**RFP # 2020880570 – General Staffing and Placement Services**

**Exhibit C-3 - Retained Search Firm Agreement**

This Retained Search Firm Agreement (“Agreement”) is made by and between **Tarrant County Hospital District, d/b/a** **JPS Health Network** (“Client”) and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“Firm”) and will be effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”). Client and Firm may be referred to individually as “Party” to this Agreement and they may be referred to collectively as the “Parties” to this Agreement.

 **WHEREAS**, Client is a unit of local government, and more specifically a country hospital district, created and operating under Chapter 281 of the Texas Health and Safety Code; and

 **WHEREAS**, Client has requested proposals to provide the services described below; and

**WHEREAS,** Firm has presented a proposal to provide such services to the Client; and

**WHEREAS**, Firm has developed and maintains the expertise and resources necessary to perform and complete the services; and

 **WHEREAS**, Firm desires to provide the services as so required by Client, and Client desires to contract with Firm for the services;

 **NOW, THEREFORE**, in consideration of the covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Responsibilities of Client**

**CLIENT AGREES TO:**

* 1. Provide a written personnel requisition for each search assignment placed with Firm using the form set forth in **Exhibit A** hereto (an “Open Position”), including a written summary of the job title, description and required position qualifications. Such personnel requisition must be submitted through Human Resources Recruitment/Employment Department.
	2. Reimburse Firm for any pre-approved out of pocket expenses incurred on Client’s behalf. Client will pay travel expenses for any pre-authorized travel for selected candidates to be interviewed by Client personnel.
	3. Designate a key contact person for each assigned search.
	4. Notify Firm of the end of the search assignment when a suitable candidate is hired or a decision to end the search for any reason.
1. **RESPONSIBILITIES OF FIRM**

