

Memorandum

To: Finance Committee
Copy: Board of Managers
From: Jonny F. Hipp, Administrator
Date: June 4, 2015
Re: Amendment of Administrator's Employment Agreement

BACKGROUND: The Administrator's Employment Agreement ("Agreement") was entered into on August 19, 2014 for the four-year term October 1, 2014 – September 30, 2018; a copy of the Agreement is attached. Certain matters have arisen concerning two sections of the Agreement and each is briefly described below. It is thought that amendment of Agreement could resolve these matters.

- **Performance Goal Pay.** Paragraph 3 of the Agreement generally relates to compensation, including subparagraph (b) thereof specifically concerning Performance Goal Pay. Presently, the current language of subparagraph (b) has caused confusion as to how the expense savings amounts described in Attachment "A" of the Agreement should be calculated; the expense savings amount calculation affects the amount of Performance Goal Pay to be paid.
- **Retirement Contribution.** Paragraph 4 of the Agreement generally relates to benefits, including subparagraph (c) thereof specifically concerning a Retirement Contribution by the Hospital District to the 457(b) plan on the Administrator's behalf. In addition to this Retirement Contribution made by the District, the Administrator may make additional age 50 and over catch-up contributions to the 457(b) plan in the form of personal contributions. Because of the Retirement Contribution being made to the 457(b) plan on the Administrator's behalf, the Agreement currently prevents him from making personal contributions (either basic or age 50+ catch-up contributions) to the 403(b) plan even though the terms of that plan allow for such personal contributions. The reason is that personal contributions to the 403(b) plan would result in an employer match under the plan. However, the 403(b) plan is now separately being considered for amendment to provide that the Administrator will not be eligible to receive any employer contribution under the 403(b) plan, even if he makes personal contributions to that plan.

**Amendment of Administrator's Employment Agreement
June 4, 2015**

REQUESTED ACTION: Authorize the Board Chairman to negotiate and execute amendment to Administrator's Employment Agreement relating to clarification of performance pay calculation and inclusion of additional employee retirement plan option void of employer contributions.

Thank you.

James F. Wipp

**NUECES COUNTY HOSPITAL DISTRICT
ADMINISTRATOR EMPLOYMENT AGREEMENT
October 1, 2014 – September 30, 2018**

This Administrator Employment Agreement (the "Agreement") is made by and between the Board of Managers (the "Board") of the Nueces County Hospital District, a political subdivision of the State of Texas (the "Hospital District"), and Jonny F. Hipp, the person appointed by the Board to be the Administrator who is qualified for such by training and experience (the "Administrator"). The Board and Administrator, for and in consideration of the terms and conditions hereinafter set forth in this Agreement and pursuant to Texas Health and Safety Code, §281.026 hereby agree as follows:

W I T N E S S E T H:

1. **Employment.** The Board, by and on behalf of the Hospital District, does hereby employ Administrator as the District's Administrator and Chief Executive Officer, and the Administrator hereby accepts such employment. It is the intent of the parties hereto that the Administrator's employment be governed by this Agreement and the District's policies regarding compensation, separation from employment, and employment-at-will shall not be applicable to the Administrator. Except as stated above and in Paragraphs 3-5 below, the District's employee policies shall be applicable to the Administrator.

2. **Duties and Performance Goals.** Subject to the Board's policies, limitations, and reasonable direction, the Administrator shall perform those duties required by the Board, including but not limited to, supervision of the work and activities of the Hospital District and general direction of the District's affairs. The Administrator shall perform those duties required of an administrator by Texas Health and Safety Code, Chapter 281. The Administrator shall assure the Hospital District complies with the applicable provisions of Texas Health and Safety Code, Chapters 61 and 281 and other applicable laws. The Administrator shall serve as Secretary of the Board as provided in Texas Health and Safety Code, §281.023(b). In addition, the Administrator shall endeavor to reasonably achieve the Performance Goals attached hereto and identified as Attachment "A." The Administrator is hereby authorized to plan, organize, manage, supervise, and direct use of the District's personnel, equipment, and other resources in the performance of his duties and achievement of the Performance Goals under this Agreement. The Administrator shall be permitted to undertake teaching activities provided that those activities do not interfere with the performance of his duties under this Agreement.

