



RESOLUTION NO. 2017-059

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, AUTHORIZING EXECUTION OF PRACTICE OPERATION AGREEMENT WITH COMMUNITY CLINICS, LLC; AND PROVIDING AN EFFECTIVE

WHEREAS, City administration has negotiated an agreement with Community Clinics, LLC to provide certain primary care medical services at an agreed cost to people enrolled in the City's group medical insurance plan at a clinic to be constructed on land located on property presently described as Lot 4, Block A, The Shops at Branch Crossing; and

WHEREAS, the City Council of the City of Farmers Branch finds it to be in the public interest to approve the terms and conditions of said agreement:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS THAT:

SECTION 1. The City Manager is hereby authorized to sign on behalf of the City a Practice Operations Agreement with Community Clinics, LLC, substantially in the form set forth in Exhibit "A," attached hereto and incorporated herein by reference, and to sign such amendments to said agreement as the City Manager determines to be in the best interest of the City other than amendments that increase the City's financial responsibility as set forth in the agreement.

SECTION 2. This resolution shall become effective immediately upon its approval.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 18TH DAY OF APRIL, 2017.

ATTEST:

APPROVED:

Amy Piukana, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:4/10/17:85217)

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PRACTICE OPERATION AGREEMENT
BETWEEN
CITY OF FARMERS BRANCH AND COMMUNITY CLINICS, LLC

This PRACTICE OPERATION AGREEMENT ("**Agreement**") is made and entered into effective as of the ____ day of _____, 2017 ("**Effective Date**") by and between the CITY OF FARMERS BRANCH ("**City**") and COMMUNITY CLINICS, LLC, a Texas limited liability company ("**Community Clinics**"). For purposes of this Agreement, City and Community Clinics are each a "**Party**" and collectively they are the "**Parties**."

W I T N E S S E T H:

WHEREAS, City would like to ensure the availability of Primary Care Medical Services, as defined herein, for its employees and other members of City's community and would like for a clinic to be established in its community that provides Primary Care Medical Services through physicians and other health care professionals; and

WHEREAS, Community Clinics provides, among other things, Primary Care Medical Services through its employed physicians and other health care professionals ("**Providers**") and is willing to establish a clinic and provide Primary Care Medical Services to City's employees and other members of City's community,

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
CERTAIN RESPONSIBILITIES OF COMMUNITY CLINICS

1.1 **Clinic.** Community Clinics agrees to establish a medical clinic at _____, Farmers Branch, Texas ("**Clinic**") at which City's employees and other members of City's community can receive Primary Care Medical Services from Providers. The Clinic will be open normal operating hours from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturdays, excepting Community Clinics recognized holidays. For purposes of this Agreement, "Primary Care Medical Services" are those medical services listed on Schedule 1.1, attached and incorporated into this Agreement.

1.2 **Professional Services.**

1.2.1 **Providers.** In connection with the operation of the Clinic, Community Clinics shall make available Providers who have appropriate education, training, experience and licensure to provide Primary Care Medical Services.

1.2.2 **Relationship of the Parties.** In the provision of the Primary Care Medical Services, and in the private practice of the Providers' professions, it is mutually understood and agreed that Community Clinics and the Providers, on the one hand, and City, on the other, are, and at all times during this Agreement shall be, independent contractors, and neither Community Clinics nor any Provider is an agent (whether actual, apparent or ostensible) or employee of City. City shall neither have nor exercise any control or direction over the professional judgment of the Providers or over the methods or manner by which the Providers provide the Primary Care Medical Services or engage in the practice their profession. Nothing contained in this Agreement is intended

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or shall be construed as giving that degree of control or direction over Community Clinics or the Providers by City that creates an employer-employee, joint venture, or landlord/tenant relationship between City, on the one hand, and Community Clinics and the Providers, on the other. No Provider shall be entitled to any salary or other compensation from City for the provision of professional services, or to any employee benefits provided by City including disability, life insurance, pension and annuity benefits, educational allowances, professional membership dues, and sick, holiday, or vacation pay as a result of the provision of professional services. City shall not withhold from amounts, if any, paid to Community Clinics or any Providers for the provision of professional services any sum for income tax, unemployment insurance, social security or any other withholding pursuant to any Applicable Law (as defined in Section 4.7 below) or other requirement of any governmental body applicable to employers. With respect to income for the provision of professional services, Community Clinics and each Provider, as the case may be, shall submit reports and returns, make any necessary payments, and maintain any records required by any applicable local, state or federal governmental agency. The Parties agree, and Community Clinics shall require the Providers to agree, to take any and all action as may be reasonably requested by either of them to inform the public of the independent contractor nature of their relationship.

