

AGREEMENT FOR MEDICAL SERVICES

R-721-2018
Contract #280-2018

This Agreement for Medical Services at an (the "**Agreement**") is made and entered into as of the 1st day of November, 2018 (the "**Effective Date**"), by and between Occupational Health Centers of the Southwest, P.A., d/b/a Concentra Medical Centers ("**Concentra**") and Lexington-Fayette Urban County Government ("**Client**").

RECITALS

WHEREAS, Concentra is in the business of providing certain healthcare services through its employees, and/or its designated affiliates and associations as more fully defined herein, including those services as described on Exhibit A attached hereto (the "**Services**") at a Concentra business location; and

WHEREAS, Client desires to engage Concentra, and Concentra desires to accept such engagement, to provide the Services, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Compensation.

(a) Client shall pay Concentra in accordance with the fee schedule set forth in Exhibit A (here, the "**Fees**"). At the beginning of each twenty-four (24) month period of this Agreement following the Effective Date, the Fees for the prior twenty-four (24) month period may be increased upon review and mutual agreement of the parties, which shall not exceed five percent (5%). Concentra shall invoice Client monthly and Client shall remit payment to Concentra within thirty (30) days of receipt of invoice. Client agrees to pay any sales, use, excise or similar taxes applicable to the Services provided for hereunder.

(b) If Client and/or Concentra determine(s) that a change to this Agreement's Scope of Services is required, then such change to the Scope of Services must be provided by written amendment executed by both parties. The written amendment shall include any change in the Fees associated with any such change to the Scope of Services.

2. Term and Termination.

(a) The initial term of this Agreement (the "**Initial Term**") shall be for one (1) year, commencing on the Effective Date. This Agreement will auto renew for additional one (1) year terms (each a "**Renewal Term**") (the Initial Term and Renewal Term collectively referred to as the "**Term**") unless terminated pursuant to Section (b) below.

(b) Either party may terminate this Agreement for convenience by providing the other party a sixty (60) day written notice of its intent to terminate.

(c) If a contractor is determined to be in default, LFUCG shall notify the contractor of the determination in writing, and must include a specified date by which the contractor shall cure the identified deficiencies. LFUCG may proceed with termination if the contractor fails to cure the deficiencies within the specified time.

(d) If the services to be performed hereunder by Concentra are not performed in an acceptable manner to Client, then Client may cancel this contract for cause by providing written notice to the proposer, giving at least thirty (30) days' notice of the proposed cancellation and the reasons for same. During that time period, Concentra may seek to bring the performance of Services hereunder to a level that is acceptable to the Client, and the Client shall rescind the cancellation if the Concentra cures the defect to Client's satisfaction.

3. Compliance with Laws. In the performance of its duties and obligations pursuant to this Agreement, Concentra shall comply with all laws, rules, and regulations applicable to Concentra in connection therewith. Concentra further shall ensure that all personnel performing Services hereunder are appropriately licensed to perform the Services.

4. Nature of Relationship. Concentra shall perform this Agreement as an independent contractor to Client and, except as specifically provided in this Agreement, Concentra shall be solely responsible for the means and methods used to perform its obligations to Client. Concentra and Client specifically acknowledge and agree that all individuals who will be performing services hereunder are agents or employees of Concentra and not of the Client. Nothing in this Agreement is intended or shall be construed to create a joint venture, agency, partnership, employer/employee relationship or any legal or equitable relationship other than that of client and independent contractor.

This Section 4 shall survive the termination of this Agreement.

5. Confidentiality.

(a) The parties recognize and acknowledge that in the course of performing its duties and obligations under this Agreement such parties may have access to the other party's trade secrets and confidential or proprietary information (the "Confidential Information"). Confidential Information shall include, but not be limited to, this Agreement and the terms contained herein. Each party hereby agrees that, except when required by law, it will not disclose, in whole or in part, such Confidential Information for its own purposes or for the benefit of any other person, firm, partnership, association, corporation or business organization, entity or enterprise. In connection therewith, each party any employee or agent of a party that has access to the Confidential Information of the other party will adhere to and be subject to the terms of this Section 5(a). Both parties shall maintain the confidentiality of medical records generated hereunder in accordance with applicable law and shall protect from disclosure any protected health information, as defined in 45 CFR §160.103.

