

**INDIGENT CARE AFFILIATION AGREEMENT BETWEEN TOM GREEN COUNTY AND  
SAN ANGELO COMMUNITY MEDICAL CENTER**

This Indigent Care Affiliation Agreement (the Agreement) is entered into as of the 20 day of November, 2012 (Effective Date), by and between by and between Tom Green County (the County) and San Angelo Hospital, L.P. d/b/a San Angelo Community Medical Center, a Delaware limited partnership (the Hospital).

**RECITALS:**

**WHEREAS**, the Hospital provides a significant amount of uncompensated care to the Indigent in the County;

**WHEREAS**, reductions in reimbursement under the Medicaid program and the growing uninsured population have created a gap between the costs the Hospital incurs for treating Medicaid patients and the Indigent and the reimbursement the Hospital actually receives;

**WHEREAS**, the County and the Hospital recognize that the Indigent numbers in the County will continue to grow, and that the burden of providing health care to the Indigent will continue to shift to the Hospital, the County, and the local communities in the County;

**WHEREAS**, the Hospital and the County desire to collaborate to ensure that the Indigent have access to and receive quality health care services; and

**WHEREAS**, the County and the Hospital recognize that it is in their mutual best interest and in the best interest of the Indigent population of the County to increase Medicaid funding for the Medicaid population of the County and to access local and federal funding to which the Hospital is entitled under the Section 1115 Demonstration Waiver for the Texas Healthcare Transformation and Quality Improvement Program (the Waiver Program);

**NOW, THEREFORE**, in consideration of the promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and agreed, the parties agree as follows:

**ARTICLE I  
DEFINITIONS**

- 1.1 Health Care Services** means those services necessary to enhance the delivery of health care to the Indigent, as defined in Section 1.2 of this Agreement.
- 1.2 Indigent** means any person eligible to participate in a state Medicaid program, a county program adopted under the Indigent Health Care and Treatment Act, as defined by the eligibility criteria described in Chapter 61 of the Texas Health and Safety Code, or a hospital charity care program.
- 1.3 Public Funds** means public revenue, generated by the County, which the County agrees to transfer in part to HHSC via IGT to serve as the non-federal share of Waiver Program Payments.

1.4 **Waiver Program** means the Section 1115 Demonstration Waiver for the Texas Healthcare Transformation and Quality Improvement Program, under which the County transfers Public Funds via intergovernmental transfer (IGT) to the Texas Health and Human Services Commission (HHSC) to generate the non-federal share of Waiver Program Payments, and the Hospital receives Waiver Program Payments from HHSC.

1.5 **Waiver Program Payments** means any Medicaid payments received by the Hospital in accordance with the Waiver Program.

**ARTICLE II  
REPRESENTATIONS AND WARRANTIES**

2.1 **Hospital's Representations and Warranties.** The Hospital represents and warrants that:

- a. The Hospital is a Delaware limited partnership duly established and created pursuant to applicable law with all requisite power and authority to enter into this Agreement in all respects;
- b. The execution, delivery, and performance by the Hospital of this Agreement are within the Hospital's powers, and are not in contravention of any other instruments governing the Hospital and have been duly authorized and approved by the Hospital to the extent required by applicable law;
- c. Neither the Hospital, nor any of their representatives are (i) currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the Federal health care programs); (ii) convicted of a criminal offense related to the provision of health care items or services but not yet excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) under investigation or otherwise aware of any circumstances which may result in the exclusion of the Hospital, or any of its representatives from participation in Federal health care programs;
- d. This Agreement has been duly and validly executed and delivered by the Hospital and constitutes the valid, legal, and binding obligation of the Hospital, enforceable against the Hospital in accordance with its terms;
- e. No funds derived from any Waiver Program Payment received by the Hospital have been or will be returned or reimbursed to the County;
- f. No other funds have been used to reimburse the County in consideration of any Waiver Program Payments paid to the Hospital;
- g. The Hospital will not use any of the Waiver Program Payments to fund any contingent fee arrangement or agreement or to pay for third-party consultant or legal services;

- h. The Hospital has not entered and will not enter into any agreement with the County to condition either the amount of the Public Funds transferred to HHSC via IGT by the County or the amount of Waiver Program Payments the Hospital receives on the amount of indigent care the Hospital has provided or will provide;
- i. The Hospital has not entered and will not enter into any agreement with the County to condition the amount of the Hospital's indigent care obligation on either the amount of Public Funds transferred by the County to HHSC or the amount of Waiver Program Payments the Hospital may be eligible to receive;
- j. Neither the Hospital nor any other entity acting on behalf of the Hospital has made or agreed to make cash or in-kind transfers to the County other than transfers and transactions that:
  - (1) Are unrelated to the administration of the Waiver Program and/or the delivery of indigent care services under this Agreement;
  - (2) Constitute fair market value for goods and/or services rendered or provided by the County to the Hospital; and
  - (3) Represent independent, bona fide transactions negotiated at arms-length and in the ordinary course of business between the Hospital and County; and
- k. Neither the Hospital nor any other entity acting on behalf of the Hospital has:
  - (1) Taken assignment or agreed to take an assignment of a contractual or statutory obligation of the County; or
  - (2) Authorized or consented to the assumption of a statutory or contractual obligation of the County by the Hospital or any other entity acting on behalf of the Hospital.

**2.2 County Representations and Warranties.** The County represents and warrants that:

- a. It is a political subdivision of the State of Texas, duly established and created pursuant to the Texas Constitution, with all requisite power and authority to enter into this Agreement in all respects;
- b. The execution, delivery, and performance by the County of this Agreement are within the County's powers, are not in contravention of any other instruments governing the County and have been duly authorized and approved by the County Commissioners Court as and to the extent required by applicable law;
- c. Neither the County, nor any of its representatives are (i) currently excluded, debarred, or otherwise ineligible to participate in the Federal health care

programs; (ii) convicted of a criminal offense related to the provision of health care items or services but not yet excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) under investigation or otherwise aware of any circumstances which may result in the exclusion of the County, or any of its representatives, from participation in Federal health care programs;

- d. This Agreement has been duly and validly executed and delivered by the County and constitutes the valid, legal, and binding obligation of the County, enforceable against the County in accordance with its terms;
- e. The County is legally authorized to and does receive ad valorem taxes, generate public revenue, or receive and expend appropriated public funds and will fund its obligations hereunder with such tax revenues;
- f. The County has entered into this Agreement after a public meeting held in compliance with the Texas Open Meetings Act in Chapter 551 of the Texas Government Code at which a majority of the County Commissioners Court voted to execute this Agreement;
- g. The County has transferred or has agreed to transfer Public Funds to HHSC via IGT for use as the non-federal share of Waiver Program Payments to the Hospital in accordance the Waiver Program;
- h. All transfers of Public Funds by the County to HHSC to support the Waiver Program Payments to the Hospital under the Waiver Program comply with:
  - (1) The applicable regulations that govern provider-related donations codified at section 1903(w) of the Social Security Act (42 U.S.C. § 1396b(w)), and Title 42, Code of Federal Regulations, Part 433, subpart B, sections 433.52 and 433.54;
  - (2) The conditions approved by the federal Centers for Medicare and Medicaid Services (CMS) for governmental entities' and private hospitals' participation in the Waiver Program; and
  - (3) Such regulations established by HHSC pursuant to the Waiver Program;
- i. The County does not and will not at any time receive any part of the Waiver Program Payments that are made by HHSC to the Hospital under the Waiver Program;
- j. The County has not entered into a contingent fee arrangement related to the County's participation in the Waiver Program;
- k. The County has not entered and will not enter into any agreement to condition either the amount of the Public Funds transferred by the County or the amount of

the Waiver Program Payments the Hospital receive on the amount of indigent care the Hospital has provided or will provide;

- l.** The County has not entered and will not enter into any agreement to condition the amount of the Hospital's indigent care obligations on either the amount of Public Funds transferred by the County to HHSC or the amount of Waiver Program Payments the Hospital may be eligible to receive;
- m.** With regard to any escrow, trust or other financial mechanism (an Account) utilized in connection with this Agreement or an IGT issued for a payment period that occurs after the Effective Date of this Agreement, the following representations are true and correct:

  - (1) The amount of any Account is not conditioned or contingent on the amount of indigent care services that the Hospital provided or will provide;
  - (2) The County has disclosed the existence of any Account to HHSC; and
  - (3) Any such Account will not be used to effect a *quid pro quo* for the provision of indigent care services by or on behalf of the Hospital;
- n.** The County has not received and will not receive refunds of payments the County made or makes to the Hospital for any purpose in consideration for an IGT of Public Funds by the County to HHSC to support the Waiver Program Payments;
- o.** The County has not received and will not receive any cash or in-kind transfers from the Hospital or any other entity acting on behalf of the Hospital other than transfers and transactions that:

  - (1) Following the date this Agreement is executed, are unrelated to the administration of the Waiver Program or the delivery of indigent care services under this Agreement;
  - (2) Constitute fair market value for goods or services rendered or provided by the County to the Hospital; and
  - (3) Represent independent, bona fide transactions negotiated at arms-length and in the ordinary course of business between the Hospital and the County; and
- p.** The County has not:

  - (1) Assigned or agreed to assign a contractual or statutory obligation of the County to the Hospital or any other entity acting on behalf of the Hospital; or

- (2) Authorized or consented to the assumption of a statutory or contractual obligation of the County by the Hospital or any other entity acting on behalf of the Hospital.

**ARTICLE III  
OBLIGATIONS OF THE HOSPITAL**

- 3.1 **Agreement to Cooperate.** The Hospital agrees to work cooperatively with the County to improve access, availability, efficiency, delivery, and funding for Health Care Services provided to the Indigent.
- 3.2 **Provision of Care.** The Hospital agrees to provide Health Care Services and meet all requirements for treating the Indigent; provided, however, the Hospital shall not provide Health Care Services for which the County has a continuing contractual or statutory obligation to provide.
- 3.3 **Reports to the County Commissioners Court.** To enable the County to perform its retrospective evaluation of the Health Care Services under Section 4.2, the Hospital will provide quarterly reports to the County Commissioners Court regarding the amounts and types of health care the Hospital has provided to the Indigent. The Hospital shall provide such reports to the County Commissioners Court within ninety (90) days after the end of each such period.

**ARTICLE IV  
OBLIGATIONS OF THE COUNTY**

- 4.1 **Agreement to Cooperate with the Hospital.** The County agrees to work cooperatively with the Hospital to improve access, availability, efficiency, delivery, and funding for Health Care Services.
- 4.2 **Retrospective Evaluation of Services.** Consistent with its constitutional, statutory and fiduciary obligations, the County may retrospectively evaluate the amount and impact of the Hospital's delivery of the Health Care Services and may rely on such historical information in determining whether to continue this Agreement with the Hospital, whether the Hospital's participation benefited the community, whether the Hospital's continued participation is likely to continue to benefit the community and/or to provide accountability to taxpayers.

**ARTICLE V  
MISCELLANEOUS**

- 5.1 **Term and Termination.** The term of this Agreement shall be one year from the Effective Date and shall automatically continue thereafter for additional terms of one year each, unless terminated in accordance with this Section 5.1. Either party may terminate this Agreement with ninety (90) days advance written notice of termination.



With copies to:                      Legal Department  
   4000 Meridian Boulevard  
   Franklin, Tennessee 37067  
   Attn: General Counsel

Eric J. Weatherford  
Brown McCarroll, L.L.P.  
2001 Ross Avenue, Suite 2000  
Dallas, Texas 75201

- 5.5 **Relationship between the Parties.** The relationship between the County and the Hospital is solely a contractual relationship between independent contractors. Neither party hereto is an agent or employee of the other party.
- 5.6 **Governing Law.** This Agreement shall be governed by the laws of the State of Texas.
- 5.7 **Venue.** Venue for any action involving the County arising out of this Agreement shall exclusively lie in State District Court in Tom Green County, Texas.
- 5.8 **Assignment.** No party may assign any right, obligation, or responsibility under this Agreement.
- 5.9 **No Third Party Beneficiary.** The parties to this Agreement do not intend to establish any third party beneficiary relationships by virtue of this Agreement.
- 5.10 **Entire Agreement.** This Agreement represents the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof, and all prior and concurrent agreements, understandings, representations and warranties with respect to such subject matter, whether written or oral, are and have been merged herein and superseded hereby.
- 5.11 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, binding on all of the parties hereto. A facsimile copy or scanned image of an executed, original counterpart shall be deemed for all purposes to be, and may be relied upon as, an original, in which case each party shall immediately provide fully executed originals to the others.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the parties have executed this Indigent Care Affiliation Agreement as of the date and year set forth above.

TOM GREEN COUNTY



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

Mike Brown, County Judge, acting in his official capacity and not individually

IN WITNESS WHEREOF, the parties have executed this Indigent Care Affiliation Agreement as of the date and year set forth above.

**SAN ANGELO HOSPITAL, L.P. D/B/A SAN ANGELO COMMUNITY  
MEDICAL CENTER, BY SAN ANGELO COMMUNITY MEDICAL  
CENTER, LLC, ITS GENERAL PARTNER**

By:   
Larry Cash  
Executive Vice President and Chief Financial Officer