

**MEDICAL DIRECTOR AGREEMENT
DEPARTMENT OF EMERGENCY SERVICES**

This Medical Director Agreement (the “Agreement”) is made and entered into as of this ___ day of _____ 2020, between DeKalb County, Georgia, a political subdivision of the State of Georgia (the “County”), and The Emory Clinic, Inc. (the “Clinic”), a Georgia non-profit corporation.

WITNESSETH:

WHEREAS, the County has determined that, consistent with State law, certain administrative and other related supervisory services are reasonable and necessary to promote and maintain the County’s emergency medical communications (the “Service”); and

WHEREAS, the County has recognized the need for a specialist, who has the training, experience, and qualifications necessary to practice medicine in the specialty of emergency medicine, to provide medical oversight and guidance while serving as Medical Director for the Medical Priority Dispatch System utilized by the DeKalb County E911 Center, and

WHEREAS, the County desires to immediately retain the services of the Clinic in order to provide such administrative and supervisory services; and

WHEREAS, the Clinic has employees who are licensed to practice medicine in the State of Georgia and who are qualified to provide such administrative and supervisory services, and desires to provide such services under contract as an independent contractor, in accordance with the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, and for other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1. DUTIES, OBLIGATIONS AND PERFORMANCE OF CLINIC

1.1 The Clinic’s Undertaking. The County hereby contracts with the Clinic to provide administrative and supervisory services described in Exhibit A hereto and incorporated into this Agreement by reference (the “Administrative Services”). The Clinic agrees to provide such Administrative Services on the terms and conditions set forth herein.

1.2 Availability of Administrative Services. The parties acknowledge that it is difficult to predict the precise amount of time required to perform the Administrative Services required by this Agreement. The parties anticipate, however, that the Clinic shall provide Administrative Services on an as-needed basis which shall, on the average, consist of approximately 17.55 hours a month.

1.3 Designation of Physician / Substitute Physicians. The Clinic shall designate a physician to provide the Administrative Services required by this Agreement, who shall comply at all times with the qualifications set forth herein in Section 1.4 (the “Medical Director”). The initial Medical Director designated by the Clinic is Cynthia Romero, MD, for the service. If the Medical Director is unable to provide the Administrative Services for any reason, the Clinic will designate a substitute physician to provide the Administrative Services, unless the County states that coverage is not required during a specific absence of the Medical Director. Should a substitute physician be required, the Clinic shall promptly provide the name of the physician to the DeKalb County Fire Chief or his/her designee per the Notice provision set forth in Article 6.10. Any such substitute physician shall comply with the requirements of this Agreement applicable to the Medical Director.

1.4 Representations, Covenants and Warranties of Clinic and Medical Director.

- A. License to Practice.** The Clinic warrants and covenants Medical Director is fully authorized to practice medicine in the State of Georgia and holds all appropriate licenses from the Georgia Composite Medical Board. The Clinic agrees that the Medical Director shall also, for the full Term (as defined in Article 4) of this Agreement, maintain such license(s) and also promptly report to the County any suspension, restriction, reduction, revocation, or termination of any license(s) thereof.
- B. Reports.** The Clinic, upon receipt of notice of such by the Medical Director, shall promptly report to the DeKalb County Fire Chief or his/her designee any denial, suspension, revocation, curtailment, reduction, or limitation imposed at any time during the Term of this Agreement upon any staff or similar privileges held by the Medical Director from any healthcare facility which is a member of the Woodruff Health Sciences Center. The Clinic will provide the DeKalb County Fire Chief or his/her designee with information about such suits or settlements as the DeKalb County Fire Chief or his/her designee may reasonably request, provided that such reports will not in the opinion of counsel for the Clinic on such matters, constitute either privileged communications, or would destroy any protections from discoverability, compromise the defense of any suit, or violate any confidentiality provisions of any settlement agreement.
- C. Compliance with Regulations.** The Clinic shall comply, and shall require the Medical Director to comply, with all material aspects of applicable federal and state laws and regulations governing the licensing and conduct of physicians and with the ethical standards of the profession, and with the applicable policies, procedures, rules and regulations of the County.