(b) The parties agree that, in the event of a disclosure or threatened disclosure of such Confidential Information in a manner inconsistent with the terms of this Agreement, through any means whatsoever, the injured party may terminate this Agreement and may, in addition to any other remedies to which it may be entitled: (i) demand the return of any and all documents or other tangible items which reflect, reveal, disclose, constitute, compromise, or embody such Confidential Information and any or all copies thereof, whereupon the party disclosing, or threatening to disclose, such Confidential Information in a manner inconsistent with the terms of this Agreement shall promptly comply with such demand; (ii) be

entitled to institute and prosecute proceedings in a court of competent jurisdiction to obtain temporary and/or permanent injunctive relief to enforce any provision hereof, without the necessity of proof of actual injury, loss or damage; and (iii) recover damages, losses, and expenses of any nature, including without limitation attorneys' fees, arising out of, resulting from or otherwise relating to such disclosure or threatened disclosure. Anything contained in this Section 5(b) to the contrary notwithstanding, each of the parties to this Agreement shall not be required to return or deliver any documents or other tangible items relating to such Confidential Information, if such return or delivery would directly violate any express provisions of an applicable order of a court of competent jurisdiction. It is the intention of the parties hereto that, in enforcing the provisions of this Section 5(b), a court may take into consideration, among other factors, each of the parties' interest in maintaining the confidentiality of such Confidential Information. Anything contained in this Section 5(b) to the contrary notwithstanding, the provisions of this Section 5(b) are not intended to cover information, which is in the public domain or becomes generally known.

This Section 5 shall survive the termination of this Agreement.

6. Indemnification.

(a) Concentra shall indemnify, save, hold harmless and defend Client and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "LFUCG") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that arise or are alleged to have arisen, directly or indirectly, from or by Concentra's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of Concentra; and (b) not caused solely by the negligence or willful misconduct of LFUCG.

(b) Notwithstanding, the foregoing, with respect to any professional services performed by Concentra hereunder (and to the fullest extent permitted by law), Concentra shall indemnify, save, hold harmless and defend LFUCG from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of Concentra in the performance of this agreement. Nothing herein shall be construed to require Concentra to indemnify LFUCG for any liabilities arising out of or relating to the negligent or intentional acts or omissions of the LFUCG.

This Section 6 shall survive the termination of this Agreement.

7. Medical Records.

(a) Custodian. Concentra shall serve as the custodian of medical records created at the clinic during the term of this Agreement. Concentra, as custodian of records shall abide by all local, state, and federal requirements for such record retention during and after the term of this Agreement. Concentra shall also abide by all applicable laws related to Concentra and the medical service record retention. Client acknowledges that Concentra will provide copies of medical records to any third-party requestor (with the appropriate executed release from the employee/patient, court order, or business affidavit, as applicable). These records are the property of Client and will be made available, in the records current format (chart, image etc.), to Client within a reasonable period of time upon termination or expiration of this Agreement at Client's sole expense.

(b) Access. Client understands and acknowledges that the Client is not entitled to access any patient medical records except to the extent allowed by law. Concentra is a "covered entity" as enumerated in 45 CFR §160.103. As a covered entity, Concentra may only disclose protected health information as authorized by and to the extent allowed by law.

(c) Retention and Destruction. Upon the termination of this Agreement for any reason, Concentra shall maintain all records created against the statutory and regulatory requirements. Should Client request records be maintained by Concentra beyond any state, local or federal rule due to an ongoing audit or legal matter, then Client shall be invoiced for such retention for as long as such records are retained until written notice from Client to destroy such retained records.

This Section 7 shall survive the termination of this Agreement.

8. Audit. Upon Client providing thirty (30) days advance written notice to Concentra, Client may inspect the books (excluding confidential proprietary data), procedures, and records of Concentra to monitor compliance with this Agreement. Upon such request, such audit is at Client's sole expense and is responsible for any reasonable fees incurred by Concentra to assist in providing such access (including, but not limited to, reasonable copy charges, hourly rates for personnel to provide requested materials for such audit, and supplies needed to provide such access). If an audit is requested and performed by Client, then Client will be invoiced as a separate line item on the next monthly billing statement as a standard Service provided under this Agreement.

9. Breach. If either party commits a material breach of its obligations under this Agreement, other than a breach of a payment obligation, the non-breaching party will provide thirty (30) days written notice describing the material breach to the breaching party. The breaching party will have thirty (30) days to cure such breach. If the breach is not cured within such period, then the party not in breach may terminate this Agreement upon thirty (30) days' prior, written notice to the other party.

10. Miscellaneous.

(a) Entire Agreement; Amendment. All exhibits referenced in this Agreement ("Exhibits") shall be attached and incorporated herein. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes any and all prior agreements, understandings, and arrangements, written or oral, between the parties hereto regarding the subject matter hereof. Only a written instrument executed by both parties may amend this Agreement.

(b) Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed to have been properly given: (i) when personally delivered; (ii) if sent via overnight delivery by a nationally recognized overnight carrier, upon the delivery date; or (iii) if sent by United States mail, three (3) business days after deposit in postage prepaid, certified or registered mail, to the following respective addresses (or to such other address or addresses as either party may designate in writing):

If to Concentra: Concentra Health Services, Inc.
5080 Spectrum Drive, Suite 1200 – West Tower
Addison, Texas 75001
Attn: Legal-Contracts
LegalContracts@concentra.com

If to Client: Lexington-Fayette Urban County Government
200 E. Main Street, Room 338
Lexington, Kentucky 40507
Attn: Mr. Todd Slatin

(c) Adequate Assurances. If reasonable grounds for insecurity arise with respect to Client's ability to pay for the Services in a timely fashion, Concentra may demand in writing adequate assurances of Client's ability to meet its payment obligations under this Agreement. Unless Client provides such assurances in a reasonable time and manner acceptable to Concentra, then in addition to any other rights and remedies available, Concentra may in its sole discretion: (a) partially or totally suspend its performance of Services while awaiting assurances from Client, without any liability; and/or (b) require payment from Client in advance for services not yet provided, without any liability.

(d) Force Majeure. Neither party shall be liable for failure to perform any duty or obligation that either may have under this Agreement where such failure has been occasioned by any act of God, fire, inevitable accident, war, or any cause outside the reasonable control of the party who had the duty to perform.

(e) Waiver. The failure of either party to exercise or enforce any right conferred upon it hereunder shall not be deemed to be a waiver of any such right, nor operate to bar the exercise or performance thereof at any time or times thereafter, nor shall its waiver of any right hereunder at any given time, including rights to any payment, be deemed a waiver thereof for any other time.

(f) Assignment; Binding Effect. Neither party may assign this Agreement to any other person or entity without the prior written consent of the other party; provided however that Client acknowledges that certain professional services to be rendered by Concentra may be rendered by a professional association affiliated with Concentra. Notwithstanding anything contained herein to the contrary, either party may assign this Agreement, without consent, to the surviving entity in the event of a merger or sale of substantially all the assets. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the parties hereto and their respective successors and assigns.

(g) Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not declared illegal, invalid, or unenforceable shall, in any event,

remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

(h) Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the state in which the Services are performed, without regard to conflict/choice of law principles.

(i) Legislative Modification. Notwithstanding any other provision to the contrary: (a) in the event that any federal, state, or local law, rule, regulation, or interpretation thereof at any time during the term of this Agreement prohibits, restricts, or in any way materially changes the method or amount of reimbursement or payment for services under this Agreement, then this Agreement shall, in good faith, be amended by the parties to provide for payment of compensation in a manner consistent with any such prohibition, restriction, or limitation; and (b) with respect to any law, rule, regulation, or interpretation thereof which results in a material increase in the cost of services provided by Concentra hereunder, Concentra shall have the right to increase its fees to reach that level of prices at which it is willing to provide services hereunder. With respect to any other prohibition, restriction, or change that causes this Agreement to be impermissible or materially different in its effect than contemplated herein, the parties hereto will, in good faith, negotiate and amend this Agreement to cause their relationship to be as consistent as possible with that which is created herein; if this Agreement is not so amended in writing prior to the effective date of said prohibition, restriction, or change, either party may terminate this Agreement upon written notice to the other party.

(j) Corporate Authority. Client represents and warrants that Client has the requisite corporate power and authority to enter into this Agreement, to engage Concentra to perform the Services set forth herein, and to perform its obligations hereunder. The execution, delivery and performance by Client of this Agreement and the engagement of Concentra to perform the Services set forth herein have been duly authorized by all requisite corporate action on the part of Client.

(k) Publicity. Each party shall submit to the other in advance any advertising, written sales promotions, press releases and other publicity matters relating to this Agreement or in which the other party's name is mentioned and shall not publish or use such advertising, sales promotion, press releases, or publicity matters without prior written approval of the other party. However, either party may, without prior written approval of the other party, include the other party's name and a factual description of the work performed under this Agreement in its lists of references and in the experience section of proposals to third parties, in internal business planning documents, in its annual report to shareholders, and whenever required for legal, accounting or regulatory purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**OCCUPATIONAL HEALTH CENTERS OF THE
SOUTHWEST, P.A. D/B/A CONCENTRA MEDICAL
CENTERS**

By: 

Name: Robert G. Hassett, DO, MPH

Title: President, Treasurer and Corporate Secretary

Date: _____

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

By: 

Name: Jim Gray

Title: Mayor

Date: 4-Dec-2018

**EXHIBIT A
SERVICE FEES**

Services	Fees
Drug Screen (5 panel)	\$27.00
T-spot	\$167.00
Physical Examination including Medical History& Vision Screening	\$30.00
Pulmonary Function Test	\$22.00
Lipid Profile	\$12.00
Chemistry Profile	\$15.00
Urinalysis	\$20.00
Electrocardiogram	\$28.00
9 or 10 Panel Drug Screen	\$30.00
PPD Tuberculous Skin Testing	\$10.00
Complete Blood Count (CBC)	\$11.00
HPE Company Defined – Level 1	\$23.00
HPE Company Defined – Level 2	\$33.00
HPE Company Defined – Level 3	\$33.00
HPE Company Defined – Level 4	\$44.00
Respiratory Fit Testing	\$20.00
Biennial Physical Examinations	\$30.00
Audiogram (Center based)	TK Group Services Agreement
After Hours Services Fees	\$100.00 per hour
Breach Alcohol Testing	\$15.00
B-Reader X-Ray Review, required for Hazmat Films	\$42.00
Chest X-ray (1-view)	\$22.00
Chest X-ray (2-view)	\$24.00
Comprehensive Metabolic Panel	\$15.00
DOT Exam	\$25.00
DOT Physical Recertification	\$25.00
Educational and Wellness Services	\$100.00 per hour
*Flu Shot	\$28.00
Hemmocult Stool	\$22.00
*Hepatitis A	\$50.00
*Hepatitis B Surface Antibody	\$28.00
*Hepatitis B Titer	\$28.00
*Hepatitis B Vaccine (3-shot series)	\$40.00 per shot
Lead	\$17.00
Lipid Panel	\$12.00
*MMR Vaccine	\$93.50
OSHA Respiratory Clearance	\$10.00
Prostatic Specific Antigen (PSA)	\$30.00
Pulmonary Function Test	\$22.00
*Rabies Vaccine	\$197.50
Respiratory Fit Test (Quantitative)	\$20.00

Services	Fees
Respiratory Fit Test (Quantitative)	\$20.00
Respiratory Questionnaire	\$40.50
Spirometry	\$24.00
*Tetanus Vaccine	\$16.00
*Typhoid Vaccine	\$47.50 (4 tabs)
Zinc	\$24.75

* After the first twelve months of this Agreement, if the current market price for the above Services change due to market conditions, demand(s) and/or shortage(s), the Client will be billed the then current market rate.

Duty to Provide Services in Fayette County. Concentra will provide services during normal business hours Monday through Friday, with necessary urgent substance abuse testing services to be provided as needed on a twenty-four hour, seven days a week availability basis. Services locations shall be in Fayette County, handicap accessible, and meet all Federal, State, and Local safety laws. Concentra shall schedule appointments in a timely manner and use reasonable efforts to ensure that LFUCG Designates wait no longer than 45 minutes from the initial appointment time to when services are actually provided. All requested physical examinations shall be done within two working days of the initial request.