

INDIGENT CARE AFFILIATION AGREEMENT

This Indigent Care Affiliation Agreement (the "Agreement") is entered into as of October 16, 2012 to be effective as of October 01, 2012 ("Effective Date"), by and between **Hidalgo County**, a unit of local government within the State of Texas ("the Governmental Entity") and **McAllen Hospitals, LP** (the "Affiliated Hospital") whose address is listed at the end of this document.

RECITALS

WHEREAS, the Affiliated Hospital and the Governmental Entity collectively provide substantial uncompensated care to indigent persons annually;

WHEREAS, the State's under-funding of, and reductions in eligibility for, Medicaid increases the volumes of indigent patients who rely on hospital emergency room services as the source of primary healthcare and shifts the burden for indigent care to the Affiliated Hospital, the Governmental Entity, and local community;

WHEREAS, the Governmental Entity and the Affiliated Hospital recognize that the State will continue to under-fund the Texas Medicaid program and that the indigent numbers in their community will continue to grow;

WHEREAS, the Governmental Entity and the Affiliated Hospital desire to ensure that the indigent have access to and receive health care services;

WHEREAS, the Governmental Entity and the Affiliated Hospital recognize that it is in their best interest to increase funding for the Medicaid population and to access federal funding for the indigent to which the Affiliated Hospital will be entitled under the State's Medicaid program; and

WHEREAS, the Governmental Entity and the Affiliated Hospital recognize that they need to cooperate to ensure their ability to deliver cost efficient healthcare services to indigent patients in their community;

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:

1.0 INDIGENT CARE COLLABORATION

- 1.1 **Improving Access to Healthcare for Indigent.** The Governmental Entity and the Affiliated Hospital will assess the opportunities to improve access to healthcare for indigent persons residing in the community through participation in the Medicaid program including the Medicaid payments authorized by the Texas Healthcare Transformation and Quality Improvement Program Section 1115 Waiver (the “Section 1115 Waiver”).

2.0 REPRESENTATIONS AND WARRANTIES

- 2.1 **Affiliated Hospital Representations and Warranties.** The Affiliated Hospital represents and warrants that:

- a. It is a Texas corporation or partnership, duly established and created pursuant to applicable law with all requisite power and authority to enter into this Agreement in all respects;
- b. There is no agreement to condition any amounts transferred by the Governmental Entity nor the amount of Medicaid payments received on the amount of indigent care the Affiliated Hospital has provided or will provide;
- c. There is no agreement to condition the amount of the Affiliated Hospital’s indigent care obligation on the amount transferred by the Governmental Entity nor the amount of any Medicaid payment the Affiliated Hospital might receive;
- d. No escrow, trust, or other funding mechanism exists, the amount of which is conditioned or contingent on the amount of indigent care services provided or to be provided by the Affiliated Hospital; and that any escrow, trust or other funding mechanism utilized in connection with an anticipated intergovernmental transfer (“IGT”) from the Governmental Entity has been disclosed to HHSC and is not used to effect a quid pro quo for the provision of indigent care services by or on behalf of the Affiliated Hospital;
- e. The Affiliated Hospital will not return or refund any Medicaid payments received to the Governmental Entity;
- f. No part of any Medicaid payment received under the Section 1115 Waiver program will be used to pay a contingent fee, consulting fee, or legal fee associated with the Affiliated Hospital’s receipt of payments under the Section 1115 Waiver program.
- g. The execution, delivery, and performance by the Affiliated Hospital of this Agreement are within the Affiliated Hospital’s powers, are not in contravention of any other instruments governing the Affiliated Hospital and have been duly authorized and approved by the Board of Directors of the Affiliated Hospital as and to the extent required by applicable law;

- h. Neither the Affiliated Hospital, nor any of its representatives are (i) currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. Section 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 circumstance which may result in the exclusion of the Affiliated Hospital or any of its representatives from participating in federal health care programs; and
- i. This Agreement has been duly and validly executed and delivered by the Affiliated Hospital.

2.2 Governmental Entity Representations and Warranties. The Governmental Entity represents and warrants that:

- a. It is a County within the State of Texas, duly established and created with all requisite power and authority to enter into this Agreement in all respects;
- b. There is no agreement to condition the amount transferred by the Governmental Entity nor the amount of Medicaid supplemental payments on the amount of indigent care the Affiliated Hospital have provided or will provide;
- c. There is no agreement to condition the amount of the Affiliated Hospital’s indigent care obligation on the amount transferred by the Governmental Entity nor the amount of any Medicaid supplemental payment the Affiliated Hospital might receive;
- d. No escrow, trust, or other funding mechanism exists, the amount of which is conditioned or contingent on the amount of indigent care services provided or to be provided by the Affiliated Hospital; and that any escrow, trust or other funding mechanism utilized in connection with an anticipated intergovernmental transfer (“IGT”) from the Governmental Entity has been disclosed to HHSC and is not used to effect a quid pro quo for the provision of indigent care services by or on behalf of the Affiliated Hospital;
- e. The Governmental Entity has not received and will not receive refunds of payments the Governmental Entity made or makes to the Affiliated Hospital for any purpose in consideration for an IGT by the Governmental Entity to fund Medicaid supplemental payments;
- f. The execution, delivery, and performance by the Governmental Entity of this Agreement are within the Governmental Entity’s powers, are not in contravention of any other instruments governing the Governmental Entity and have been duly authorized and approved by the Board of

Directors of the Governmental Entity as and to the extent required by applicable law;

- g. This Agreement has been duly and validly executed by the Governmental Entity;
- h. The Governmental Entity has not received and has no agreement to receive any portion of any Medicaid payments made to Affiliated Hospital;
- i. The Governmental Entity has not entered into a contingent fee arrangement related to its participation in the Section 1115 Waiver program;
- j. The Governmental Entity is authorized to participate in the Section 1115 Waiver program pursuant to a vote of its governing body in a public meeting preceded by public notice published in accordance with its usual and customary practices or the Texas Open Meetings Act, as applicable; and
- k. Notwithstanding anything in this Agreement to the contrary, any decision by the Governmental Entity to provide funding for the Medicaid program is at the sole discretion of the Governmental Entity.

3.0 OBLIGATIONS OF THE AFFILIATED HOSPITAL

- 3.1 **Agreement to Collaborate with the Governmental Entity.** The Affiliated Hospital agrees to work cooperatively with the Governmental Entity to improve access to health care for indigent persons.
- 3.2 **Documentation.** The Affiliated Hospital agrees to provide the Governmental Entity documentation that demonstrates the amount and types of health care (including indigent health care and Medicaid services historically provided in its community) as requested by the Governmental Entity, but no more frequently than quarterly.
- 3.3 **Compliance with State and Federal Law.** The Affiliated Hospital agrees to retain qualified professionals to ensure health care is provided in compliance with state and federal charity care laws, anti-trust laws, and any other applicable laws, and the Medicare and Medicaid programs.
- 3.4 **Indigent Care Program Participation.** At all times during the term of this Agreement, the Affiliated Hospital shall use their best efforts to maintain its qualifications for participation in the Medicaid and Medicare programs.
- 3.5 **Compliance with HIPAA.** To the extent applicable to this Agreement, the Affiliated Hospital agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 1320d, *et seq.* ("HIPAA"), and any current and future regulations promulgated thereunder,

including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Parts 160, 162, and 164 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162 (the "Federal Electronic Transaction Regulations"), all as amended from time to time, and all collectively referred to herein as "HIPAA Requirements." The Affiliated Hospital agrees not to use or further disclose any Protected Health Information (as defined in the Federal Privacy Regulations) or EPHI (as defined in the Federal Security Regulations), other than as permitted by the HIPAA Requirements and the terms of the Agreement. In addition, the Affiliated Hospital agrees to comply with any state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and electronic transactions pertaining to, health care information.

As and to the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, the Affiliated Hospital shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after rendering of such services. The Affiliated Hospital will also indemnify and hold the Governmental Entity harmless if any amount of reimbursement is denied or disallowed because of the Affiliated Hospital's failure to comply with the obligations set forth in this section. Such indemnity shall include, but not be limited to, the amount of reimbursement denied, plus any interest, penalties and legal costs. If the Affiliated Hospital carries out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, the Affiliated Hospital agrees to include this requirement in any such subcontract. This section is included pursuant to, and is governed by the requirements of, 42. U.S.C. § 1395x(v)(1) and the regulations thereto.

4.0. OBLIGATIONS OF THE GOVERNMENTAL ENTITY

- 4.1 **Agreement to Cooperate with the Affiliated Hospital.** The Governmental Entity agrees to work cooperatively with the Affiliated Hospital to improve access to health care for indigent persons.
- 4.2 **No Condition on Medicaid Funding.** The Governmental Entity agrees that it will not condition the amount to which it funds the non-federal share of Medicaid supplemental payments on a specified or required minimum amount of prospective indigent care.

- 4.3 **Retrospective Evaluation of Services.** The Governmental Entity may retrospectively evaluate the amount and impact of the Affiliated Hospital's indigent care delivery and can rely on such historical information in determining whether and to what degree it will provide an IGT in the future.
- 4.4 **Documents Publicly Available.** The Governmental Entity agrees to make publicly available any documentation utilized in connection with intergovernmental transfers of funds and any documentation executed by the Governmental Entity related to its participation in the Section 1115 Waiver, including this Agreement.
- 4.5 **Use of Public Funds.** To the extent the Governmental Entity decides to provide funding for Medicaid supplemental payments, the Governmental Entity agrees to use public funds for such funding.
- 4.6 **Compliance with HIPAA.** The Governmental Entity agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Sections 1320d, *et seq.* ("HIPAA"), and any current and future regulations promulgated thereunder, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Parts 160, 162, and 164 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162 (the "Federal Electronic Transaction Regulations"), all as amended from time to time, and all collectively referred to herein as "HIPAA Requirements." The Governmental Entity agrees not to use or further disclose any Protected Health Information (as defined in the Federal Privacy Regulations) or EPHI (as defined in the Federal Security Regulations), other than as permitted by the HIPAA Requirements and the terms of the Agreement. In addition, the Governmental Entity agrees to comply with any state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and electronic transactions pertaining to, health care information.

As and to the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, the Governmental Entity shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after rendering of such services. The Governmental Entity will also indemnify and hold the Affiliated Hospital harmless if any amount of reimbursement is denied or disallowed because of the Governmental Entity's failure to comply with the obligations set forth in this section. Such indemnity shall include, but not be limited to, the amount of reimbursement denied, plus any interest, penalties and legal costs. If the Governmental Entity carries out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a

twelve (12) month period with a related individual or organization, the Affiliated Hospital agrees to include this requirement in any such subcontract. This section is included pursuant to, and is governed by the requirements of, 42. U.S.C. § 1395x(v)(1) and the regulations thereto.

5.0 GENERAL PROVISIONS

- 5.1 Term and Termination.** The term of this Agreement shall be one year from Effective Date and shall automatically continue thereafter for additional terms of one year unless the parties agree otherwise; provided, however, that this Agreement shall terminate immediately upon written notice by either the Governmental Entity or the Affiliated Hospital to the other party.
- 5.2 Notices.** All notices required or permitted hereunder shall be in writing and shall be sufficiently given and deemed to have been received upon personal delivery, by overnight carrier, by email, or by United States mail, postage prepaid, registered or certified mail, addressed to the parties as follows:

Governmental Entity:

Hidalgo County
Attn: Dairen Sarmiento
1304 South 25th Avenue
Edinburg, Texas 78542

Affiliated Hospital:

McAllen Hospitals, LP
Lorenzo Olivarez Jr, CFO
1400 W Trenton Road
Edinburg, Texas 78539
956-388-2126

- 5.3 Relationship Between the Parties.** The relationship between the Governmental Entity and the Affiliated Hospital is solely a contractual relationship between independent contractors. No party hereto is an agent or employee of any other party. Nothing in this Agreement shall prevent any affiliation or contracting by any party with any third party, with the exception that no party may contract or affiliate with other party to gain entitlement to Medicaid supplemental payments pursuant to this Agreement.
- 5.4 Governing Law.** This Agreement shall be governed by the laws of the State of Texas. The Affiliated Hospital understands that the Governmental Entity is a political subdivision of the State of Texas and governed by certain statutes applicable thereto.

5.5 Assignment. No party may assign any right, obligation, or responsibility under this Agreement except to a successor in interest.

5.6 Third Party Beneficiaries. The parties to this Agreement do not intend to establish any third party beneficiary relationship by virtue of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date(s) set forth below.

GOVERNMENTAL ENTITY

By: _____
Ramon Garcia, County Judge

ATTEST:

By: _____
Arturo Guajardo Jr., County Clerk

AFFILIATED HOSPITAL:

By _____
McAllen Hospitals, LP