D. Diligent Performance. In performance of the Administrative Services under this Agreement, the Clinic shall require the Medical Director to use diligent efforts and professional skills and judgment with the Principles of Ethics of the American Medical Association.

1.5 Insurance. Clinic shall obtain and maintain during the term of this agreement the following insurance covering itself and Medical Director's Services under the Agreement:

- (1) Commercial general liability insurance including broad form contractual with limits not less than \$1 million per occurrence and \$3 million in the aggregate; and
- (2) Professional liability insurance with limits not less than \$1 million per occurrence and \$3 million in the aggregate; and
- (3) Workers' Compensation and Employers Liability Insurance covering the Medical Director with limits not less than:

Workers' Compensation: Statutory Limits
Employers' Liability: \$1,000,000 each accident;
\$1,000,000 disease policy limit;
\$1,000,000 disease each employee; and

- (4) Excess coverage in the amount of \$1 million over and above the primary limits, which shall apply if any of the primary liability policies should be exhausted.

Should any of the insurance policies be written on a claims-made basis, insurance requirements shall survive the expiration of the Agreement and extended coverage shall be afforded for at least two (2) years after the expiration of this Agreement. Clinic agrees to provide the County with certificates of insurance evidencing aforementioned insurance coverages upon signing the agreement and upon request thereafter. The certificates of insurance shall state that the issuing company will make a reasonable business effort to provide (30) days prior written notice to the certificate holder should any of the policies be cancelled prior to the expiration date. All insurance policies shall be written on standard ISO forms or comparable forms and carried with companies authorized to do business in the State of Georgia, having a rating from A.M. Best of not less than A-/X or through self-insurance. This Subsection shall survive the termination of this Agreement.

ARTICLE 2. COMPENSATION AND BILLING

2.1 Compensation for Medical Director Services. During the Initial Term and first Renewal Term (as defined in Article 4 of this Agreement), as the compensation to the Clinic for the Administrative Services to be provided hereunder, the County agrees to pay the Clinic the annual equivalent sum of Fifty-Eight Thousand and Six Hundred Dollars (\$58,600) (the "Fee").

During the Initial Term and first Renewal Term, the County shall pay Clinic the Fee in equal monthly installments of Four Thousand Eight Hundred and Eighty-Three Dollars and thirty-three cents (\$4,883.33). After the first Renewal Term and beginning January 1, 2022, the Fee shall increase annually by an amount equal to three percent (3%), unless otherwise agreed to by the parties in writing.

2.2 Additional Terms. Each monthly Fee installment shall be due on or before the fifth (5th) day of each month, for the preceding month. The County agrees to employ its best efforts to make its payments to the Clinic in a timely manner.

2.3 Fair Market Value. The parties agree that the Fee represents fair market value compensation for the Administrative Services, and the Fee has not been determined on the basis of volume or value of any referrals or other business generated among the Clinic, Medical Director and the County. The Fee and the maximum hours may be adjusted if agreed upon by the parties, but adjustments may not be made more frequently than annually. Any such adjustment shall be made in writing, approved by the DeKalb County Board of Commissioners, and attached hereto as an amendment to this Agreement and shall not be effective until approved by the Board of Commissioners. The Administrative Services described herein are not intended to and may not exceed the services that are reasonable and necessary for the legitimate business purposes of this Agreement.

ARTICLE 3. RESPONSIBILITIES OF THE COUNTY

3.1 Equipment, Supplies and Records. The County shall provide, maintain, and make available to the Clinic such equipment, supplies and records as the Clinic deems reasonably necessary for the provision of the Administrative Services.

3.2 Personnel. The County shall provide secretarial and other personnel necessary to provide support services to the Clinic in conjunction with the delivery of Administrative Services as contemplated herein. Such personnel will be hired by the County. Such personnel shall be and remain either employees and/or independent contractors with the County, and may be disciplined, transferred, or discharged only by the County.

