

## **LETTER OF AGREEMENT FOR PROCEDURES AT FOREST PARK MEDICAL CENTERS**

January 20, 2015

City of McKinney  
222 N. Tennessee  
McKinney, Texas 75069

Dear City of McKinney,

This letter sets forth the mutual understanding between Forest Park Medical Center, LLC, Forest Park Medical Center at Frisco, LLC, Forest Park Medical Center at Southlake, LLC, and Forest Park Medical Center at Fort Worth, LLC (collectively “Forest Park”) and The City of McKinney, Texas (“McKinney”) (each a “Party” and collectively the “Parties”) with respect to the medical services to be provided by Forest Park to McKinney’s employees and/or family members (the “Patient(s)”). The Parties need to make certain preparations in anticipation of the aforesaid medical services. Thus, both Forest Park and McKinney agree and commit to proceed with the following points of mutual understanding:

### **Section 1 Services and Payment for Services**

1.1 Services and Payment for Services. Forest Park shall render and provide medical services to the Patient in exchange for payment from McKinney in the amounts set forth in Appendix 1. This Letter of Agreement (“LOA”) shall not cover any medical services and/or Patient(s) of McKinney that have not been approved by Forest Park, in advance. If the Parties agree to any additional procedures, DRG codes, or rates not expressly included in this LOA, such additional information shall be added by written addendum to this LOA, executed by the Parties, and shall be incorporated and made part of this LOA. Notwithstanding the foregoing, any complications or medically necessary services outside of the scope of the DRG codes listed in Appendix 1 that may arise while the Patient is in the course of undergoing medical treatment shall be billed directly to McKinney at the in-network rates at which Forest Park is contractually reimbursed by McKinney’s insurance carrier. In the event it is necessary for Patient to be transferred to another facility, these costs and charges shall not be included under the terms of this LOA and shall be billed separately by the receiving facility. McKinney shall remit payment to Forest Park within fourteen (14) days of receipt of an invoice from Forest Park for the medical services rendered under this LOA.

1.2 Standards; Compliance with Laws. All services provided by Forest Park shall meet the standards established and required by all applicable governmental, regulatory or other professional authorities. Forest Park and McKinney shall comply with all relevant state and federal laws regarding the privacy and confidentiality of the Patient’s medical records including, but not limited to, the Health Insurance Portability and Accountability Act (“HIPAA”); the Health Information Technology For Economic and Clinical Health Act (“HITECH”) provisions of the American Recovery and Reinvestment Act; and the Texas Medical Records Privacy Act. Furthermore, to the extent allowable by law, McKinney shall indemnify Forest Park from any costs, claims, or damages that Forest Park may incur as a result of any

violation of HIPAA, HITECH, and/or any Texas state laws pertaining to medical privacy caused by McKinney or its agents or employees while performing under this LOA.

1.3 Medical Judgment. This LOA shall not be construed to alter Forest Park’s relationship with its patients or to interfere with Forest Park’s ability to render services under current medical standards. The final decision to provide or receive services shall be made by the Patient and his or her physician(s), regardless of whether McKinney or its designated agent has determined that such services are covered under this LOA.

1.4 Confidentiality. In performing the obligations under this LOA, McKinney may come into contact with, be given access to, and, in some instances, contribute to Forest Park’s Confidential Information. In consideration of permitting McKinney to have access to Forest Park’s Confidential Information, during the term of this LOA and at all times thereafter, McKinney agrees that it will not disclose to, or use on behalf of, any third party any Confidential Information of Forest Park, subject at all times to McKinney’s obligations under the Texas Public Information Act (the “Act”) which shall control in the event of any conflict in the provisions of this Paragraph 1.4 and the Act. For purposes of this Section, “Confidential Information” shall mean any and all information, patient information, prices, trade secrets, financial information, know-how, processes, documentation and all other information without limitation which is not generally known to, or readily ascertainable by proper means, by the public or which might reasonably be considered confidential, secret, sensitive, proprietary or private to Forest Park.

1.5 Billing of Medicare and Medicaid. Forest Park is not licensed to bill Medicare or Medicaid and will not bill Medicare or Medicaid for services rendered to the Patient. Medical services rendered to the Patient are the financial responsibility of McKinney, as set forth more specifically in Section 1.1. \_

## **Section 2 Representations and Covenants of Forest Park**

2.1 Licensing and/or Accreditation. Forest Park represents, warrants, and covenants that it currently maintains in good standing all licenses, permits, governmental or board authorizations or approvals required by law; shall maintain accreditation by the Healthcare Facilities Accreditation Program (“HFAP”); will submit evidence of the above to McKinney upon request and shall promptly notify McKinney of any termination, revocation, suspension or limitation thereof; and is properly organized and operated to undertake the duties described in this LOA.