3. **Compensation.** The Administrator shall be entitled to the following payments (collectively, the "Compensation"):

(a) **Salary.** Considering the level of expertise, education, and experience required of the Administrator by the Board, the adequacy of which is hereby confirmed by the Board, and the Board's desire to fairly compensate the Administrator for such qualities, the Board has surveyed other similarly-situated hospital districts in the State concerning the salary and benefits paid for positions comparable with that of the Administrator. The Board,

acknowledging and considering (i) the Administrator's performance in carrying out the requirements of prior employment agreements with the District; (ii) the Administrator's achievement of prior Performance Goals; (iii) the Administrator's doctoral education, collectively all of which have directly benefited and continue to benefit the District and the taxpayers; (iv) the compensation and benefits paid and made available to administrators in similarly-situated hospital districts in the State; (v) the Board's desire that the Administrator be fairly compensated; (vi) that the greater than ever complexities of healthcare administration, quality, financing, and governmental regulations require the expertise of the Administrator; and (vii) the Board's desire to achieve consistency, stability and longevity in the Administrator's position, the Board hereby determines and agrees that the Hospital District shall pay the Administrator a salary amount of seven thousand three hundred eighty-four dollars and eighty cents (\$7,384.80) per biweekly pay period during the Term, subject to withholding taxes prescribed by applicable statutes and as additionally authorized by Administrator (the "Salary"). There shall be twenty-six (26) biweekly pay periods per calendar year and the Administrator's Salary shall be prorated for any partial employment period.

(b) **Performance Goal Pay.** The Board desires to achieve cost savings. Accordingly, the Board hereby determines and agrees that on or about each February 1st during the Term, the District shall, in addition to the Salary above, pay the Administrator a lump sum amount equal to the amount(s) associated with the Administrator's reasonable achievement of Performance Goal(s) set forth in Attachment "A", subject to withholding taxes prescribed by applicable statutes and as additionally authorized by Administrator (the "Goal Achievement Pay"). Prior to disbursement of any Goal Achievement Pay, the Administrator shall notify the Board in writing as to achievement of the specific Performance Goals being relied upon for that particular year's Goal Achievement Pay and provide the Board relevant supporting documentation.

4. **Benefits.** The Administrator shall be entitled to receive the same employee benefits, commensurate with his past service considering his original hire date, as other employees of the Hospital District (the "Common Benefits"). In addition to the Common Benefits, the Administrator shall be entitled to the following supplemental benefits during the Term (the "Supplemental Benefits"):

(a) **Automobile Allowance.** To facilitate performance of Administrator's duties and achievement of his Performance Goals under this Agreement, the Hospital District agrees to pay the Administrator an allowance of two hundred thirty-five dollars and zero cents (\$235.00) per biweekly pay period for use of his personal automobile within the District's boundaries (the "Automobile Allowance"). The Automobile Allowance shall be prorated for any partial employment period.

(b) **Telephone Allowance.** To facilitate performance of Administrator's duties and achievement of his Performance Goals under this Agreement, the Hospital District agrees to pay the Administrator an allowance of fifty dollars and zero cents (\$50.00) per

biweekly pay period for use of his personal communications device (the "Telephone Allowance"). The Telephone Allowance shall be prorated for any partial employment period.

(c) **Retirement Contribution.** The Hospital District agrees to deposit into the District's Internal Revenue Code ("IRC"), Section 457(b) Deferred Compensation Plan (the "Deferred Compensation Plan") each calendar year for benefit of Administrator, an amount equal to the then current calendar year's annual IRC Section 457(b) contribution limit (the "Retirement Contribution"). The Retirement Contribution shall be prorated based on twenty-six (26) biweekly pay periods per calendar year and shall be further prorated for any partial employment period. All Retirement Contribution deposits shall be fully and immediately vested in the Administrator and are freely transferrable by the Administrator in the event the Administrator is no longer employed by the Hospital District, subject to the requirements of IRC Section 457(b). The Administrator shall not be restricted from depositing additional personal contributions into the Deferred Compensation Plan. In consideration of this Retirement Contribution provided by the District, the Administrator agrees he will not participate in the District's IRC, Section 403(b) Tax-Sheltered Annuity Plan.