3.3 Facilities. The County shall provide the physical space for the delivery of Administrative Services contemplated hereunder. The size and location of such space shall be determined by the County in consultation with the Clinic.

3.4 Other Business Expenses. In the event that the County requests or authorizes the Medical Director to engage in a business activity on behalf of the County to further the Administrative Services contemplated hereunder, the County will reimburse the Medical Director for all reasonable expenses incurred for which itemized expense reports are presented to the County in accordance with the County's standard policies.

3.5 Compliance with Regulations. To the extent applicable, the County shall comply with federal, state and local laws and regulations applicable to the County's activities under this Agreement.

3.6 Insurance. The County shall maintain appropriate insurance coverage on any equipment made available by the County to the Clinic for the delivery of such Administrative Services. Notwithstanding this provision, the County reserves the right to self-insure.

ARTICLE 4. TERM AND TERMINATION

4.1 Term. The initial term of this Agreement shall be upon execution through December 31, 2020 (the "Initial Term"), unless otherwise terminated as provided herein. Thereafter, this Agreement shall automatically renew for four (4) additional one-year terms, not to exceed December 31, 2024 (each one-year term a "Renewal Term;" the Initial Term and the Renewal Term(s) are collectively referred to herein as the "Term") unless terminated as herein provided in Article 4.2 or unless either party notifies the other of an intent to terminate at least thirty (30) days prior to the expiration of the Initial Term.

4.2 Termination

- A. Termination Without Cause.** Either party may terminate this Agreement, without cause, at any time upon sixty (60) days written notice to the other.
- B. Early Termination by The County.** The County may terminate this Agreement immediately upon written notice to the Clinic in the event that:
 - 1. The Medical Director fails to maintain the representations, covenants, and warranties set forth in Article 1.4 and the Clinic fails to designate a qualified physician within thirty (30) days of receipt of notice by The County of such failure;
 - 2. The Clinic fails, after thirty (30) days written notice of default or failure to comply, to provide the Administrative Services required to be provided under this Agreement or to comply and to maintain compliance with any other provision of this Agreement.
- C. Early Termination by the Clinic.** The Clinic may terminate this Agreement immediately, with cause, upon written notice to the County upon The County's failure, after thirty (30) days written notice of default to comply, or maintain compliance with any provision of this Agreement.

4.3 Effect of Change in Law / Agreement to Renegotiate. Should (i) a Court of competent jurisdiction rule that any provision of this Agreement violates any state or federal law, rule, or regulation; or (ii) counsel for both parties mutually determine that a ruling from a Court of

competent jurisdiction would adversely affect any provision of this Agreement, the parties agree to renegotiate such affected provisions for ninety (90) days in order to affect compliance with any such ruling. In the event the parties cannot reach a mutually agreeable resolution after ninety (90) days, this Agreement will terminate automatically.

4.4 Affirmative Action Clause. To the extent applicable, the provisions of 41 C.F.R. Section 60-1.4, and Section 60-741.5(a) pertaining to affirmative action obligations are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. In addition, the parties agree that, in fulfilling their respective obligations and duties under this Agreement, they shall not discriminate against any individual or group on the basis of race, religion, age, sex, national origin, citizenship, disability, sexual orientation, genetic information, or veterans/national guard/military reserve status.

ARTICLE 5. RESPONSIBILITY

It is hereby stipulated and agreed between the parties that, with respect to any claim or action arising out of the activities described in this Agreement, each party shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements, or judgments resulting from the negligence, actions, or omissions of its own agents, officers, and employees.

