INDIGENT HEALTH CARE AGREEMENT
Tom Green County and La Esperanza Clinic Incorporated

This Agreement made and entered into by and between Tom Green County, a political subdivision of the State of Texas, hereinafter designated "COUNTY" acting by and through its County Judge, Michael D. Brown, and La Esperanza Clinic Incorporated, a Texas non profit corporation, hereinafter designated "CLINIC," acting through its Chief Executive Officer, Mike Campbell, in consideration of the mutual promises herein contained, agree as follows:

RECITALS

1. La Esperanza Clinic Incorporated, a Texas non profit corporation, provides medical services to the citizens of Tom Green County and is an approved Texas Title XIX Medicaid-enrolled Federally Qualified Health Center.

2. Tom Green County desires to assure the availability to Indigent Persons at a non-emergent care facility Medical Care and Health Care Services, and the CLINIC is willing to provide Medical Care and Health Care Services to Indigent Persons, upon the terms and subject to the conditions set forth herein. It is the intent of the COUNTY to provide by this contractual agreement for some of the Health Care Services that is required be provided to Indigent Persons under the provisions of the Indigent Health Care and Treatment Act, V.T.C.A. Health and Safety Code § 61.001 et.seq. (the "ACT").

Therefore, the COUNTY and CLINIC hereto agree as follows:

1. Definitions.

1.01 Medical Care. The term "Medical Care" means medical care and services or products rendered or provided by an outpatient medical clinic (non-emergent care facility) to a person on an outpatient basis, which includes, but not limited to, treatment for medical conditions, laboratory, and other ancillary medical services.

1.02 Indigent Person. The term "Indigent Person" means any person who (a) is an eligible resident of a county who does not reside in the service area of a public hospital or hospital district and meets the income and resource requirements established by the Act, and (b) is a Resident of Tom Green County. This definition is adopted solely for purposes of this Agreement and does not constitute a definition of "Indigent Person" or "Pauper" for any other purpose.

1.03 Indigent Care. The term "Indigent Care" means Health Care Services, which under state law are the responsibility of Tom Green County and are provided to an Indigent Person who (a) is an eligible resident of a county who does not reside in the service area of a public hospital or hospital district and meets the income and resource requirements established by

the Act, and (b) are Residents of Tom Green County.

1.04 **Medical Staff.** The term "Medical Staff" means the medical personnel of the Clinic or those individuals or entities as selected by the Clinic.

1.05 **Resident.** The term "Resident" shall be determined in accordance with§6 1.003 of the Act as it now exists or may hereafter be amended.

1.06 **Business Days.** The term "Business Days" means normal working business days, i.e., Monday through Friday of each calendar week, exclusive of county holidays.

1.07 **Mandated Provider.** The term "Mandated Provider" means a provider of Health Care Services selected by the County that agrees to provide Health Care Services to eligible residents.

1.08 **General Revenue Levy.** The term "General Revenue Levy" means the property taxes imposed by a county that are not dedicated to construction and maintenance of farm-to-market roads or to flood control under Article VIII, Section 1-a, of the Texas Constitution, or dedicated to the further maintenance of the public roads under Article VIII, Section 9, of the Texas Constitution and the sales and use tax revenue to be received by County during the calendar year in which the state fiscal year begins under Chapter 323, Tax Code, as determined under Section 26.041(d), Tax Code.

1.09 **SSI/Medicaid.** The term "SSI" means the Supplemental Security Income program for the aged, blind and disabled, administered by the Social Security Administration. Medicaid is administered by the Health and Human Services Commission (HHSC) under 42 U.S.C.A. 1381-1383c.

1.10 **Health Care Services.** The term "Health Care Services" means those basic services County is required to provide Indigent Persons under the Act, § 61.028 which are (1) primary and preventative services to meet the needs of the community, including immunizations, medical screening services and annual physical exams; (2) inpatient and outpatient hospital services; (3) rural health clinics services; (4) laboratory and X-ray services; (5) family planning services; (6) physician services; (7) payment for not more than three prescription drugs a month; and (8) skilled nursing facility services, regardless of the patient's age. The COUNTY may provide additional Health Care Services but may not credit the assistance toward eligibility for state assistance, except as provided under the Act §61.0285.

1.11 **County Indigent Health Care Officer. (CIHCO).** The official designated by the County for overseeing and insuring County and providers compliance with the Act.