1.3 **Malpractice Insurance.** At all times during the term of this Agreement, and after the term of this Agreement for claims or occurrences related to the provision of professional medical services during the term of this Agreement, Community Clinics shall maintain on its behalf and on behalf of the Providers professional liability insurance with respect to all claims arising out of the provision of services constituting the practice of medicine (“**Malpractice Insurance**”). Malpractice Insurance for Community Clinics and each Provider shall individually be in amounts of coverage not less than One Million Dollars per occurrence and Three Million Dollars annual aggregate (\$1,000,000.00/\$3,000,000.00).

ARTICLE II
FINANCIAL AND BILLING ARRANGEMENTS

2.1 **Space Costs.** As consideration for the provision of the Primary Care Medical Services to City’s employees, City shall make all payments under that certain Lease Agreement between LCP Development Company, LLC (“**Landlord**”) and Community Clinics with a lease date of _____, (“**Lease**”) as follows: (i) upon the opening of the Clinic to the City’s employees for the provision of Primary Care Medical Services (the “**Clinic Opening Date**”), the City shall pay to Landlord the sum of Four Hundred Thousand Dollars (\$400,000.00); and (ii) on each of the first, second, third, fourth, fifth and sixth anniversaries of the Clinic Opening Date, the City shall pay to the Landlord the sum of One Hundred Thousand Dollars (\$100,000.00), the sum of such payments being equal to a total of One Million Dollars (1,000,000.00)(“**Clinic Rent**”), *provided, however*, that no such payment shall be due and payable in the event the Clinic is not then open and providing Primary Care Medical Services. City shall pay the installments of Clinic Rent to Landlord without notice from Community Clinics. Community Clinics shall comply with and fulfill all other obligations and responsibilities under the Lease applicable to it as Tenant. Community Clinics shall not execute any amendments to the Lease without the prior consent of City, which approval shall not be unreasonably withheld or delayed; provided, however, City shall be under no obligation to approve any amendment to the Lease which will result in an increase in the Clinic Rent or other financial obligation of Community Clinics. In the event of City’s failure to approve any amendment to the Lease (other than an amendment which would result in an increase in the Clinic Rent), Community Clinics shall be permitted to terminate this Agreement on a date not earlier than thirty (30) days after providing City written notice of termination pursuant to this Section 2.1. Community Clinics shall be solely responsible for costs related to the use of water, sanitary sewer, solid waste collection and disposal, gas, electricity, telephone, and cable or satellite television used and/or consumed by Community Clinics during its occupancy of the premises under the Lease. Community Clinics shall further be

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responsible for all costs related to any remodeling of the leased premises which Community Clinics may desire to perform during the term of the Lease after initial occupancy.

2.2 **Operating Costs.** As further consideration for the provision of the Primary Care Medical Services to City’s employees, City shall pay to Community Clinics the following amounts: (i) on the first, second, third, fourth, fifth and sixth anniversaries of the Clinic Opening Date, an amount equal to One Hundred Thousand Dollars (\$100,000.00); and (ii) on the seventh anniversary of the Clinic Opening Date, an amount equal to Two Hundred Thousand Dollars (\$200,000.00))(each such payment being a “Clinic Fee Installment”), *provided, however*, that no such payment shall be due and payable in the event the Clinic is not then open and providing Primary Care Medical Services. All such payments are to partially offset Community Clinic’s operating costs of the Clinic. In the event Clinic ceases operation between anniversary dates, City shall only be obligated to make a pro-rated payment of the Clinic Fee Installment due for said period in an amount equal to (i) the number of days falling between the immediately previous anniversary and the date the Clinic ceased operations multiplied by (ii) the amount of the Clinic Fee Installment due for said period divided by (iii) 365, such payment to be made not later than sixty (60) days after the date Community Clinics provides notice to City of the date that operations have ceased.