ARTICLE 6. GENERAL PROVISIONS

6.1 Independent Contractor Status. The Clinic and Medical Director at all times will be independent contractors providing Administrative Services pursuant to this Agreement. Neither the Clinic nor Medical Director shall represent to third parties that the Medical Director is an employee of the County in the provision of Administrative Services under this Agreement. The County shall neither have nor exercise any control or direction over the methods or manner by which Medical Director performs his Services and functions. Medical Director shall not be eligible for any employee benefit plan offered by the County and shall not be entitled to employee benefits, including vacation pay, sick leave, retirement benefits, Social Security, Workers' Compensation, disability or unemployment insurance benefits that may be provided to County employees. Because the Medical Director is not an employee of the County, the County will not deduct from payments made hereunder for State and Federal Income Taxes, FICA or other amounts normally withheld from compensation due employees, or offer the Clinic the opportunity to participate in any pension plan or other benefit plan for employees. The Clinic shall make all tax filings, withholdings, and payments required by law.

6.2 Medicare Access Clause. If required by Section 952 of the Omnibus Reconciliation Act of 1980, for a period of four years after furnishing services with a value or cost of \$10,000.00 or more over a twelve (12) month period and upon written request, the parties shall make available to the Secretary of the Department of Health and Human Services, or to the Comptroller General of the United States, or their designees, the Agreement and the books, documents, and records necessary to verify the nature and extent of the cost of such services. If the parties provide any services through a subcontract with a related organization, such contract shall contain an “Access to Books and Records” section similar to this one, if required by the Act.

No attorney-client, accountant/client, or other legal privileges will be deemed to have been waived by the County or the Clinic by virtue of this Agreement.

6.3 Medicare and Medicaid. The parties expressly acknowledge that it has been and continues to be their intent to comply fully with all federal, state and local laws, rules, and regulations. It is not a purpose, nor is it a requirement, of this Agreement nor of any other agreement between the parties, to offer or receive, induce, or encourage the referral of any patient, payment of which may be made in whole or in part by Medicare or Medicaid. No payment made or received under this Agreement is in return for the referral of patients or in return for the purchasing, leasing, ordering, or arranging for or recommending the purchasing, leasing, or ordering of any good, service, item, or product for which payment may be made in whole or in part under Medicare or Medicaid. In the event of any legislative or regulatory change or determination, whether federal or state, that has or would have a significant adverse impact on either party hereto in connection with the performance of the Administrative Services, or should either party be deemed for any reason in violation of any statute or regulation arising from this Agreement, then this Agreement shall be renegotiated to comply with then current law. Neither party shall make or receive any payment that would be prohibited under state or federal law.

6.4 Assignment. This Agreement may not be assigned by either party without the express prior written consent of the other party.

6.5 Governing Law. This Agreement and each provision hereof shall be construed under and governed by the laws of the State of Georgia.

6.6 Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall attach only to such clause or provision, or a part thereof, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision in this Agreement in any jurisdiction.

6.7 Entire Agreement. This Agreement constitutes the entire Agreement between the parties, and it is expressly understood and agreed that the Agreement may not be altered, amended, modified, or otherwise changed in any respect, except by a writing executed by each party or an authorized representative of each party affected by any such modification.

6.8 Captions. The captions in this Agreement are for purposes of convenient reference only and form no part hereof.

6.9 Binding, Effect and Amendment. This Agreement, together with any amendments or attachments hereto, shall be binding upon the parties, and their heirs and successors, and this Agreement may be amended only by written instrument signed by both parties hereto.

6.10 Notice. Any notice, request, instruction or other document to be given pursuant to this Agreement by either party shall be in writing and delivered personally or sent by certified mail, postage prepaid, return receipt requested, to the other party at the address set forth below or to other address as such party may from time to time designate:

To the County: Zach Williams, Chief Operational Officer
Maloof Building
1300 Commerce Drive, 6th Floor
Decatur, GA 30030

With a Copy: Darnell Fullum, Fire Chief
DeKalb County Fire Rescue Department
1950 West Exchange Place
Tucker, GA 30084

To the Clinic: The Emory Clinic, Inc.
ATTN: Alex Isakov
Emergency Medicine
1599 Clifton Road, N.E.
Mailstop 1599-001-1BQ
Atlanta, Georgia 30322

With a copy to: Office of the General Counsel
Emory University
201 Dowman Drive
102 Administration Building
Atlanta, GA 30322
ATTN: Chief Health Counsel

Any notice shall be deemed to have been received by the party to whom it is addressed (i) upon actual receipt at the office of such party in the case of notices sent by delivery service with signature acknowledging receipt required; or (ii) three (3) days after it is deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, to such party.