2.2 Quality of Care. Forest Park represents and warrants that it, together with the Patient’s physicians, will be responsible for the quality of medical services provided to Patient. Forest Park acknowledges and agrees that McKinney’s authorization of payment for medical services and any utilization management functions are payment, not treatment decisions, and McKinney is not responsible for treatment decisions related to medical services.

2.3 Malpractice Insurance. Forest Park shall procure and maintain, at its own expense, professional liability insurance or equivalent self-insurance covering Forest Park, its facilities, and employees. The amounts and extent of such insurance coverage shall not be less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate. Forest Park shall provide evidence of such malpractice insurance upon request. Forest Park shall give McKinney or its designee written notice at least thirty (30) calendar days in advance of any change to or cancellation of any such insurance; if such change or cancellation is less than thirty (30) calendar days from date of discovery, notice shall be provided within three (3) calendar days from time of discovery.

## **Section 3 Relationship between Parties**

3.1 Independent Contractors. The relationship between McKinney and Forest Park is solely that of independent contractors and nothing in this LOA or otherwise shall be construed or deemed to mean that either Party is the employee, agent, partner or representative of the other Party. Neither Party will have an expressed or implied right of authority to assume or create any obligation or joint venture responsibility on behalf of or in the name of the other Party.

3.2 Limited Responsibility of Forest Park. McKinney agrees and understands that Forest Park is only responsible for hospital services, does not practice medicine, and is not responsible or liable for the quality or medical necessity of care provided by Patient's physician(s).

#### **Section 4 Indemnification**

##### 4.1 Indemnification.

4.1.1 To the extent allowed by applicable law, each party (each, an "Indemnifying Party") agrees to indemnify and hold harmless the other party to this LOA and their respective officers, shareholders, directors, and employees (the "Indemnified Parties") from any damages, losses, liability, claims, causes of action, lawsuits or judgments incurred by, or made against any Indemnified Party, which the Indemnified Party may sustain as a result of the Indemnifying Party's negligence, or the Indemnifying Party's acts or omissions under the terms of this LOA.

4.1.2 The Parties agree that each Party's respective officers, elected officials, shareholders, directors, associates, and employees shall be deemed an Indemnified Party under Section 4.1.1 solely with respect to the other party's obligations as the Indemnifying Party.

4.2 Limitation of Liability. IN NO EVENT SHALL ANY PARTY BE LIABLE TO THE OTHER PARTIES FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER IN CONNECTION WITH THIS LOA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES.

#### **Section 5 Disputes**

5.1 Negotiation of Disputes. Resolution of disputes pertaining to this LOA shall be subject to good faith negotiation between the Parties. The complaining Party shall notify the other Party in writing of such dispute, and the Parties shall meet attempting in good faith to resolve the dispute within thirty (30) days of the date of such notice, or within such time as is mutually agreed upon in writing by the Parties. In the event the dispute is not resolved within such time period, the dispute shall, in lieu of court action, be submitted in writing to a mutually agreed upon mediator. The mediation shall be conducted in Collin County, Texas at a mutually agreed upon time and location. The expense of engaging a mediator shall be shared equally by the Parties. Each Party shall be solely liable for all other costs it incurs related to mediation, including the payment of attorney's fees. In the event the mediator is unable to assist the Parties to reach resolution within thirty (30) days, any Party may pursue such other remedies as may be available at law or in equity.

#### **Section 6 Term and Termination**

6.1 Term. This LOA shall be in effect for a term of one (1) year from the date executed below. Upon expiration, this Agreement may be renewed upon the mutual written consent of the Parties.

6.2 Termination Without Cause. Either party may terminate this LOA at any time, with or without cause, including for convenience and due to non-appropriation, by giving the other party at least ten (10) days' prior written notice; provided however, that McKinney shall pay Forest Park all amounts due and owing under this LOA that accrued prior to termination.

6.3 Modification or Termination upon Advice of Counsel. The Parties intend that this LOA comply at all times with all existing and future applicable laws. If at any time either Party reasonably believes in good faith based upon the advice of reputable health care counsel that this LOA, or the performance by that party of any of its obligations under this LOA, violates any material law or regulation, state or federal, then that Party may, upon written notice, require the other Party to enter into good faith negotiations to renegotiate the terms of this LOA in a manner that attempts to retain as much as possible of the economic arrangement originally contemplated by the Parties.

### **Section 7 Miscellaneous**

7.1 Amendment. This LOA may be amended only in a written amendment executed by all of the Parties.

7.2 Assignment. No Party hereto may assign, sell, lease or otherwise delegate this LOA or any of such Party's rights, duties or obligations set forth herein without the prior written consent of the other Party.

7.3 Entire Agreement. This LOA constitutes the entire agreement between the Parties in regard to its subject matter. Any prior agreements, promises, negotiations or representations of or between the Parties, either oral or written, relating to the subject matter of this LOA, which are not expressly set forth in this LOA, are null and void and of no further force or effect.

7.4 Governing Law. Unless preempted by applicable federal law, this LOA shall be governed by and construed in accordance with the laws of the State of Texas.

7.5 Venue. The Parties hereby agree to, and waive any objection regarding, the laying of venue of any lawsuit, claim, or other proceeding arising out of or relating to this LOA in the courts of Collin County, Texas.

7.6 Notices. All notices under this LOA will be in writing and mailed by registered or certified mail, return receipt requested, to the following addresses:

If to McKinney:  
City of McKinney  
Office of the City Manager  
222 N. Tennessee  
McKinney, TX 75069

If to Forest Park:  
Forest Park Medical Centers  
Att: Legal Department  
12222 N. Central Expressway; Suite 420  
Dallas, TX 75243

or to such other address as either Party may from time to time designate by notice to the other Party.

7.7 Severability. In the event any provision of this LOA is held to be invalid or unenforceable, the remainder of the provisions of this LOA will remain in full force and effect.

7.8 Waiver. In the event a Party waives any provision of this LOA, it will not be deemed to have waived that provision at any other time or to have waived any other provision in this LOA.

7.9 Survival of Terms. In the event of a termination of the LOA, those Sections that should survive termination, including but not limited to, Sections 1.1 (as to McKinney's payment obligations, if applicable), 1.4, 4.1, 5.1, 7.1, and 7.3 of the LOA, shall survive termination.

Sincerely,

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Archie Drake, Chief Executive Officer

Forest Park Medical Center, LLC

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Julie Camp, Chief Executive Officer

Forest Park Medical Center at Frisco, LLC

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Charles Nasem, Chief Executive Officer

Forest Park Medical Center at Southlake, LLC

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Jim Davis, Chief Executive Officer

Forest Park Medical Center at Fort Worth, LLC

AGREED:

CITY OF MCKINNEY, TEXAS

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPENDIX 1

**PRICING AND COVERED SERVICES**

<b>DRG</b>	<b>Case Rate</b>	<b>Description</b>
619, 620, or 621	\$22,000	Gastric Bypass (CPT Code 43644) Gastric Sleeve (CPT Code 43775)

**Case Rate Inclusions**

1. Pre-operative testing (Labs, EKG, etc.)
2. All charges normally listed on a standard hospital billing form
3. Fees for surgeon and assistant surgeon
4. Fees for surgeon post-op visits up to 90 days
5. Physician charges for anesthesiology, radiology, pathology, hospitalist
6. Implants

**Case Rate Exclusions**

1. Costs incurred after discharge (Physical therapy, x-rays, etc.)
2. Durable medical equipment for use after Program discharge

**Pre-operative Exclusions**

The following pre-op procedures are excluded from the bundled payment and the surgeon and/or facility will bill the insurance carrier.

1. EGD- Esophagogastroduodenoscopy
2. Cardiac stress test
3. Sleep study
4. Psychiatric evaluation
5. Cancer screening
6. Additional medical clearances such as gastroenterology, nephrology, rheumatology, etc.

In order to maintain the continuity of care necessary for the very best outcomes, we recommend that these procedures be performed at Forest Park Medical Center (when available).

**15 Day Warranty**

If a patient experiences avoidable complication(s) as a result of this surgery/episode of care within 15 days post-procedure, additional treatment costs and/or readmissions are at no cost to the employer, patient or insurance carrier.

The warranty is part of the bundled payment program available to employers. The warranty covers the care for the patient when all services are delivered by Forest Park Medical Center. The warranty does not cover complications due to failure of the surgically implanted device.