

**SERVICES AGREEMENT BETWEEN ESCAMBIA COUNTY, FLORIDA
AND SACRED HEART HEALTH SYSTEM
(COVID-19 Rapid Testing)**

THIS AGREEMENT is made by and between Escambia County, a political subdivision of the State of Florida (hereinafter referred to as the "County") with administrative offices located at 221 Palafox Place, Pensacola, Florida 32502, and Sacred Heart Health System, Inc., (hereinafter referred to as "SHHS") with administrative offices at 4451 Bayou Boulevard, Pensacola, Florida 32503 (each being at times referred to as "Party" or "Parties").

WITNESSETH:

WHEREAS, the national pandemic outbreak of the novel coronavirus SARS-CoV-2, the virus that causes the novel coronavirus, commonly known as COVID-19 ("COVID-19"), has led to a public health emergency affecting the geographic area of Escambia County, Florida; and

WHEREAS, the County desires to engage SHHS to provide CDC 2019 Novel Coronavirus (2019-n-CoV) Real-Time Reverse Transcriptase (RT)-PCR Diagnostic Panel tests for the detection of the virus that causes COVID-19 ("Testing") on behalf of County.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, the County and SHHS agree as follows:

Section 1. Recitals. The recitals contained in the preamble of this Agreement are declared to be true and correct to the best of SHHS's knowledge and are hereby incorporated into this Agreement.

Section 2. SHHS Obligations. SHHS shall perform the activities outlined in **Attachment A** (the "Services") attached hereto and made a part hereof.

Section 3. Funding. SHHS agrees to accept as full payment for eligible Services rendered pursuant to this Agreement the amounts set forth below. Said Services shall be performed in a manner reasonably satisfactory to the County. In no event shall the total funding or reimbursement to be paid hereunder exceed the maximum and total authorized sum of \$500,000.00 for the period of the Effective Date below through May 31, 2021.

County hereby agrees to pay SHHS in an amount equal to Twenty-Three and 46/100 Dollars (\$23.46) for Testing (as described in **Attachment A**) performed on each Resident under this Agreement. County further agrees to pay the additional sum of One Hundred and 00/100 Dollars (\$100.00) for Testing performed on each uninsured Resident (the "Additional Payment").

SHHS agrees to return to the County any overpayments due to unearned funds or funds disallowed based on non-compliance with the terms of this Agreement and any interest attributable to such funds pursuant to the terms of this Agreement that were paid to SHHS by the County. If the County or its independent auditor discovers that an overpayment has been made, SHHS will repay the overpayment within forty (40) calendar days without prior notification from the County. If the County discovers an overpayment has been made, the County will notify SHHS in writing of such a finding. Should repayment not be made in the time specified by the County, SHHS will pay interest of one percent per month compounded on the outstanding balance after 40 calendar days after the date of notification or discovery. The County reserves the right, in its

sole and exclusive discretion, to recoup SHHS's unearned funds from any invoice submitted under this Agreement or through collection proceedings.

Section 4. Time for Performance. The Effective Date of this Agreement shall be upon execution by both Parties ("Effective Date") and shall remain in effect until May 31, 2021 ("Expiration Date"), unless earlier terminated. The Expiration Date of this Agreement may also be extended by written agreement of both Parties.

Section 5. Method of Payment. The County agrees to pay SHHS for the Services consistent with the terms of this Agreement.

SHHS shall not request payment for Testing rendered before the Effective Date of this Agreement (except as to amounts due SHHS pursuant to the Cares Act Funding Program Agreement for Covid-19 Screening Tests between the Parties), nor shall it request payment for Testing rendered after the expiration date of this Agreement. In no event shall the County provide advance funding to SHHS or any subcontractor hereunder. SHHS shall request payment from the County by submitting proper supporting documentation as described in **Attachment B**, attached hereto and made a part hereof. Satisfactory proof of Testing by SHHS shall consist of originals of invoices, receipts, or other evidence of the payment due for the Services hereunder. In the event an original document cannot be presented, SHHS may furnish copies, if deemed satisfactory and acceptable by the County.

Each request for payment with proper supporting documentation should be submitted to the County for approval no later than thirty (30) calendar days after the end of each month the Services are provided hereunder. Payment shall be made by the County, upon proper presentation of invoices and Reports (defined below) submitted by SHHS. Invoices will not be honored or approved if received by the County more than thirty (30) calendar days after the expiration date of this Agreement.

County will pay the total fee due to SHHS within fifteen (15) days of receipt of each invoice.

Section 6. Implementation. SHHS shall implement this agreement in accordance with applicable Federal, State, County and Local laws, ordinances, and codes, and amendments and additions thereto as may from time to time be made; provided that any such amendments and additions thereto shall be provided to SHHS a reasonable period in advance of expected implementation. The Federal, State, County and Local laws, ordinances, and codes are minimal regulations which may be supplemented by more restrictive guidelines set forth by the County to the extent such guidelines have been provided to SHHS a reasonable period prior to the date on which compliance is expected. No reimbursements will be made without evidence of appropriate insurance required by this Agreement on file with the County.

Section 7. Financial Accountability. The County may have a financial system analysis and/or an audit of SHHS or of any of its subcontractors performed by an independent auditing firm employed by the County or by the County Internal Audit Department at any time the County deems necessary to evaluate SHHS's performance under this Agreement and to determine the capability of SHHS to fiscally manage the project in accordance with the requirements of this Agreement. The County will provide SHHS reasonable notice of the intent to exercise its rights under this Section.

Section 8. Subcontracts. Services covered by this Agreement, including but not limited to, consultant work or services, shall not be subcontracted or reimbursed without the prior

written approval of the County. Any Services subcontracted hereunder shall be specifically by written contract, written agreement, or purchase order. All subcontracts shall be submitted by SHHS to County and approved by the County prior to execution of any subcontract hereunder. All subcontracts shall be subject to the requirements of this Agreement.

Section 9. Reports. SHHS shall provide the County with documentation of the number of Residents tested and the number of Residents with positive test results the first (1st) and the fifteenth (15th) days of each month, beginning February 1, 2021 (“Report”). The County may also request that SHHS provide a listing of Residents tested in a de-identified manner (i.e., a listing which excludes any Protected Health Information) and test results for each such Resident. Payment will be contingent on the timely receipt of complete and accurate Reports required by this Agreement.

Section 10. Accountability. SHHS agrees to maintain personnel, financial, and other records and accounts as are necessary to properly account for all funds expended in the performance of this Agreement. These records and accounts shall be subject at times to inspection, review, or audit for a period of five (5) years following the termination of this Agreement unless said records are the subject of audit or litigation, in which case they shall be retained indefinitely pending resolution of such review. Access to such records shall be provided to the County or its representatives; or SHHS shall transfer these records and accounts to the custody of the County.

Section 11. Default: Termination.

A. Termination for Cause. Either County or SHHS may terminate this Agreement for cause at any time if any covenant, warranty, or representation made by the other Party in connection with this Agreement shall at any time be false or misleading in any respect, or in the event of the failure of the other Party to satisfactorily perform under this Agreement or otherwise comply with the terms and conditions of this Agreement.

B. Termination for Convenience. This Agreement may be terminated for convenience by either Party upon providing the non-terminating Party with ten (10) days written notice.

C. Effect of Termination. Costs incurred by SHHS after termination of this Agreement shall not be reimbursable unless expressly authorized by the County prior to the effective date of termination.

Section 12. Independent Contractor. SHHS shall act as an independent contractor, and not as an employee of the County, in performing the aforementioned Services. Further, this agreement is not intended to create an employer/employee, partnership, or joint venture relationship between the County and Agency.

Section 13. Indemnification. SHHS shall indemnify, defend, and hold harmless Escambia County, its subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents from any and all claims, suits, actions, damages, liability and expenses in connection with the loss of life, bodily or personal injury, property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the performance of this Agreement. SHHS’s obligation shall not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy or insurance. The County will provide prompt written notice to SHHS of any claim for which it seeks indemnification hereunder, which shall include the County’s basis for requesting

indemnity. SHHS shall have no obligation to indemnify the County if the claim results from or arises out of the actions or negligence of the County. Further, the County shall not be entitled to indemnification for any incidental damages (including damages for loss of profit or diminution in value), consequential damages or punitive damages.

Section 14. Insurance. SHHS shall at all times during the term of this Agreement maintain in full effect the following policies of insurance:

(a) General Liability, provided through Ascension Health Alliance Self-Insurance Trust which provides minimum limits of liability of \$1,000,000 per occurrence; and

(b) Florida statutory Workers' Compensation and employer's liability insurance policy for all workers' compensation obligations imposed by state law and employer's liability limits of at least \$100,000 each accident and \$100,000 each employee/\$500,000 policy limit for disease.

SHHS shall provide at least thirty (30) days advance notice of cancellation, nonrenewal or adverse change. Such notices shall be mailed to Escambia County, Office of Risk Management, 221 Palafox Place, Suite 200, Pensacola, FL 32502.

The County shall be endorsed as "Additional Insured" on the General Liability coverage referenced above and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this Agreement; provided that such coverage will not extend to the negligence of the County. The County shall not be considered liable for premium payment, entitled to any premium return or dividend, and shall not be considered a member of any mutual or reciprocal company.

A Memorandum of Liability Insurance and list of covered Ascension Florida subsidiaries evidencing the above coverage will be provided to the Office of Risk Management, 221 Palafox Place, Suite 200, Pensacola, FL 32502 prior to commencement of services hereunder.

SHHS shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies acceptable to the County and shall file with the County a Memorandum of Liability Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the County, SHHS shall, upon instructions of the County, cease all operations under the Agreement until directed by the County, in writing, to resume operations.

SHHS's required coverage(s) shall be considered primary and all other insurance shall be considered as excess, over and above SHHS's coverage; provided, however, as set forth above SHHS's insurance coverage shall exclude coverage for the County's negligence.

Section 15. Public Records. SHHS acknowledges that this Agreement and any related financial records, audits, reports, plans correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes. SHHS shall maintain all such public records and, upon request, provide a copy of the requested records or allow the records to be inspected within a reasonable time. SHHS shall also ensure that any public records that are exempt or exempt and confidential from disclosure are not disclosed except as authorized by law. Upon the expiration or termination of the Agreement, SHHS agrees to maintain all public records for a minimum period of five (5) fiscal years in accordance with the applicable records retention schedules established by the Florida Department of State. In the

event SHHS fails to abide by the provisions of Chapter 119, Florida Statutes, the County may, without prejudice to any other right or remedy and after giving SHHS seven (7) days written notice, during which period SHHS still fails to allow access to such documents, terminate the Agreement.

IF SHHS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO SHHS'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**Escambia County
Office of the County Administrator
221 Palafox Place, Suite 420
Pensacola, Florida 32502
(850) 595-4947**

Section 16. Assignment. This Agreement or any interest herein shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties, without the prior written consent of the other Party.

Section 17. All Prior Agreements Superseded.

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements whether oral or written. Notwithstanding the foregoing, any obligations that survive the expiration or termination of the Cares Act Funding Program Agreement for Covid-19 Screening Tests between the Parties, including the obligation of the County to pay SHHS, shall remain obligations of the Parties.

It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

Section 18. Headings. Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

Section 19. Survival. All provisions, which by their inherent character, sense, and context are intended to survive termination of this Agreement, shall survive the termination of this Agreement.

Section 20. Interpretation. For the purpose of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons

succeeding to their respective functions and capacities.

If the either Party discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of any provision of the Agreement, it shall immediately notify the other Party and request clarification of the its interpretation of this Agreement.

This Agreement shall not be more strictly construed against either Party hereto by reason of the fact that one Party may have drafted or prepared any or all of the terms and provisions hereof.

Section 21. Severability. The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed to be enforced as if this Agreement did not contain such invalid or unenforceable portion of provision.

Section 22. Further Documents. The parties shall execute and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provisions of this Agreement.

Section 23. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the parties stipulate that venue for any matter which is the subject of this Agreement shall be in the County of Escambia.

Section 24. Notices. All notices required or made pursuant to this Agreement by either Party to the other shall be in writing and delivered by hand or by United States Postal Service, first class mail, postage prepaid, return receipt requested, addressed to the following:

COUNTY
County Administrator
221 Palafox Place, Suite 420
Pensacola, FL 32502

SHHS
Sacred Heart Health System, Inc.
4451 Bayou Boulevard
Pensacola, FL 32503
Attn: COO

Either Party may change its above noted address by giving written notice to the other Party in accordance with the requirements of this section.

Section 25. No Waiver. The failure of a Party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any other provision or of either Party's right to thereafter enforce the same in accordance with this Agreement.

Section 26. No Inducement to Refer.

The parties enter into this Agreement with the intent of conducting their relationship in full compliance with applicable federal, state, and local law, including the Medicare/Medicaid Anti-fraud and Abuse Amendments and federal and state physician self-referral laws. Notwithstanding any unanticipated effect of any of the provisions herein, neither Party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of these provisions. The parties hereto acknowledge and agree that this Agreement, the arrangement contemplated

herein, and the compensation to be paid hereunder: (i) has been negotiated on an arm's length basis pursuant to bona fide bargaining among the parties; (ii) is commercially reasonable; (iii) is commensurate with fair market value; (iv) is not in return for, does not vary with, or take into account or reflect the volume or value of referrals or other business generated between the parties; and (v) is consistent with, necessary for, and does not exceed the reasonable and legitimate business purposes of the parties.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature:

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners.

By: _____
Robert Bender, Chairman

Date: _____

BCC APPROVED: _____

ATTEST: Pam Childers
Clerk of the Circuit Court

By: _____
Deputy Clerk

(SEAL)

Sacred Heart Health System:

By: _____

Date: _____

ATTEST:

By: _____

Approved as to form and legal sufficiency.

By: Matthew R. Shaud
Title: Assistant County Attorney
Date: January 4, 2021

ATTACHMENT A SERVICES

- (1) SHHS employs and contracts with healthcare personnel who will provide CDC 2019 Novel Coronavirus (2019-n-CoV) Real-Time Reverse Transcriptase (RT)-PCR Diagnostic Panel tests for the detection of the virus that causes COVID-19 ("Testing") on behalf of County. Testing will be performed on-site at the locations and use of facilities below, or such other places and times as the parties mutually agree to in writing by an amendment hereto.
 - (a) Locations: 5192 Bayou Blvd, Pensacola, Florida
 - (b) Days of Week: Monday - Friday
 - (c) Schedule of Operations:
 - (i) Testing shall be available on weekdays at above locations from 9 a.m. to 1 p.m.
- (2) SHHS shall bear sole responsibility for all persons and agents necessary to carry out the Testing under the terms of this Agreement. No persons employed by or who contract with SHHS pursuant to this Agreement shall be considered employees or agents of County.
- (3) SHHS will conduct all Testing in conformity with all applicable regulations and guidelines established by the U.S. Center for Disease Control (CDC).
- (4) SHHS may provide Testing to any person at SHHS's sole expense and responsibility; however, only current residents of Escambia County, Florida ("Residents") are eligible to receive Testing under this Agreement.
- (5) Persons seeking Testing, including Residents, are required to schedule an appointment with SHHS's Screening Call Center at (850) 746-2684 prior to receiving Testing.
- (6) Results of Testing shall be provided to each Resident by phone within forty-eight (48) hours of the collection of the Testing sample from the Resident.
- (7) Testing does not include, and SHHS has not agreed or committed in any manner to provide, without limitation, any antibody testing, surgery, procedure, diagnostic imaging, diagnosis, prognosis, prescription, medical advice, treatment or cure.
- (8) SHHS will cooperate in the completion of necessary and required forms for all persons who receive Testing including, without limitation, informed consent and authorization, HIPAA release and authorization, residency certification, and insurance and governmental benefits, as required by County or SHHS, as a condition of receiving Testing.
- (9) SHHS shall provide to the County's Administrator a daily status report containing: (1) the number of all persons, including Residents, receiving Testing at each site; and (2) the percentage of those persons, including Residents, receiving Testing results that day who were reported to be positive for current infection with COVID-19.
- (10) SHHS promises that for each Resident that it submits for Additional Payment:

- (a) SHHS has checked for health care coverage eligibility and confirmed that the Resident is uninsured. SHHS shall verify that the Resident does not have coverage through an individual or employer-sponsored plan, a federal healthcare program, or the Federal Employees Health Benefits Program at the time Testing was performed, and no other payer will reimburse SHHS for Testing. For those Residents that are insured, SHHS shall have the sole responsibility to obtain any remaining reimbursement from the requisite Resident's insurer.
- (b) SHHS will accept the Additional Payment as payment in full for that Resident.
- (c) SHHS agrees not to balance-bill the Resident.
- (d) SHHS agrees that all payments and records generated by SHHS and/or County under this Agreement may be subject to post-reimbursement audit review.

ATTACHMENT B
SUPPORTING DOCUMENTATION REQUIREMENTS

SHHS should prepare a cover page on its letterhead with the date of the payment request and amount with the required certification as noted in this Agreement. The cover page should be signed by a person authorized to obligate SHHS.

SHHS shall submit monthly invoices to the County Administrator on the first (1st) and fifteenth (15th) days of each month, via e-mail and U.S. mail, as set forth in Section 24 of this Agreement.

Invoices shall, at a minimum, identify the number of Residents for whom Testing was provided and the total fee to be paid by County.

SHHS shall also collect and include in the foregoing invoice such other identifying information as reasonably requested by County, to allow County to verify the residency status of the Resident.