements statutes, rules, regulations (including, but not limited to, "safe harbor" regulations) or guidance stating that activities such as those contemplated by the MOU are then unlawful, such Party shall notify the other Parties in writing and shall describe the violation or potential violation with particularity. Within thirty (30) days of such notice, the Parties shall commence the renegotiation of this MOU in good faith in light of the issues raised. If the Parties fail to reach MOU within sixty (60) days of this written notice, the MOU shall automatically terminate.

14. INDEPENDENT RELATIONSHIP

None of the provisions of this MOU are intended to create, nor shall be deemed or construed to create, any relationship between TCH, TCP and FBHHS other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this MOU. Neither of the Parties hereto shall be construed to be the agent, employer or representative of the other.

15. BENEFIT

This MOU is intended to inure only to the benefit of TCH, TCP and FBHHS. This MOU is not intended to create, nor shall it be deemed or construed to create, any rights in any third parties.

16. WAIVER

A waiver by a Party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

17. GOVERNING LAW

This MOU shall be construed in accordance with the laws of the State of Texas. Venue shall lie solely in Harris County, Texas.

18. COUNTERPARTS

This MOU may be executed in two (2) or more counterparts, all of which together shall constitute only one (1) MOU.

19. ENTIRE MOU

This MOU constitutes the entire understanding between the Parties hereto concerning the subject matter herein and as a complete statement of the terms thereof, and shall supersede all previous understandings and agreements, either oral or written. The Parties shall not be bound by any representation made by a Party or agent of a Party that is not set forth in this MOU. This MOU may not be amended or modified except by mutual written agreement of authorized representatives of the Parties.

20. NON-EXCLUSIVITY

This MOU is non-exclusive. Each Party may contract with other third parties for same or similar partnerships, services, items, products or work.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed in their names as their official acts by their respective representatives, each of whom is duly authorized to execute the same.

TEXAS CHILDREN'S HOSPITAL

By: _____

Date: _____

Name: _____

Title:

FORT BEND HEALTH AND HUMAN SERVICES

By: _____

Date: _____

Name:

Title:

TEXAS CHILDREN'S PEDIATRICS

By: _____

Date: _____

Name: _____

Title: