

EMPLOYEE ASSISTANCE PROGRAM SERVICES AGREEMENT

This EMPLOYEE ASSISTANCE PROGRAM SERVICES AGREEMENT (“Agreement”) is made as of the 1st day of September, 2020 (“Effective Date”), by and between **Saint Elizabeth Medical Center, Inc. dba St. Elizabeth Healthcare**, a Kentucky nonprofit corporation located at 1 Medical Village Drive, Edgewood, Kentucky 41017 (“St. Elizabeth”), and **Newport Independent School District**, with a location at 30 W 8th Street, Newport, Kentucky 41071 (“Company”).

WITNESSETH:

WHEREAS, St. Elizabeth Healthcare’s mission is to promote the health and well-being of the Northern Kentucky community and to enhance the provision of quality medical care to Northern Kentucky residents;

WHEREAS, Company desires to retain St. Elizabeth to develop and provide an Employee Assistance Program (“Program” or “EAP”); and

WHEREAS, St. Elizabeth agrees to perform such EAP services for Company on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties, intending to be legally bound, and in consideration of the mutual covenants and agreements herein contained, agree as follows:

1. Definitions. In this Agreement and in all attachments to this Agreement:

A. “Employee” means any person eligible to receive Services under this Agreement by virtue of being a current employee of Company.

B. “Dependent” means the eligible family members of an Employee eligible to receive Services under this Agreement as a dependent of an Employee.

C. “Participants” means Employees and Dependents eligible for Services.

D. “Payment Due Date” shall mean the date that payment is required as set forth on the Company’s invoice or as stated herein. Payment is to be made in a form and manner as reasonably determined by St. Elizabeth.

E. The term “Services” shall have the meaning set forth in Section 2 below.

F. The term “Service Fees” shall have the meaning set forth in Section 3 below.

2. Services. St. Elizabeth agrees to furnish the EAP services as agreed to by the parties (the “Services”) during such times and locations as set forth in the attached **Exhibit A**. During the term of this Agreement, St. Elizabeth shall be the exclusive provider of EAP Services to Company.

3. **Service Fees.** Associated fees for the Services are set forth in **Exhibit B.** St. Elizabeth may adjust the fees and pricing at the beginning of each calendar year or renewal term but no more than once every twelve (12) months. St. Elizabeth shall provide Company with written notice of any changes to pricing and/or services. Company agrees to pay St. Elizabeth for the Services as set forth in Exhibit B. Any payment received more than thirty (30) days after the invoice generation date shall be accompanied by an interest payment equal to one and one-half (1.5%) percent per month, calculated from the date of such invoice. Such written notice shall be provided by email to Company's designated contact.

4. **Term/Termination.**

A. **Term.** This Agreement shall commence on the Effective Date and continue for a one (1) year period unless otherwise earlier terminated as provided for herein. Thereafter, on each anniversary of the Effective Date, this Agreement shall automatically renew for successive terms of one (1) year each.

B. **Termination without cause.** Either party may terminate the Agreement without cause and at any time by giving not less than sixty (60) days prior written notice to the other party, and upon the expiration of said notice, this Agreement shall have no further force or effect whatsoever, except as otherwise may be provided herein.

C. **Termination with cause.** Either party may terminate this Agreement in the event the other party engages in an action or omission constituting a material breach of any term or condition of this Agreement. The party seeking to terminate the Agreement for cause shall provide the breaching party with not less than sixty (60) days' advance written notice specifying the nature of the breach. The breaching party shall then have fifteen (15) days from the date of the notice in which to remedy the breach in conformance conduct to the Agreement. If corrective action is not taken within the time specified, this Agreement shall terminate at the end of the sixty (60) day period without further notice or demand and the parties shall have no further obligation hereunder, except obligations that survive the termination of this Agreement.

D. **Immediate Termination.** This Agreement may be terminated immediately by either party upon the occurrence of any one of the following events: (i) conviction of either party of any health care related crime defined in 42 U.S.C. 1320a-7(1); (ii) any other conduct or activity by either party that materially jeopardizes the proper operation of the other party; or (iii) either party's debarment from, suspension from, exclusion from, or ineligibility to take part in, Federal or state-funded health care programs.

5. **Responsibilities of Company.**

A. On or before the Effective Date, Company shall furnish to St. Elizabeth the number of Company's covered Employees. Thereafter, Company shall supply to St. Elizabeth, on a timely basis, any necessary updated Employee counts in a form and manner reasonably determined by St. Elizabeth. St. Elizabeth shall not be responsible for any delay or error in the provision of Services caused by Company's failure to furnish accurate Employee counts in a timely manner.

B. At the beginning of each calendar year, Company shall provide St. Elizabeth with an update of the number of Company's covered Employees, and St. Elizabeth's annual fee shall be based on the updated number of covered Employees.

C. At all times while this Agreement is in effect, if Company experiences an increase of ten percent (10%) or greater in the number of its covered Employees over the number of Employees on which St. Elizabeth's then-current annual fee is based, Company shall give immediate notice of such increase to St.

Elizabeth. Company shall be responsible for payment of an additional pro rata fee over the remainder of the then-current term based on such increase in the number of Company's covered Employees.

D. It is understood and agreed that Company retains complete authority and responsibility for their employee health benefits plan, its operations, and the benefits provided thereunder, including EAP (if applicable).

E. Company will promote and publicize the services available to Participants through the Program. Company will take such action and adopt such policies as are reasonable and desirable to facilitate communication between Company, its employees and other representatives regarding the EAP Services. Company will work with St. Elizabeth to develop and provide internal publicity and communications as are necessary to promote and maintain the Services.

F. Company will designate a Company employee to be Company's primary contact and coordinator with St. Elizabeth regarding the Services provided under this Agreement and to work with St. Elizabeth in the day-to-day activities.

G. Company will provide ongoing feedback to St. Elizabeth regarding the Services.

6. Independent Contractor. St. Elizabeth, in performing the Services, is acting in the capacity of an independent contractor, and is not an agent, servant, partner, or employee of Company. St. Elizabeth will have control over the performance of the Services and shall be solely responsible for payment of its federal and local taxes, salary for its respective employees, Social Security payments, and any and all other expenses incurred by St. Elizabeth in the performance of this Agreement unless otherwise set forth herein.

7. Insurance. St. Elizabeth, at its own expense, shall carry a policy or policies of professional liability and general liability insurance or shall maintain an adequately funded self-insurance plan, providing coverage in the amount of at least \$1 million per occurrence and \$3 million aggregate per year, which insures St. Elizabeth and each St. Elizabeth employee thereof against any act, error or omission of St. Elizabeth and St. Elizabeth's employees providing Services under this Agreement. St. Elizabeth shall also provide Workers' Compensation insurance as may be required and consistent with state law for its respective employees that provide Services under this Agreement. St. Elizabeth agrees to furnish to Company upon request evidence of the insurance or self-insurance required by this Paragraph 7. Company, at its own expense, shall keep in full force and effect at all times during the term of this Agreement, insurance coverage types and amounts as are customary for businesses of the type and size of Company. Company shall inform St. Elizabeth immediately of any cancellation of such coverage.

8. Indemnification. St. Elizabeth shall indemnify, defend and hold Company harmless from and against any and all liability, judgments, costs, damages, claims or demands, including, without limitation, reasonable attorneys' fees, asserted by a third party arising out of the negligence or willful misconduct of St. Elizabeth in the performance of the Services. Company shall indemnify, defend and hold St. Elizabeth and St. Elizabeth's employees, directors, officers and agents harmless from and against any and all liability, judgments, costs, damages, claims or demands, including, without limitation, reasonable attorneys' fees, asserted by a third party arising out of the negligence or willful misconduct of Company related to this Agreement.

9. Notices. Notices provided under this Agreement must be in writing to be effective and sent to the addresses noted in the introductory paragraph of this Agreement and shall be deemed received

upon the earlier to occur of (i) actual receipt, or (ii) three days after the same are mailed by U.S. certified or registered mail, postage prepaid or return receipt requested.

10. Compliance. The parties shall remain, throughout the term of this Agreement, in compliance with all applicable federal and state laws and regulations including the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) related to the Agreement and the Services to be provided hereunder. St. Elizabeth will obtain for each Participant that is to receive Services a HIPAA-compliant Authorization signed by the Participant permitting St. Elizabeth to provide Services.

11. Standard of Care. St. Elizabeth shall perform its duties and obligations under this Agreement with that level of reasonable care which a similarly situated administrator of EAP programs would exercise under similar circumstances.

12. Confidentiality. Each party shall keep confidential all Confidential Information of the other party (“owning party”) and shall not use or disclose Confidential Information either during or at any time after the term of this Agreement, without the owning party’s express written consent, unless required to do so by law, court order or subpoena in which case a party shall not disclose such information until it has provided advance written notice to owning party such that owning party may timely act to protect such disclosure. For purposes of this provision, “Confidential Information” means non-public information about either party or its employees or agents that is disclosed or becomes known to the other party as a consequence of or through its activities under this Agreement, including, but not limited to proprietary, financial, strategic and operational information. Confidential Information received or acquired by the parties during the term of this Agreement may be utilized or disclosed on a need to know basis and in furtherance of the objectives sought by the parties under this Agreement, provide, however, no information pertaining to either party’s proprietary subject matter may be disclosed without prior written permission.

13. Binding Effect; Assignment. This Agreement shall inure to the benefit of and be legally binding on the parties hereto, their successors and assigns. Each party agrees not to assign any rights or delegate any duties hereunder except as provided for under this Agreement without first obtaining the prior written consent thereto from the other party.

14. Waiver of Breach. The waiver by either party of any breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach hereunder. No waiver shall be valid unless in writing and signed by the party granting such waiver.

15. Entire Agreement. This Agreement contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes any prior written or oral agreements or understandings, and any contemporaneous oral agreements or understandings, between them respecting the subject matter hereof. There are no representations, agreements, arrangements or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein.

16. Amendment or Modification. This Agreement shall not be waived, changed, modified, extended or discharged except by an agreement in writing, signed by both parties hereto.

17. Severability. If any provision of this Agreement shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid or unenforceable, such invalidity shall not affect, impair or invalidate the remaining provisions of this Agreement.

18. **Headings.** The headings used in this Agreement are for convenience of reference only and shall not control or affect the meaning or construction or limit the scope or intent of any provision of this Agreement.

19. **Counterparts.** This Agreement may be executed in several counterparts or with counterpart signature pages, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement.

20. **No Rights in Third Parties.** Nothing in this Agreement shall be construed as creating or giving rise to any rights in any third parties or any persons other than the parties hereto.

21. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Kentucky without regard to the principles of conflicts of law. Further, in the event of any claim or cause of action arising from this Agreement, the parties hereto consent to the jurisdiction of the federal and/or state courts of Kentucky.

22. **Force Majeure.** Neither party shall be held responsible for any delay or failure in performance of any part of this agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its reasonable control and without the fault or negligence of the delayed or non-performing party. The affected party will notify the other party in writing within ten (10) days after the beginning of any such cause that would affect its performance. Notwithstanding, if a party's performance is delayed for a period exceeding thirty (30) days from the date the other party receives notice under this paragraph, the non-affected party will have the right, without any liability to the other party, to terminate this Agreement.

23. **Covenant Not to Solicit or Hire Employees.** During the Term of this Agreement and for one (1) year thereafter, neither Party shall, directly or through a third party, solicit, induce, attempt to hire, or hire any employee of the other Party who has provided Services under this Agreement or who has been introduced to the Party attempting to hire as part of performance under this Agreement.

24. **Federal Exclusion.** Each party represents that neither that party nor any entity owning or controlling that party is excluded from any federal health care program including the Medicare/Medicaid program or from any state health care program. Each party further represents that it is eligible for Medicare/Medicaid participation. Each party agrees to disclose immediately any material federal, state, or local sanctions of any kind, imposed subsequent to the date of this Agreement, or any investigation which commences subsequent to the date of this Agreement, that would materially adversely impact the parties' abilities to perform their obligations hereunder.

25. **Government Access to Books and Records.** If required by Section 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. Section 1395x(I)(i)(ii), for a period of four (4) years after the Services are furnished, the parties agree to make available, upon the written request of the Secretary of Health and Human Services, the Comptroller General, or their representatives, this Agreement and such books, documents, and records as may be necessary to verify the nature and extent of the Services with a value or cost of \$10,000 or more over a twelve (12) month period.

26. **Signatory Authority.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have set their hands on the Effective Date first noted above.

COMPANY:

Saint Elizabeth Medical Center, Inc.

By: _____

By: _____

Name: _____

Name: Gary Blank

Title: _____

Title: EVP/Chief Operating Officer

EXHIBIT A

SERVICES

St. Elizabeth will provide the following EAP Services:

1. Assist Company with the development and implementation of the Program. This shall include working with Company's management and appropriate staff, such as human resources.
2. Provide initial orientation and educational materials regarding Program.
3. Provide start-up training sessions for Company's managers, supervisors, and employees. Such sessions shall be held at Company's location and on such dates and times as agreed upon by St. Elizabeth and Company.
4. Provide annual training sessions of one (1) hour duration for Company's employees. Total number of sessions provided is determined by number of employees annually and listed on Exhibit B. Such sessions shall be held at Company's location and on such dates and times as agreed upon by St. Elizabeth and Company.
5. Provide counseling services to Participants regarding behavioral health concerns relating to chemical dependency and mental health conditions, treatable within a short-term model. Such counseling sessions shall include assessment, counseling, and referral services. Participants may self-refer to Program or may be referred by management of Corporation. The annual fee for St. Elizabeth's services under this Agreement shall cover up to eight (8) counseling sessions of one (1) hour in duration for each Employee and his/her Dependents during any one (1) year term of this Agreement. Such counseling services shall be provided at St. Elizabeth's facility located at 4123 Olympic Boulevard, Suite 151, Erlanger, Kentucky 41018, or at such other location as designated by St. Elizabeth.
6. Offer an initial assessment and counseling session to any Participant in non-emergency cases within five (5) to seven (7) business days of each referral to Program.
7. Offer an initial assessment and counseling session to any Participant in emergency cases within forty-eight (48) hours of each referral to Program.
8. Refer Participants for further counseling or treatment to providers of behavioral health services or other health services when deemed appropriate by St. Elizabeth. Payment of the charges for any such services to which St. Elizabeth may refer a Participant shall not be included in the fees paid by Company to St. Elizabeth under this Agreement. In making such referrals for other services, consideration shall be given to the need for, and location, cost, and availability of, such other services.
9. Maintain files and records on each Participant who receives Services through Program. Such files and records are the property of St. Elizabeth and shall remain so at all times. Only St. Elizabeth and the particular Participant shall have access to such files and records unless the Participant signs an appropriate authorization to release his/her files and records, or the disclosure of such files and records is permitted or required by law or court order.
10. St. Elizabeth will provide Company with a management report that includes data on Program utilization, services provided, cases opened and closed, and projected program activity. St. Elizabeth EAP Program reports provide aggregate data only so that the confidentiality of individual Participants is always protected.
11. Exclusions. The following services are outside the scope of EAP which include but are not necessarily limited to the following: psychological testing, long term counseling, counseling for children under age eleven, diagnostic testing, drug testing, medication prescriptions, legal representation in court, court mandated/related services, and treatment of chemical dependency.

EXHIBIT B
SERVICE FEES

1. Company shall pay St. Elizabeth an annual fee of \$8,428.00 to cover a maximum of 301 Employees. St. Elizabeth will send Company an annual invoice to be paid within thirty days of the date of the invoice.

Counseling Services

8-Session Model	\$ 28.00	PEPY
-----------------	----------	------

Auxiliary Services

	Price	Quantity
Initial Program Orientation	Included	Annual
Promotional Materials	Included	Annual
Health Fair Participation	Included	Annual
Critical Incident Stress Debriefing (CISD)	Included	Unlimited
Onsite Grief Intervention	Included	Unlimited
Work Unit Intervention & Mediation	Included	Unlimited
Mandatory Supervisor Referral	Included	Unlimited
Training Hours	Included	6 HR
Additional Training Hours Beyond Contract	\$ 85.00	HR