2.3 **Payment for Services.**

2.3.1 **Routine Services for City Employees.** In exchange for the payments of Clinic Rent and Clinic Fee Installments to be made by City pursuant to Section 2.1 and 2.2, Community Clinics agrees to provide office visits for City’s employees, employees’ spouses, employees’ dependents, and any other person covered on City’s Community Clinics health plan for a Forty-Nine Dollar (\$49.00) per visit fee, which fee, after the third (3rd) anniversary of this Agreement, shall be subject to annual review by Community Clinics and may be increased by Community Clinics in its discretion no more frequently than annually and by no more than ten percent (10%) per year. Such fee shall be the responsibility of the patient and shall not be billed to the patient’s insurer or to City. For tests, injections and procedures identified on Schedule 1.1, Community Clinics shall bill the patient or the patient’s third-party payer for services rendered at Community Clinic’s then-current charges. City agrees to provide Community Clinics with the list of names of people covered on City’s Community Clinics health plan and shall regularly update or supplement such list as people are added and deleted from City’s Community Clinics health plan.

2.3.2 **Workers’ Compensation.** Community Clinics shall bill City’s workers’ compensation carrier for any services provided to City’s employees covered by workers’ compensation regardless of whether such services are listed on Schedule 1.1.

2.3.3 **Patients Other Than City Employees.** For all services provided to individuals other than City employees, employees’ spouses, employees’ dependents, and any other person covered on City’s Community Clinics health plan, Community Clinics shall bill the patient or the patient’s third-party payer for services rendered at Community Clinic’s then-current charges.

ARTICLE III
TERM AND TERMINATION

3.1 **Term; Renewal.** The term of this Agreement shall commence on the Effective Date and will continue in effect for seven (7) years from the Effective Date (“Initial Term”), unless terminated as provided in this Agreement. Thereafter, this Agreement will automatically renew for one (1) additional three (3) year period under the same terms and conditions, unless terminated as provided in this Agreement.

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3.2 **Optional Termination.** After the Initial Term of this Agreement, either Party may terminate this Agreement at any time, for any reason or no reason, with or without cause, by giving the other Party at least one hundred eighty (180) days prior written notice of termination.

3.3 **Termination for Breach.** If either Party materially defaults in the performance of its obligations under this Agreement and such default is not cured within thirty (30) days of the receipt of written notice of such default, then the non-defaulting Party shall have the right, in addition to any other rights it may have, to immediately terminate this Agreement as to the defaulting Party.

3.4 **Termination upon Termination of the Lease.** This Agreement shall be co-terminus with the Lease and shall automatically terminate upon the expiration, termination or non-renewal of the Lease.

3.5 **Post-Termination Obligations.** The termination of this Agreement shall not relieve either Party of any obligation pursuant to this Agreement which arose on or before the date of termination.

ARTICLE IV
MISCELLANEOUS

4.1 **Governing Law; Venue.** This Agreement shall be construed and governed according to the Applicable Law of the State of Texas, without giving effect to its conflict of laws provisions. The Parties expressly agree that this Agreement is executed and shall be performed in Dallas County, Texas and venue of all disputes, claims and lawsuits arising between the Parties hereunder shall lie in a state court in Dallas County, Texas.

4.2 **Entire Agreement; Representation; and Construction.** This Agreement, together with any exhibits or schedules specifically mentioned herein, constitutes the entire agreement between the Parties regarding its subject matter and supersedes all prior or contemporaneous discussions, representations, correspondence, offer letters, memoranda and agreements, whether oral or written, pertaining to the subject matter of this Agreement. By executing this Agreement, the Parties acknowledge that they have been represented, or had the opportunity to be represented, by legal counsel, and have had the opportunity to review and consider the terms of the Agreement. The language of this Agreement shall be construed as a whole according to its fair and common meaning. The various titles of the sections in this Agreement are used solely for convenience and shall not be used for interpreting or construing any word, clause, paragraph, or subparagraph of this Agreement.

4.3 **Notices.** Notices or communications to be given under this Agreement shall be provided to the appropriate Party in writing either by personal delivery, overnight delivery service, or registered or certified mail, postage prepaid, as follows:

To City:

City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, Texas 75234
Attention: City Manager

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with a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, Texas 75234
Attention: Director of Human Resources

To Community Clinics:

Community Clinics, LLC

Attn: _____

or at such other addresses and to such other persons as either Party may from time to time designate by notice given as provided in this Section. Such notices or communications shall be deemed to have been given: (i) upon receipt if by personal delivery; (ii) one (1) business day after sending if by an overnight delivery service; and (iii) three (3) business days after deposit in the United States mail if sent by regular, registered or certified mail, postage prepaid.

4.4 **No Third Party Beneficiaries.** This Agreement shall be binding upon and inure to the benefit of the Parties, their successors and permitted assigns. Nothing in this Agreement is intended, or shall be deemed or construed, to confer any benefits on any third party, including, without limitation any City employee, nor shall any such person or entity have any right to seek, enforce or recover any right or remedy with respect to this Agreement.

4.5 **Assignment.** Neither Party may assign or delegate its rights, duties or obligations under this Agreement without obtaining the prior written consent of the other Party.

4.6 **Waiver.** Waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any prior, concurrent or subsequent breach of the same or similar provision. None of the provisions of this Agreement shall be considered waived by a Party except when such waiver is given in writing.

4.7 **Change in Law; Severability.** The Parties recognize that this Agreement is at all times subject to applicable federal, state and local law, together with any amendments and binding interpretations thereof (collectively, "**Applicable Law**"). Any provision of Applicable Law that invalidates this Agreement or a portion of this Agreement, or that would cause either of the Parties to be in violation of Applicable Law, shall be deemed to supersede such provisions of this Agreement and shall require reformation of this Agreement. Moreover, if any term or provision of this Agreement is held illegal, invalid or unenforceable to any extent pursuant to Applicable Law or otherwise, the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law. The Parties shall exercise their reasonable best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the Applicable Law. If the Parties are unable to mutually agree regarding the reformation of this Agreement,

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either Party may terminate this Agreement by giving the other Party thirty (30) days prior written notice of such termination.

4.8 **Corporate Practice of Medicine.** Nothing contained herein is intended or shall be construed: (a) to constitute the use of a medical license for the practice of medicine by anyone other than a licensed physician; (b) to aid City or any other entity to practice medicine; or (c) to do any other act or create any other arrangements in violation of the Texas Medical Practice Act.

4.9 **Further Acts.** Each Party agrees to cooperate fully with the other Party to take such further action and execute such other documents or instruments as necessary or appropriate to implement this Agreement.

4.10 **Amendments.** This Agreement shall be amended only by a written instrument signed by the Parties.

4.11 **Force Majeure.** Neither Party shall be liable or be deemed in breach of this Agreement for any failure or delay of performance which results, directly or indirectly, from acts of God, civil or military authority, public disturbance, accidents, fires, or any other cause beyond the reasonable control of either Party.

4.12 **Remedies.** The remedies provided to the Parties by this Agreement are not exclusive or exhaustive, but are cumulative of each other and in addition to any other remedies the Parties may have at law or in equity.

4.13 **Attorney Fees.** If either Party brings an action against the other to enforce any condition or covenant of this Agreement, the prevailing Party, in addition to other relief awarded by a court, shall be entitled to recover from the other Party its court costs and reasonable attorney's fees incurred in such action.

4.14 **Electronic Execution; Counterparts.** This Agreement may be executed electronically, in accordance with the Uniform Electronic Transactions Act. In addition, the Agreement may be executed in multiple counterparts, with each counterpart considered an original whether or not such counterpart is executed electronically.

(Signatures on following page)

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IN WITNESS WHEREOF, the Parties have signed this Agreement as of the Effective Date.

COMMUNITY CLINICS, LLC

By: _____

CITY OF FARMERS BRANCH, TEXAS

By: _____
Charles S. Cox, City Manager

ATTEST:

Amy Piukana, City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

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Schedule 1.1
Primary Care Medical Services

For purposes of this Agreement, Primary Care Medical Services shall constitute the following:

Office Visit: (negotiated rate per Agreement)

(Following billed to insurance)

Procedures:

EKG
Nebulizer
Pulse Ox
X-Ray
Ear Wax Removal
Sutures (minor lacerations)
I & D

Injections:

Kenalog	Solumedrol
Dexamethasone	Rocephin
Albuterol	Xylocaine
Depo Medrol	Epinephrine
Benedryl	Celestone
Bicillan CR 12u	Vaccines

Labs:

Rapid Strep
Rapid Flu
U/A
Pregnancy Test
Stool Guaiac
Glucose