6.11 Waiver. Failure of any party to pursue any remedy for any default by either party pursuant to the terms of this Agreement or the parties' waiver of any default or non-compliance by the other party shall not affect or impair either party's rights with respect to any subsequent default or non-compliance of the same or different kind of nature. Furthermore, the parties' delay or omission in asserting any right which either party may have hereunder will not constitute a waiver of such right or impair either party's right to assert such default or non-compliance on the part of the other party.

6.12 Duplicate Originals. This Agreement may be executed in duplicate, each of which, when executed and delivered, shall be deemed an original.

6.13 Drafting of Agreement. This Agreement shall be construed without regard to the party or parties responsible for its preparation and shall be deemed as having been prepared jointly by the parties. Any ambiguity or uncertainty existing in this Agreement shall not be interpreted or construed against any party hereto. The parties hereto agree that no representations except those contained herein that have been made by any party to induce the execution of this Agreement by any other party.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have set their hand and seal the day and year first written above.

DEKALB COUNTY, GEORGIA

THE EMORY CLINIC, INC.

By:

By:

Michael Thurmond, Chief Executive Officer
DeKalb County, Georgia

Maureen Haldeman, Chief Operating Officer

ATTEST:

ATTEST:

By:

By:

Barbara Sanders-Norwood, CCC
Clerk to the Chief Executive Officer and
Board of Commissioners of
DeKalb County, Georgia

Date: _____

Date: _____

APPROVED AS TO SUBSTANCE:

Darnell Fullum, Fire Chief

APPROVED AS TO FORM:

County Attorney Signature

County Attorney Name (Printed)

Acknowledged and agreed to by MEDICAL DIRECTOR:

I represent and warrant that I currently comply with and will maintain compliance with the covenants, representations and warranties and all other provisions as stated in this Agreement.

Cynthia Romero, MD

APPROVED AS TO FORM:

By: _____

Exhibit A

Duties of Medical Director

911 EMD Program

A. Prospective

Protocols

- Approval and periodic review of emergency medical dispatch (EMD) protocols, and response configuration in concert with the appropriate county designee(s)
- Interpretation of medical terminology and explanation of disease/injuries, diagnoses, and care to new call takers in-training

Personnel

- Approve standards for communications work as it relates to telephonic clinical care
 - Participation in the clinical orientation program for EMD personnel
 - Evaluation and approval of all EMD training programs in conjunction with communication training supervisors

Training

- Review of the clinical content of testing materials used in the evaluation of EMD personnel, as it relates to telephonic clinical care
- Approve in-house EMD training

B. Concurrent

- Periodic observation and participation on the communications floor, with call takers and dispatchers, to monitor the provision of services

C. Retrospective

- Medical oversight and guidance for the Medical Priority Dispatch, Continuous Quality Improvement (CQI) program, including:
 - Active involvement in the quality assurance program
 - Periodic audio reviews of problem EMD calls, conducted jointly with CQI

personnel

- Review and analysis of the monthly, cumulative scores of personnel, shift, and 911 center performance in handling a percentage ranging between 3% and 1% of all 911 medical calls processed through the Medical Priority Dispatch System using the sliding scale calculator provided by the International Academy of Emergency Dispatch (recommended standard per the International Academy of Emergency Dispatch and Priority Dispatch, Inc.)
- Assistance, as requested, with dispatcher continuing education, based on individual call taker deficiencies and collective identified needs.
- Participation in relevant dispatch review committee, dispatch steering committee, and related committee meetings
- Participation in discussions of challenging/problem dispatch-related cases and advice for the deliberations resulting from such discussions
- Participation in development and periodic review of communication center policy, as appropriate
- Participation in review of plans to adopt International Academy of Emergency Dispatch standards into policy and/or procedures