**FIRM** **AGREES TO:**

* 1. Use only qualified personnel to perform and complete the services in a diligent, professional and workmanlike manner, in accordance with all industry standards which are applicable to the services.
	2. Recruit and present viable candidates for employment according to the specific qualifications provided by Client for each Open Position. The Firm will submit candidates and resumes only in response to the specific search for an assigned Open Position that has been brought to its attention by Client.
	3. Present diverse candidates for each Open Position search and will not discriminate on the basis of race, color, religion, sex, age, national origin, marital status, disability, veteran status, or other characteristic protected by law.
	4. Screen potential candidates to confirm level of interest and compatibility with job qualifications and specifications.
	5. Verbally confirm with candidate that s/he meets Employment Eligibility Verification - Department of Homeland Security / US Citizenship and Immigration (I-9) verifying the candidate’s identity and eligibility to work.
	6. Prior to offer being extended, conduct a criminal back ground check using all last names that the candidate has used (maiden name, nickname, former married names, birth name if adopted, etc.) and all cities, county and states where the candidate has worked or lived in for the past seven (7) years.
	7. Prior to offer being made, conduct and provide primary source verification of any required licensure, credentials, and education.
	8. Present a candidate portfolio that includes professional resume and copies of references, results of criminal back ground screening and verification of primary source verification of license/other professional credentials and required education.
	9. Present candidates only through HR Recruitment/Employment Department for consideration.
	10. Facilitate completion of Client employment application and any other documents required by Client that are part of the employment application process including, without limitation, the survey assessment.
	11. Present at least one (1) viable candidate for each Open Position within 90 days of such position’s placement with Firm.
	12. Assign a dedicated person to conduct the search and communicate with the Human Resources Recruitment/Employment designated contact.
	13. Submit invoices for approved expenses.
1. **FEES**
	1. The fee for the Firm’s services will be **twenty percent (20%)** of the selected candidate’s annual base salary. The Firm will conduct a U.S.-based comprehensive candidate search to include: target company research, candidate identification, candidate development and presentation until the selected candidate is hired for the Open Position.
	2. For the purposes of designing a fee payment structure for this agreement, it is agreed as follows: At the beginning of each search, Client will pay the Firm a retainer payment equal to approximately 1/3 of the total projected fee. The aforementioned retainer payment represents approximately the first one-third of the projected total for the Open Position. Additional Client payments to the Firm beyond the aforementioned retainer payment will occur as follows:
	3. Second one-third of the projected total fee for the Open Position will be invoiced 30 days after search inception only if a minimum of two qualified and interested candidates, as determined by the Client, have been presented to Client by the Firm. This second payment will be deferred until such condition is met.
	4. The balance of the total fee for the aforementioned Open Position will be invoiced upon successful acceptance by the selected candidate of the Client’s offer of employment. The final fee payment amount will be based upon the actual hired candidate’s total cash compensation (base and target bonus) less any fee payments already made to Firm by Client.
	5. In addition, the Firm may also bill Client for actual out-of-pocket expenses. These include pre-approved staff and candidate travel and accommodations, mileage and courier services if required. It is assumed that the Client will directly reimburse candidates for expenses related to their visits to the Client organization. Reimbursement for all expenses shall be subject to Client policies and reimbursable amounts shall be in keeping with the most recent standards set forth by the United States Office of General Accounting. No reimbursement or payment will be made except for reasonable and necessary out-of-pocket expenses for travel, hotel rooms, parking and meals, actually incurred by Firm to perform and complete the services. Expenses shall not exceed those permitted under Client’s policy for employee travel reimbursement (LD 1201) and shall not exceed the current IRS Meals & Incidental Expense rate for the region of travel. Reimbursement for hotel rooms is limited to the most economical standard room available and may not exceed the applicable GSA lodging rates for the area. Current rates may be found at <https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup>.
2. **PLACEMENT GUARANTEE**
	1. Firm shall guarantee all candidates placed with Client shall remain an employee for a period of 365 days from employment date. In the event a candidate hired through the efforts of Firm voluntarily resigns or is terminated from his or her position of employment for cause, Firm shall provide a replacement candidate at no additional fee except for the out-of-pocket expenses as outlined in paragraph 3.3 above. Efforts by Firm will continue until a satisfactory replacement candidate has been hired. This guarantee shall not be applicable if the candidate hired is terminated or voluntarily terminates due to material changes in the position; reassignment to a position other than the position for which they were hired, with or without the candidate’s concurrence; of the position for which they were hired is eliminated.
3. **GENERAL PROVISIONS**
	1. **Term**. This Agreement shall continue for a period of **three (3) years** from the Effective Date, unless it is extended by written agreement of the parties or earlier terminated pursuant to paragraph 4.5 (“Cancellation”) below. Thereafter, District may renew the Agreement for up to two (2) additional one (1) year terms by providing written notice to the Firm at least thirty (30) days prior to the end of the then-current term. At the end of the final renewal term of the contract the Client reserves the right to extend the contract for up to 120 days to provide an opportunity to bring a new contract into place with another agency.
	2. **Non-Solicitation**. During the term of this Agreement and for one year following the expiration of this Agreement, the Firm agrees that it will not directly or indirectly solicit any person who is an employee or advisor to Client to terminate his/her employment with Client, without first obtaining approval to do so from the responsible human resources manager for such employee. General solicitation, such as the Firm posting a job on a publically accessible website or in an advertisement, is not prohibited by this paragraph.
	3. **Confidentiality**. Neither the Firm nor any individual performing services under this Agreement on behalf of the Firm shall, without prior written consent of Client, disclose to any person outside of Client or publish, at any time, any Client proprietary, confidential or trade secret information which may be obtained by the Firm through the furnishing of services under this Agreement, including but not limited to, information about Client, its employees, patients, organization, activities, policies or products and including any reports or data or analysis prepared by the Firm in connection with this Agreement.
	4. **Indemnification.** The Firm shall defend, hold harmless and indemnify Client from and against any and all claims, demands, liabilities, suits, actions, losses, damages, costs, expenses and reasonable attorney's fees arising from the Firm's performance or breach of its obligations under this Agreement.
	5. **Cancellation**. If any of the search is canceled for any reason by the Client within 30 days of inception, no additional fees will be due to Firm except those already earned as outlined in Article III above, provided that Firm has met all conditions set forth in that Article. If the search is canceled after 30 days, the Client will pay to the Firm the remaining fees, but only to the extent that the Firm has met the conditions with respect to the presentation of qualified and interested candidates (e.g., if only first one-third payment has been paid but the Firm has presented two qualified and interested candidates as determined by Client, then the second one-third payment will be due to Firm.) If the Client’s conditions have not been satisfied (e.g., insufficient number of suitable qualified and interested candidates presented), no additional fees will be paid. All pre-approved expenses incurred to the date of cancellation will be paid in full. Payment upon cancellation will be accepted by the Firm in full satisfaction of all claims and demands against the Client based upon or arising out of or in connection with this Agreement.