(d) **Employee Insurance Premiums.** The Hospital District agrees to pay up to one hundred twenty-five dollars and zero cents (\$125.00) per biweekly pay period toward the employee's portion of the Hospital District's health, dental, and vision insurance premiums for the Administrator and his children or family, as he shall determine for each insurance, and the Administrator is responsible for payment of any amounts in excess of that limit.

(e) **Expense Reimbursement.** The Hospital District shall reimburse Administrator for reasonable expenses incurred by him in the performance of his duties and achievement of his Performance Goals under this Agreement and his professional development, statutorily required training, and related activities upon written approval of the required number of Board Authorities as described below. Such expenses shall be categorized as those: (i) incurred while within Nueces County; (ii) incurred while outside of Nueces County; (iii) related to Administrator's professional development, statutorily required training, and related activities; and (iv) not covered by or in addition to categories (i)-(iii) herein.

(i) Reasonable reimbursable expenses incurred while within Nueces County shall include business meals, telephone calls, parking, dues for professional organizations, and any other reasonably incurred business-related expenses. The aggregate amount of the Administrator's professional organizations-related dues expenses shall not exceed four hundred fifty dollars and zero cents (\$450.00) per Hospital District fiscal year and the Administrator is responsible for payment of any dues in excess of that amount;

(ii) Reasonable reimbursable expenses incurred while outside of Nueces County shall include automobile mileage, airfare, toll charges, overnight accommodations, business meals, personal meals, taxicab and shuttle fares, limousine fares, bus fares, train fares, rental car, parking, office supplies, photocopying expense, overnight letters,

telephone calls, facsimiles and any other reasonably incurred business-related expenses;

(iii) Reasonable reimbursable expenses for the Administrator's professional development, statutorily required training, and related activities shall include annual dues, registration and course fees, mileage, airfare, toll charges, overnight accommodations, personal meals, taxicab and shuttle fares, limousine fares, bus fares, train fares, rental car, parking and any other reasonably incurred development and training related expenses, including fees, course materials, books, publications, videos, software, and other similar and related materials. The aggregate amount of the Administrator's professional development shall not exceed five thousand dollars and zero cents (\$5,000.00) per biennium and the Administrator is responsible for payment of any amounts in excess of that limit; and

(iv) Any other additional, reasonable and necessary expenses incurred in the performance of or in support of Administrator's duties and Performance Goals not otherwise identified in Paragraphs 4(e)(i) and (ii) above, or as otherwise approved by the Board Authorities as set forth herein.

For purposes of this Agreement, the term "Board Authorities" shall mean the Board's Chairman, Vice Chairman, Finance Committee Chairman, and Planning Committee Chairman. Prior to reimbursement of any of the Administrator's expenses incurred under Paragraphs 4(e)(i)-(iv) above, said expenses (including appropriate detailed receipts) shall be submitted for review by and written approval of any two (2) of the Board Authorities within fifteen (15) days of incurrence. The Board Authorities shall consider reasonableness and practicality when reviewing Administrator's expenses and approve or disapprove his submissions within five (5) working days. Following approval by the Board Authorities above, the Hospital District shall reimburse Administrator within five (5) working days.

Reimbursement of Administrator's expenses under Paragraphs 4(e)(ii) and (iii) above shall be limited as follows. The aggregate amount of the Administrator's personal meal expenses shall not exceed fifty-five dollars and zero cents (\$55.00) per day (excluding tips, which should not exceed fifteen percent [15%] of the bill) and the Administrator is responsible for payment of any personal meal expenses in excess of that limit. To the extent possible, Administrator's airfare expenses should not exceed Coach fare. Administrator's automobile mileage reimbursement shall be based on actual mileage incurred and paid at the Internal Revenue Service standard mileage rate for business miles in effect at the time the mileage was incurred. The Hospital District shall not reimburse Administrator for any expenses not specifically described and permitted above, including alcoholic beverages and entertainment.

(f) **Provision of Indemnification and Cost of Defense.** To the extent allowed by law, and if the Administrator was acting within the course and scope of his employment with the Hospital District, excluding any criminal acts, the District agrees to hold harmless and indemnify Administrator from any and all demands, claims, suits, actions, legal proceedings, and defense arising from the performance of his duties, both past and present,

which are or expected to be brought against him, either in his individual capacity, or in his official capacity as agent and employee of the Board and/or Hospital District. However, in no case will any individual Board member or members be considered personally liable for indemnifying Administrator against such demands, claims, suits, actions, legal proceedings, and defense. This provision shall survive termination of this Agreement.

(g) **Payment of Performance Bond.** To assure compliance with the performance bond requirement of Texas Health and Safety Code, §281.026(d), the Hospital District agrees to arrange for and pay the cost of such bond.

5. **Term and Termination.** The Administrator's term of employment shall be for four (4) years beginning October 1, 2014 and ending September 30, 2018 (the "Term"). Except for good cause, or for other than good cause as described below, a majority vote of the entire Board may terminate this Agreement not more than ninety (90) days and not less than sixty (60) days prior to the end of the Term upon written notice of such to the Administrator.

For good cause, or for other than good cause, the Board may terminate this Agreement upon sixty (60) days written notice of such to the Administrator. For purposes of this Agreement, the phrase "for good cause" shall mean: (i) the Administrator willfully breaches or habitually neglects the duties he is required to perform under terms of this Agreement; (ii) the Administrator refuses to obey reasonable Board directives; (iii) the Administrator commits clearly dishonest acts toward the Hospital District; and (iv) the Administrator is formally charged for any crime involving moral turpitude. The phrase "for other than good cause" shall mean: (i) occurrence of circumstances that make it impossible or impracticable for the business of the District to be continued; (ii) the death of the Administrator; (iii) the loss by Administrator of his legal capacity; (iv) the continued incapacity on the part of the Administrator to perform his duties for a continuous period of ninety (90) days, unless waived by the Board; and (v) the Administrator becomes permanently disabled because of sickness, physical or mental disability, or any other reason, such that it reasonably appears that he will be unable to perform his duties under this Agreement.

The Administrator may terminate this Agreement for any reason upon sixty (60) days written notice of such to the Board's Chairman.

Upon termination of this Agreement by either the Board or the Administrator as described in this Paragraph 5, the Administrator shall be entitled to the Compensation, Goal Achievement Pay, Common Benefits, and Supplemental Benefits, as provided for in this Agreement, that were earned prior to the effective date of the termination, computed pro rata up to and including the effective date of termination.

6. **Subsequent Employment.** During the one hundred eighty (180)-day period immediately following delivery of written notice of termination of this Agreement by the Administrator, he shall not consult to or be employed by any entity located in Nueces County,

Texas then under contract to the Hospital District to provide indigent health care. In the event the Board terminates this Agreement, or in the event any action is taken by the Board or any other body or entity to abolish, dissolve, or materially diminish the powers or duties of the Hospital District and the Administrator terminates this Agreement, there shall not be any form of subsequent employment constraint enforceable on the Administrator at any time.

7. **Severability.** If any provision contained in this Agreement is determined by a court of competent jurisdiction to be void, illegal or unenforceable, in whole or in part, then the other provisions contained herein shall remain in full force and effect as if the provision which was determined to be void, illegal, or unenforceable had not been contained herein.

8. **Amendment, Modification, and Waiver.** This Agreement may not be changed orally but only by written agreement signed by both parties. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party. This instrument contains the entire agreement of the Parties concerning employment and supersedes all prior and contemporaneous representations, understandings and agreements, either oral or in writing between the parties hereto with respect to the employment of the Administrator by the Board and all such prior or contemporaneous representations, understandings and arrangements, both oral and in written, are hereby terminated upon the beginning date of this Agreement.

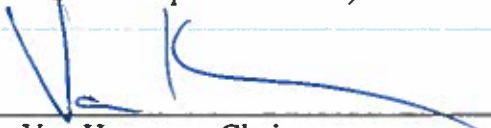
9. **Governing Law and Venue.** Unless specifically provided otherwise, the parties intend that the laws of the State of Texas should govern the validity of the Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto. Venue for all matters arising from this Agreement or other related matters subject to the provisions herein relating to binding arbitration shall be in Nueces County, Texas.

10. **Attachments, Schedules, and Exhibits.** Attachments, schedules, and exhibits mean the attached documents setting out certain particulars of this Agreement and any replacement documents thereof. All attachments, schedules, and exhibits referred to in this Agreement are incorporated herein by reference and are hereby made part of this Agreement.

11. **Binding Arbitration.** In lieu of litigation, the parties agree that any dispute between them arising from this Agreement shall be submitted to binding arbitration. The parties shall share equally the fees and costs payable to the arbitrator. The award of the arbitrator may be entered in, and enforced through, any court of competent jurisdiction in Nueces County, Texas. Any action to enforce or vacate the obligation to arbitrate or to enforce or vacate an arbitrator's award shall be governed by state law. Unless agreed to in writing between the parties, there shall be no other court action.

IN WITNESS WHEREOF, the parties have hereunto undertaken this Agreement and executed it as of the 19th day of August 2014.

**NUECES COUNTY HOSPITAL DISTRICT
BOARD OF MANAGERS**
("Board" and "Hospital District")

By: 


Van Huseman, Chairman
Board of Managers

JONNY F. HIPPI
("Administrator")

By: 

Jonny F. Hipp

APPROVED AS TO FORM:



Wm DeWitt Alsup
Attorney

Attachment "A"

PERFORMANCE GOALS		
Goal	Description	Goal Achievement Pay
1	Deliver controllable expense* savings compared to budget for fiscal year ending September 30, 2014.	15% of savings, not to exceed \$47,500
2	Deliver controllable expense* savings compared to budget for fiscal year ending September 30, 2015.	15% of savings, not to exceed \$47,500
3	Deliver controllable expense* savings compared to budget for fiscal year ending September 30, 2016.	15% of savings, not to exceed \$47,500
4	Deliver controllable expense* savings compared to budget for fiscal year ending September 30, 2017.	15% of savings, not to exceed \$47,500
5	Achieve uneventful financial audit results and no significant management letter related comments for fiscal year ending September 30, 2014.	\$1,500
6	Achieve uneventful financial audit results and no significant management letter related comments for fiscal year ending September 30, 2015.	\$1,500
7	Achieve uneventful financial audit results and no significant management letter related comments for fiscal year ending September 30, 2016.	\$1,500
8	Achieve uneventful financial audit results and no significant management letter related comments for fiscal year ending September 30, 2017.	\$1,500

*For purposes of this Agreement and this Attachment "A," the term "controllable expense" shall mean total budgeted expenses for the identified fiscal year, less:

- appraisal district fees;
- tax assessor/collector fees;
- tax notice advertising;
- required advertising;
- required expenses;
- required training and related travel;
- indigent care payments;
- county healthcare services expenditures;
- county attorney salaries and benefits;
- attorney's fees and expenses and other legal expenses;
- expenses related to operation of the Texas Medicaid Section 1115 Waiver;
- expenses related to participation in the Texas Medicaid Section 1115 Waiver;
- intergovernmental transfers;

- expenses that are reimbursed;
- attorney's fees and expenses and other expenses related to modification or termination of existing transactions or creation and implementation of new transactions;
- litigation expense;
- settlements;
- prior year(s) controllable expenses;
- Administrator's Compensation, Goal Achievement Pay, and Supplemental Benefits;
- expenses associated with Memorial Medical Center;
- Memorial Medical Center cost report fees; and
- Memorial Medical Center professional liability and workers compensation costs and claims.

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