1.12 **Medical Necessity or Medically Necessary.** Means, unless otherwise defined (i) preventative, diagnostic and/or therapeutic in nature; (ii) specifically related to the condition

which is being treated/evaluated; (iii) rendered in the least costly medically appropriate setting (e.g., inpatient, outpatient, office), based on the severity of the illness and intensity of service required; and (iv) not primarily for the covered person's convenience or that of his/her physician.

2. Terms of Agreement.

This Agreement shall be for a period beginning September 1, 2011, and ending August 31, 2012. The parties shall have the option to renew and extend the Agreement for one (1) year upon the written agreement of the parties beginning September 1, 2012 to August 31, 2013.

This Agreement may be amended only in writing executed by the parties through their authorized representatives. Termination or alteration of said Agreement may occur at any time with sixty (60) days written notice by the parties. All amendments shall be submitted to the Commissioners' Court for their consideration and approval. The Clinic shall submit a copy of its Board of Directors approval of the Agreement to the County.

3. Mandated Provider. _____

_____CLINIC agrees that it will be a Mandated Provider for the COUNTY for the purposes of providing Indigent Persons Health Care Services, that it will provide such services in accordance with this Agreement; that it will comply with all requirements for a Mandated Provider set out in the Act and will comply with the rules and regulations promulgated by the Texas Department of State Health Services Community Health Services (HSCHS).

4. Scope of Work.

_____Pursuant to this Agreement CLINIC agrees to provide COUNTY with Medical and Health Care Services for Indigent Persons within Tom Green County as follows:

1. CLINIC agrees that any services provided under this Agreement will be medically necessary and provided by, or pursuant to the order of, medical personnel licensed by the State of Texas. Compliance with this section will be certified in writing to the COUNTY on a periodic basis or as required by COUNTY.

2. CLINIC shall provide non-emergent Health Care Services for eligible Indigent Persons residing within Tom Green County [Indigent eligibility to be determined by Indigent screening services provided by Tom Green County Indigent Health Care, 113 West Beauregard, San Angelo, Texas 76903. CIHCO shall provide identification cards for eligible Indigent Persons and shall be available during Business Days to confirm Indigent Persons' eligibility for treatment by CLINIC].

3. CLINIC shall confirm Indigent Persons' eligibility for treatment before

administering treatment. Only eligible and allowed claims shall be approved for treatment.

4. CLINIC shall make Health Care Services available during regular CLINIC business hours established by CLINIC for a minimum of forty (40) hours per week.

5. CLINIC shall maintain all files and documentation (medical records) regarding each Indigent Person in conjunction with Indigent Health Care Director.

5. **Financial Responsibility for Indigent Care.** COUNTY's obligation to pay for Indigent Care provided to Indigent Persons shall be limited in accordance with the terms set out in 8.01 of this Agreement. The COUNTY's obligation to reimburse CLINIC for Indigent Care shall be limited as follows:

(a) rates established pursuant to 9.01 of the Indigent Health Care Agreement for Indigent Health Care;

(b) provided, the maximum obligation of the COUNTY per county fiscal year shall not exceed payment for a total of 30 days (cumulative) of inpatient hospitalization and/or care in a skilled nursing facility, or a maximum payment of $30,000.00 for all mandatory services provided to an Indigent Person, whichever is reached first; and

(c) provided, the maximum liability of the COUNTY for all services and payments in any one state's fiscal year is limited to eight percent (8%) of the County's General Revenue Tax Levy. If the 8% is expended, and state funding is available for further care as authorized by the Act, then the COUNTY is obligated for 10% of additional costs and the State of Texas is obligated for the remaining 90%. If the State of Texas has notified the COUNTY that the state funds have been depleted and are no longer available, the CIHCO will shut down the indigent health care program as authorized by the Act and no rollback will be granted to any provider for services rendered during the shut down period.

6. **Notice Requirements.** COUNTY and CLINIC agree to comply with notice requirements as promulgated by the Act.

7. **Application and Determination of Eligibility.** CLINIC shall not be required to accept or process any applicant or make the determination of the eligibility for any applicant for Indigent Care.

8. **Reimbursement.**

8.01 CLINIC shall submit bills to COUNTY for Indigent Care provided to Indigent Persons at the CLINIC. Bills will be submitted to COUNTY CIHCO as they are incurred and subject to

payment under the Indigent Health Care Payment Standards Handbook. After review of bills, the CIHCO shall submit their recommendations of payment to the County Treasurer for processing and the County Treasurer will then submit the bills to the County Auditor for audit. The County Treasurer will present the bills at the Commissioners' Court next regularly scheduled meeting after the examination and approval of the bills. The bills shall be paid within 45 days of receipt. In the event that any bills submitted by CLINIC to the COUNTY should contain charges that the COUNTY believes may not be eligible for reimbursement the COUNTY shall pay the portion of the bills that are not disputed, within 45 days of receipt.

8.02 If COUNTY determines, in good faith, that the patient for whom CLINIC has billed COUNTY, was not an Indigent Person pursuant to this Agreement, the CIHCO shall notify CLINIC of this determination within ninety (90) days from the date of service.

8.03 Except as provided in 9 below and except in cases of fraud, misrepresentation or clerical error, COUNTY, through CIHCO, shall have the right to disallow payments to CLINIC only if the patient for whom CLINIC submits a bill to COUNTY is not an Indigent Person as defined in the Act.

9. <u>Cost of Indigent Care.</u>

9.01 COUNTY shall pay to CLINIC the total sum of $130.00 per medical encounter. This payment rate shall remain in force during the term of this Agreement. In the event the term of this Agreement expires COUNTY is liable for paying the amounts established by the Texas Department of State Health Services Community Health Services (HSCHS) as the payment standard for mandatory services as set forth in applicable regulations including 25 T.A.C. 14.203.

(a) The payment standard for outpatient clinic care is the CLINIC'S rate for allowable services as established by Texas Department of State Health Services Community Health Services (HSCHS) and not the CLINIC'S encounter rate as established by Texas Department of State Health Services Community Health Services (HSCHS) for an approved Texas Title XIX Medicaid enrolled Federally Qualified Health Center, but in no event shall the payment standard exceed the encounter rate as established by Texas Department of State Health Services Community Health Services (HSCHS) for an approved Texas Title XIX Medicaid enrolled Federally Qualified Health Center.

(b) The payment standard for Health Care Services identified by Texas Department of State Health Services Community Health Services (HSCHS) as the most commonly performed procedures in the Medicaid Program is the average Medicaid payment for the procedure.

Provided, however, if the regulations promulgated for payment of mandatory services are changed subsequently to require additional or different payment standards, CLINIC and COUNTY will utilize the new standards.

9.02 CLINIC will bill COUNTY for services covered by this Agreement at the rates set forth in 9.01 of this Agreement as limited by the terms set forth in 5 of this Agreement.

9.03 CLINIC shall attempt to ascertain whether a person seeking Indigent Care at the CLINIC is eligible for participation in the Medicaid or Medicare programs or for coverage by any other third-party payors.

(a) If it is determined by CLINIC that a patient may reasonably be eligible for such coverage, then CLINIC shall direct the patient to the Tom Green County Indigent Health Care Department who shall who shall provide that patient with assistance in preparing and presenting his application for coverage.

(b) If such patient is later determined to be eligible for Medicare or Medicaid, amounts received by CLINIC for Medicare or Medicaid reimbursements for treatment of that patient shall be returned to the COUNTY to the extent that payments were made from the COUNTY to CLINIC.

9.04 In computing the amounts CLINIC will bill the COUNTY for Indigent Care, CLINIC may not include the following:

(a) any amount that CLINIC has received, or is entitled to receive, from a third party insurer or under a governmental program; provided, however, if the health care source pays less than the appropriate payment standard as specified in 9.01 of this Agreement, COUNTY is responsible for the amount remaining up to the payment standard amount;

(b) any amount in excess of the payment that CLINIC has received, or is entitled to receive, from a third party insurer or under a governmental program where CLINIC has agreed or is otherwise required to accept this payment as payment in full for the services; and

(c) any amount for which reimbursement would be available under Medicare, Medicaid or similar programs if the CLINIC does not participate in those programs.

9.05 The COUNTY is classified as the payor of last resort and shall provide assistance only if other public or private sources of payment are inadequate or unavailable.

10. Availability of Records.

10.01 CLINIC agrees to maintain and make available for inspection, by the County, upon written request and with reasonable notice and during regular business hours, consistent with personal privacy and subject to the limitation of federal, state, and local law any and all records necessary to document CLINIC'S provision of Health Care Services to Indigent Persons of Tom Green County.

(a) Such records shall be maintained for at least four years after the date services were provided. COUNTY and CLINIC agree to ensure the confidentiality of household information.

(b) The records described in 10.01(a) shall be made available for inspection and audit by the Texas Department of State Health Services Community Health Services (HSCHS) for determination of the COUNTY'S eligibility for financial assistance under the Act to the extent required by state or federal law imposed on CLINIC or the COUNTY.

(c) County Financial and related records pertaining to this Agreement shall be made available to CLINIC for review upon written request during regular hours on Business Days.

10.02 As a prerequisite to obtaining Indigent Care, Indigent Persons shall be required to authorize release of their medical records to the COUNTY. The records to be released shall be in accordance with the guidelines established in Health Insurance Portability and Accountability Act of 1996 (HIPAA).

11. Responsibility of Employers. CLINIC is an independent contractor and not an agent of the COUNTY. COUNTY and CLINIC shall each be solely responsible for the wages, benefits, insurance all other costs of employing their respective employees.

12. Scope of Indigent Care. Under the terms of this Agreement, the medically necessary care for which the COUNTY agrees to pay is limited to those services required by the Act as further defined by the regulations promulgated thereunder including but not limited to 25 T.A.C. 14.201 and 14.202 and County Commissioner decisions on optional medical services.

13. Personnel. La Esperanza Clinic Incorporated shall perform all services associated with this Agreement. CLINIC may, at its sole discretion and expense, engage independent contractor(s) to perform certain aspects of specialized health care expertise. CLINIC shall determine the independent contractor(s) who provide Health Care Services to the Indigent Persons within Tom Green County are competent and qualified to perform those services.

14. **Place of Payment**. Payment shall be made to La Esperanza Clinic Incorporated at 1610 S. Chadbourne, San Angelo, Texas 76903.

15. **Exclusivity**. This Agreement is nonexclusive and nothing herein shall in anyway limit the right of the parties to enter into agreements with other individuals or entities to provide the same or similar service or to use the same or similar written materials as are used in performance of this Agreement.

16. **Relationship of the Parties**. The CLINIC is associated with the COUNTY for the performance of Health Care Services to Indigent Persons within Tom Green County. The CLINIC is and shall be an independent contractor and subject to the terms of this Agreement, shall have the sole and exclusive right to supervise, manage, operate, control, and direct the performance of the services under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer/employee or principal-agent, or to otherwise create any liability for the COUNTY whatsoever with respect to the indebtedness, liabilities and obligations of the CLINIC. The CLINIC shall be solely responsible for (and the COUNTY shall have no obligation with respect to) payment of all federal income, FICA and other taxes owed or claimed to be owed by the CLINIC, arising out of this Agreement, and the CLINIC shall indemnify and hold the COUNTY harmless from and against, and shall defend the COUNTY against, any and all losses, damages, claims, costs, penalties, liabilities and expenses whatsoever arising or incurred because of, incident to, or otherwise with respect to any such taxes.

17. **Notice**. Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if made in writing and delivered by hand-delivery, facsimile and confirmed by first-class mail, postage prepaid, or deposited in the United States Mail, postage prepaid, addressed to the respective representative and to the respective addresses set forth below. The notice shall be effective on the date of receipt, unless notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

IF TO COUNTY:

Name:	Honorable Michael D. Brown
Title:	County Judge
Address:	122 West Harris
	San Angelo, Texas 76903
Telephone:	325/653-3318
Facsimile:	325/659-3258

IF TO CLINIC:

Name:	Mike Campbell
Title:	Chief Executive Officer
Address:	2029 West Beauregard
	San Angelo, Texas 76901
Telephone:	325/223-8129
Facsimile:	325/223-1480

The parties may change the address where or the individual to whom notice is to be given by providing written notice of such change pursuant to this section. Nothing contained in this section shall be construed to restrict the transmission of routine communications between authorized representatives of COUNTY and CLINIC.

18. **Governing Law and Forum.** This Agreement and its interpretation and any disputes relating thereto, arising out of or connected with this Agreement, shall be governed by the laws of the State of Texas, without regard to its conflicts of law provisions. Any dispute relating to, arising out of, or connected with this Agreement shall be filed and maintained in San Angelo, Tom Green County, Texas, in the State Courts located in San Angelo, Tom Green County, Texas. For purposes of this Agreement, venue shall be in Tom Green County, Texas.

19. **Extent of Agreement**. This Agreement represents the entire Agreement between CLINIC and COUNTY and supersedes all prior negotiations, representations or agreements, whether written or oral.

20. **Exclusive Right to Enforce Agreement.** COUNTY and CLINIC have the exclusive right to bring suit to enforce this Agreement, and no other party may bring suit, as a third-party beneficiary or otherwise, to enforce this Agreement.

21. **Amendment**. This Agreement may be amended only in writing, with such written amendment being approved and executed by the Board of Directors for the Clinic and the Tom Green County Commissioners Court. All amendments shall be submitted to and approved by the Commissioners' Court.

22. **Force Majeure**. In the event either party is kept from performing its obligations hereunder because of strike, war, riot, fire, flood, earthquake, natural disaster, or any other event beyond its control, then such Party shall be relieved of its obligations to perform until such time as the factor inhibiting performance has abated.

23. **Attorneys Fees**. In the event of the bringing of any legal action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions or provisions on the part of the other party arising out of this Agreement, the prevailing party

shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including reasonable and necessary attorneys fees in accordance with the Civil Practice & Remedies Code.

24. **INDEMNIFICATION**. CLINIC COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD HARMLESS THE COUNTY, ITS EMPLOYEES, OFFICERS, ELECTED OFFICIALS, AND LEGAL REPRESENTATIVES FROM ANY AND ALL THIRD-PARTY CLAIMS, SUITS, DEMANDS, AND LIABILITIES OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS FEES RELATING TO ANY AND ALL DAMAGES (BODILY INJURY, DEATH AND DAMAGE TO PROPERTY), CLAIMS, LOSSES, CAUSES OF ACTION, SUITS, LIABILITIES OR FINES ARISING BY REASON OF OR IN CONNECTION WITH CLINIC'S ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF CLINIC IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY CLINIC TO INDEMNIFY AND PROTECT COUNTY FROM CLINIC'S ACTUAL OR ALLEGED NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD PARTY HARM.

25. **RELEASE**. CLINIC, ITS PREDECESSORS, SUCCESSORS, AND ASSIGNS HEREBY RELEASE, RELINQUISH, AND DISCHARGE THE COUNTY, THEIR PREDECESSORS, SUCCESSORS, ASSIGNS AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES, OFFICERS, ELECTED OFFICIALS AND LEGAL REPRESENTATIVES, FROM ANY LIABILITY ARISING OUT OF THE NEGLIGENCE OF THE CLINIC FOR ANY INJURY, INCLUDING DEATH OR DAMAGE TO PERSON OR PROPERTY, WHERE SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH OR ARISING OUT OF THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

26. **Binding Agreement**. This Agreement is binding upon and shall ensure to the benefit of the parties, personal representatives and successors, as applicable.

27. **Assignment of Rights and Delegation of Duties**. Due to the unique nature of the Health Care Services, the parties agree that the CLINIC may not assign its rights or delegate its duties hereunder to any third party without the prior written consent and approval of the COUNTY, which consent shall not be unreasonably withheld. Any purported assignment, transfer or conveyance without such consent shall be null and void. Notwithstanding the foregoing, a merger, recapitalization, consolidation, acquisition, reorganization, or similar action by the CLINIC shall not be considered an assignment of rights or delegation of duties.

28. **Captions.** The heading of the various sections of this Agreement have been inserted for

convenient reference only and shall not modify, define, limit or expand the express provisions of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date indicated.

"CLINIC"

LA ESPERANZA CLINIC INCORPORATED

By: _____
Mike Campbell, Chief Executive Officer

STATE OF TEXAS §

COUNTY OF TOM GREEN §

This instrument was subscribed and acknowledged before me on the 26 day of August, 2011, by Mike Campbell, Chief Executive Officer, for and on behalf of La Esperanza Clinic Incorporated.

ROSALINDA M. ARAMBULA
Notary Public, State of Texas
My Commission Expires
July 27, 2012

_____
Notary Public, State of Texas

"COUNTY"

TOM GREEN COUNTY

By: _____
MICHAEL D. BROWN, Tom Green County Judge, acting in his official capacity as County Judge and not individually

STATE OF TEXAS §

COUNTY OF TOM GREEN §

This instrument was subscribed and acknowledged before me on the 2nd day of August, 2011, by Michael D. Brown, Tom Green County Judge, acting in his official capacity as County Judge and not individually, for and on behalf of Tom Green County.

Attest: Elizabeth McGill

Elizabeth McGill, County Clerk
Tom Green County, Texas

COUNTY COURT OF TOM GREEN COUNTY, TEXAS

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