	6. **Budgetary Limitations***.* Firmacknowledges and agrees that Client is a governmental entity and, as such, is subject to an annual budgetary process and the limitation and restrictions of fiscal funding. Notwithstanding any other provision herein, if and to the extend the obligations of this Agreement, either in its initial term or in any automatically or otherwise renewed term, should continue over into Client’s subsequent fiscal years following that fiscal year when this Agreement was executed and funds are not appropriated or budgeted for this Agreement and completion of the term in question, Client may terminate this Agreement without penalty and shall have no further obligation or liabilities hereunder. However, if the Agreement is terminated pursuant to the terms above, Client agrees to pay for fees and charges incurred as of the termination date.
	7. **Taxes**. Firmrecognizes that the Client qualifies as a tax-exempt governmental agency pursuant to the provisions of Section 151.309 of the Texas Sales, Excise, and Use Tax Code, and is not responsible for payment of any amounts accountable or equal to any federal, state or local sales, use, excise, personal property, or other taxes levied on any transaction or article provided for by this Agreement.
	8. **Texas Public Information Act**. Firm acknowledges that Client is a governmental body under Chapter 552 of the Texas Government Code and thereby acknowledges that certain information that is collected, assembled, or maintained in connection with the transaction of official business by a governmental body is considered public information potentially subject to disclosure pursuant to a valid Texas Public Information Act (“TPIA”) request and hereby assumes full responsibility for challenging any requests for information it considers confidential under Chapter 552. Client agrees to notify Firm of any TPIA requests that seek disclosure of what Client reasonably determines to potentially constitute confidential information of Firm under this Agreement; however failure to notify by Client shall not be deemed a material breach of the Agreement. Firm’s confidential information, which may include, but is not limited to, any trade secrets, financial information, and related proprietary information, (“Confidential Information”) that is provided by Firm to Client under the terms of this Agreement may be subject to the exception to disclosure applicable to Client under Chapter 552 of the Texas Government Code, Subchapter C. If a TPIA request for public information is made on Client to disclose documents or information which contain what Firm has identified to Client to be, or is otherwise believed by Client to be Confidential Information, Client agrees to (i) promptly notify Firm of such request for disclosure, and (ii) decline any such request for disclosure of such Confidential Information and file a written request with the Texas Attorney General’s office seeking a determination as to whether such disclosure may be withheld; provided, however, failure to notify by Client shall not be deemed a material breach of the Agreement. Client is not required to take any further action with respect to any request made for determination by the Attorney General, and after any such request is made, all responsibility for briefing, supplementing and challenging the results of any requests to the Attorney General shall be Firm’s sole responsibility.
	9. **No Boycott of Israel**.In compliance with Section [2271.001](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2271.htm) et seq. of the Texas Government Code, Firm verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. “Boycott Israel” is defined in Section [808.001(a)](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.808.htm) of the Texas Government Code.
	10. **No Engagement in Scrutinized Business Operations**. In compliance with Section [2252.151](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm#2252.151) et seq. of the Texas Government Code, Firm warrants, represents, and by its execution of this Agreement hereby verifies that: (1) Firm does not engage in scrutinized business operations in Sudan; (2) Firm does not engage in scrutinized business operations in Iran; and (3) Firm does not engage in scrutinized business operations with designated foreign terrorist organizations. “Scrutinized business operations in Sudan” is defined in Section [2270.0052](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2270.htm#2270.0052) of the Texas Government Code. “Scrutinized business operations in Iran” is defined in Section [2270.0102](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2270.htm#2270.0102) of the Texas Government Code. “Scrutinized business operations with designated foreign terrorist organizations” is defined in Section [2270.0152](https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2270.htm#2270.0152) of the Texas Government Code.
	11. **Availability of Records**. If and to the extent required by 42 U.S.C. § 1395x(v)(1)(I), until the expiration of four (4) years after the termination of this Agreement, the FIrm shall make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by the FIrm under this Agreement.
4. **MISCELLANEOUS**
	1. **Notices.** All notices provided for by this Agreement shall be made in writing either (a) by actual delivery (e.g., personally, by commercial courier service, or by confirmed fax) of the notice, or (b) by the mailing of the notice by United States Postal Service certified or registered mail, return receipt requested, and addressed to the Party to be notified at the address set forth on the execution page below (or at such other address as may be given by notice by a Party). The notice shall be deemed to be received (i) if by actual delivery, on the date of its receipt by the Party, or (ii) if by mail, on the second day on which mail is delivered following the date of deposit in the United States Postal Service.
	2. **Applicable Law/Venue.** The Parties agree that this Agreement is subject to, and agree to comply with, applicable local, State of Texas, and federal statutes, rules and regulations. **This Agreement between the Parties shall be governed by and interpreted in accordance with the laws of the State of Texas, USA, without reference to its laws relating to conflicts of law**. Any legal action arising out of or relating to this Agreement shall be brought only in the state or federal courts located in Tarrant County, Texas, and the Parties irrevocably consent to the jurisdiction and venue of such courts with respect thereto.
	3. **Assignment.** Neither Party to this Agreement may assign this Agreement without the prior written consent of the other Party.
	4. **Binding Agreement.** The parties hereto warrant and represent that upon execution hereof, this Agreement shall be a legal, valid and binding obligation on them and shall be enforceable against them in accordance with its terms. The Individuals signing this Agreement warrant and represent that they are duly authorized to sign this Agreement on behalf of the parties hereto.
	5. **Waiver.** The failure to comply with or to enforce any term, provision, or condition of this Agreement, whether by conduct or otherwise, shall not constitute or be deemed a waiver of any other provision hereof; nor shall such failure to comply with or to enforce any term, provision, or condition hereof constitute or be deemed a continuing waiver. No waiver shall be binding unless executed in writing by the party making the wavier.
	6. **Modification.** Nosupplement, modification, or amendment of any term, provision, or condition of this Agreement shall be binding or enforceable on either party hereto unless in writing signed by both parties.
	7. **Parties Affected.** Nothing in this Agreement, whether express or implied, is intended to confer upon any individual or entity, or other than the parties hereto (and their respective heirs, representatives, successors, and permitted assigns), any rights or remedies hereunder or otherwise. Nothing in this Agreement is intended to relieve or discharge any liability of any party hereto or any third party. No provision in this Agreement shall give any individual or entity any right of subrogation against any party hereto.
	8. **Severability.**Should any part, term, or provision of this Agreement be declared to be invalid, void, or unenforceable, all remaining parts, terms, and provisions hereof shall remain in full force and effect, and shall in no way be invalidated, impaired, or affected thereby.
	9. **Subject Headings.**The subject headings of the sections, paragraphs, and subparagraphs of this not be deemed to explain, modify, limit, amplify or aid in the meaning, construction, or interpretation of any of the provisions of this Agreement.
	10. **Attorney’s Fees and Court Costs.**If either party brings an action against the other to enforce any condition or covenant of the Agreement, each party shall be individually responsible for its own court costs and attorney’s fees.
	11. **Relationship of the Parties.** None of the provisions of this Agreement are intended to create, and none shall be deemed or construed to create, any relationship between the parties, other than that of independent contractors. This Agreement. Shall not create the relationship of employer-employee, agency, partnership, or joint venture. Neither party shall have the right or power in any manner to unilaterally obligate the other to any third party, whether or not related to the purpose of this Agreement.
	12. **Entire Agreement**. This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed, and supersedes all prior written or oral agreements or communications between the parties.
	13. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which shall constitute one and the same instrument for all purposes.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date(s) set forth below.

|  |  |  |
| --- | --- | --- |
| **FIRM: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |  | **TARRANT COUNTY HOSPITAL DISTRICT****d/b/a JPS HEALTH NETWORK** |
| Address:  |  | 1500 S. Main St.Fort Worth, TX 76104 |
|  |  |  |
| By: |  | By: |
| Name:  |  | Name:  |
| Title:  |  | Title:  |
| Date:  |  | Date:  |

Retained Search Firm Agreement (contingent payment in thirds) 111120.docx

**Exhibit A**

**Available Positions**

|  |  |  |
| --- | --- | --- |
|  | **Position** | **Salary Range (if applicable)** |
| ☐ |   |  |
| ☐ |  |  |
| ☐ |  |  |
| ☐ |  |  |
| ☐ |  |  |
| ☐ |  |  |

**Exhibit B**

**Open Position Placement Request Form**

District requests Firm to provide an individual for placement in the following position:

scope of services for this position is as follows (attach additional sheets, if necessary):

The desired start date for the individual is:

The District hiring manager for this position is:

**Anticipated Salary**

The District anticipates this position will have a salary of $\_\_\_\_\_\_\_\_\_\_\_ - $ \_\_\_\_\_\_\_\_\_\_\_\_.

**Prerequisites**

Prior to presenting candidates for this position, Agency will conduct a criminal back ground check using all names that the candidate has used (maiden name, nickname, former married names, birth name if adopted, etc.) and all cities, county and states where the candidate has worked or lived in for the past seven (7) years.

Agency has primary source verification of each candidate’s required licensure, credentials, and education (as applicable to the position). Additional requirements and verification thereof may be attached, as appropriate.

District requestor signature: Date of request:

Print name:

Print title: