



Wharton County Junior College

Proposed Agenda Item Board of Trustees Meeting

Complete this form and submit it to the Office of the President by noon on Friday, 11 days prior to the Tuesday evening meeting of the Board of Trustees. If this form does not provide enough space, you may use an expanded version *as long as you follow the format specified below.*

Date of Board Meeting: 03/19/19

Date of this Proposal: 03/06/19

SUBJECT: Agreement with El Campo Memorial Hospital for Campus-Based Health Center Services and Lease Agreement for Use of College Property

RECOMMENDATION: Recommend approval

BACKGROUND/RATIONALE: Representatives from El Campo Memorial Hospital contacted WCJC administration indicating their desire to establish a health care facility for students, faculty, and staff on the WCJC campus. Administration has determined that approximately 760 square feet of the Senior Citizen's Area in the LaDieu Building could be renovated to fit the needs of the Hospital. Legal counsel has assisted in preparing the attached document.

Estimated Cost and Budgetary Support (how will this be paid for?): N/A

RESOURCE PERSON(S) [name(s) and title(s)]:

Betty A. McCrohan, President

Bryce D. Kocian, Vice President of Administrative Services

SIGNATURES:

B. Kocian
Originator

03/06/2019
Date

B. Kocian
Cabinet-Level Supervisor

03/06/2019
Date

PRESIDENT'S APPROVAL:

Betty A. McCrohan

3-6-2019

Reg 113
6-21-95

**AGREEMENT FOR CAMPUS-BASED HEALTH CENTER SERVICES
AND LEASE AGREEMENT FOR USE OF COLLEGE PROPERTY**

THIS AGREEMENT is made and entered into on the ____ day of _____, 2019 between El Campo Memorial Hospital ("Hospital") and Wharton County Junior College ("WCJC"). This Agreement outlines the relationship between the parties required to meet the mutual goal of improving access and promoting preventive physical and mental health care of the students, faculty and staff of WCJC.

WITNESSETH

WHEREAS, HOSPITAL has the medical framework and mission to provide health care to the students, faculty and staff of WCJC; and

WHEREAS, WCJC has identified the need for accessible and affordable health care for students, faculty and staff; and

WHEREAS, WCJC and HOSPITAL desire to link health and education by providing programs for primary and preventive medical care, promotion of early detection of health related problems and provision of interventions to help WCJC students, faculty and staff achieve optimal learning and health; and

WHEREAS, the Parties desire to collaborate and cooperate in the establishment and operation of a campus-based health care program of primary care which will serve only the students, faculty and staff of WCJC; and

WHEREAS, the Parties have identified existing office space located at the WCJC Campus as the proposed location for the campus-based clinic facility; and

WHEREAS, the WCJC Board of Trustees has determined that the value of the in-kind goods and services which HOSPITAL has contracted to provide by execution of this Agreement will meet or exceed the value of the use by HOSPITAL of the Clinic Site; and

WHEREAS, the WCJC Board of Trustees has determined that there is a legitimate public purpose in leasing the Clinic Site to HOSPITAL for the Clinic, in that, HOSPITAL will provide convenient and exclusive healthcare services to WCJC students, faculty, and staff, thus improving the overall health of WCJC's population and reducing student, faculty and staff absenteeism for routine medical visits off of campus premises; and

WHEREAS, the WCJC Board of Trustees has determined that WCJC will receive value in the form of this improvement of overall health, increased availability of healthcare services, and reduction in absenteeism due to consistent medical early intervention and convenient availability of service; and

WHEREAS, the HOSPITAL will establish reasonably adequate controls to ensure that such benefits are received by WCJC, since this Agreement requires HOSPITAL to provide equipment for the Clinic and adequate staff and supplies for program operation, and to comply with reporting requirements regarding services provided;

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained in this Agreement, HOSPITAL and WCJC agree as follows:

ARTICLE I **DEFINITIONS**

1.1 **Enrollee.** An Enrollee shall be any student currently enrolled at Wharton County Junior College or a WCJC employee who has provided a properly executed Consent to Treat Form signed by Enrollee or, if Enrollee is under eighteen (18) years of age, an adult parent/guardian of Enrollee on record at the Clinic prior to receiving treatment through the Clinic.

1.2 **Health Care Team.** The campus-based health care team will consist of the HOSPITAL clinical staff employed by HOSPITAL who provide services at the Clinic ("Clinical Staff"); and any collaborating physician contracted by HOSPITAL to provide oversight ("Physician"). The Clinical Staff, and the Physician(s) are hereinafter collectively referred to as the "Health Care Team".

ARTICLE II **COLLABORATIVE EFFORTS**

2.1 **Grievances initiated by an Enrollee and Medical Provider.** HOSPITAL and WCJC agree to cooperate in good faith in any grievance procedure initiated against the HOSPITAL, its employees, agents, or representatives by an Enrollee or Health Care Team. Grievances initiated against WCJC and its employees, agents or representatives will be handled according to the procedures set forth in the applicable WCJC College Regulation.

2.2 **Health Care Team Member and Their Duties.** In addition to the collaborative duties provided above, each member of the Health Care Team will also have responsibility for the separate duties established below:

2.2.1 The Health Care Team will provide the front-line services at the Clinic, serve as a resource for students, faculty and staff, and make referrals, as necessary, to consulting physicians, outside physicians and other county agencies.

2.2.2 The Physician shall, collaborate with the HOSPITAL Clinical Staff, as may be required by applicable law, or by regulatory or accrediting agencies, in the development of

protocols for common acute care problems, and will provide consultation for complicated medical problems.

ARTICLE III

HOSPITAL RESPONSIBILITIES

3.1 Program Services. HOSPITAL, either itself or through its subcontractors, agrees to provide health maintenance services for Enrollees, including: diagnosing and treating minor illnesses and injuries; conducting general physicals and sports physicals, monitoring chronic conditions; testing for and treating diseases; conducting routine laboratory work; providing referrals to community resources and when necessary to involve physicians and other professionals not physically located at the Clinic. HOSPITAL also agrees to refer Enrollees to third-party medical providers for mental health, social, and dental services upon identification of a need by the Health Care Team.

3.2 Clinic Staff.

3.2.1 HOSPITAL shall provide competent, qualified medical staff to administer, coordinate, and provide health-related services pursuant to this Agreement. During the term of this Agreement, HOSPITAL shall utilize providers, who are appropriately licensed to practice in the State of Texas. HOSPITAL shall at a minimum, assign to the Clinic one full-time, fully qualified nurse practitioner to serve the healthcare needs of Enrollees. HOSPITAL shall also assign a LVN and/or Medical Assistant to the Clinic. The HOSPITAL shall at all times provide sufficient staff to serve the Enrollees seeking services at the Clinic.

3.2.2 HOSPITAL retains all responsibility related to employment and expenses of the nurse practitioner, the office clerk and any other members of the Health Care Team defined above, including, but not limited to, compensation, healthcare benefits, payroll taxes and statutory worker's compensation for all staff persons assigned to the Clinic. The Health Care Team and any Clinic office staff will be employed by and under the direct supervision of the HOSPITAL at all times during the hours of operation of the Clinic, regardless of whether they may be employed at other times by WCJC; such employees of HOSPITAL shall never be deemed to be an employee of WCJC.

3.2.3 HOSPITAL shall ensure that the staff assigned by HOSPITAL to perform services at the Clinic complies with all of WCJC's rules, regulations, directives and policies while on the WCJC Campus or while attending WCJC-related sponsored events on or off the WCJC Campus, including all procedures of the WCJC campus on which services are provided.

3.2.4 If any member of the Health Care Team or other Clinic staff assigned to the Clinic terminates his or her employment with HOSPITAL, HOSPITAL shall assign a satisfactory replacement to the Clinic as soon as feasible, but in no event later than five (5) business days after HOSPITAL receives notice of termination.

3.3 Credentialing of Clinic Staff and Insurance. HOSPITAL will require its Medical Providers to be duly licensed to practice in the State of Texas, within the scope of their license, and maintain themselves in good professional standing at all times. HOSPITAL will require its Medical Providers, to the extent they are under contract and not employees of HOSPITAL, to

carry professional liability insurance in accordance with HOSPITAL'S general practices. Certificates of coverage and proof of qualifications shall be provided to WCJC prior the Clinic opening and annually thereafter on the anniversary of the Clinic opening.

3.4 Program Expenses. HOSPITAL shall be solely responsible for all costs associated with the operation of the Clinic, including, but not limited to, costs of personnel and office supplies and materials utilized in the Clinic. HOSPITAL shall provide supplies adequate to operate the Clinic Site for its intended use as a health clinic. WCJC shall be responsible for provision of utilities in accordance with Section 4.4 herein.

3.5 WCJC Policies. HOSPITAL shall assume full responsibility for any personal injury or damages to personal property or other liability related to its use of the Clinic Site, including any tax assessed on the WCJC Campus due to HOSPITAL's use.

3.6 Duty to Report Abuse or Neglect. HOSPITAL and HOSPITAL's employees, agents and consultants agree to comply with all provisions and requisites of any WCJC College Regulation and state or federal law, which requires that any person who has cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as required by law, including but not limited to Family Code §261.101(a).

3.7 Agreement to Release and Hold Harmless.

3.7.1 HOSPITAL shall release and hold WCJC and its trustees, administrators, employees, officers, agents, volunteers and assigns harmless from all suits, actions, losses, damages, claims or liability of any character, including but not limited to claims arising under the Individuals with Disabilities Education Act, and all expenses of litigation, court costs, and attorney's fees for injury or death to any person, or to any property, received or sustained by any persons or property, arising out of, or occasioned by, the acts or omissions of HOSPITAL, its employees, officers, agents, contractors, representatives or assigns, whether negligent or purposeful, in the execution or performance of (1) any campus-based health care services performed on the Clinic Site; or (2) the terms of this Agreement. THE INDEMNITY CONTAINED IN THIS PARAGRAPH (a) IS INDEPENDENT OF HOSPITAL'S INSURANCE, (b) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (c) WILL SURVIVE THE END OF THE TERM OF THIS AGREEMENT, AND (d) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF WCJC BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF WCJC.

3.7.2 Further, HOSPITAL and WCJC agree that WCJC shall have no liability for any damages, injuries or other claims brought by any of the Health Care Team, Clinic staff or other individual assigned by HOSPITAL to perform services subject to this Agreement, arising in any way whatsoever from the provision of any services on the Clinic Site.

3.8 Insurance Coverage. Throughout the term of this Agreement, HOSPITAL shall maintain,

at its sole cost and expense, insurance coverage described below with the following limits at a minimum, insuring WCJC, HOSPITAL and HOSPITAL's affiliates against any and all liability for injury to or death of a person or persons and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Clinic Site by HOSPITAL or by the condition of the Clinic Site. This insurance is to be carried by one or more insurance companies duly authorized or admitted to transact business in Texas, selected by HOSPITAL and approved by WCJC.

Worker's Compensation: (Including Waiver of Subrogation Endorsement)	All liability arising out of HOSPITAL's employment of workers and anyone for whom HOSPITAL shall be liable for Worker's Compensation claims.
Employer's Liability:	\$1,000,000.00
Commercial General Liability:	\$1,000,000.00
Occurrence	\$1,000,000.00
Aggregate	\$3,000,000.00
Personal Injury	\$1,000,000.00 each person
Automobile Liability:	\$1,000,000 combined single limit
Professional Liability:	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services. If written on a claims made basis, HOSPITAL shall provide coverage for an additional 25 months after the term of this Agreement.

Such insurance coverage shall (a) except for Workers Compensation and Professional Liability, name WCJC and its trustees, administrators, employees, officers and agents as an additional insured, (b) be primary and noncontributory as to any insurance or self-insurance retention maintained by the additional insureds, (c) contain a provision requiring the insurance carriers to waive all rights of subrogation against WCJC and its trustees, administrators, employees, officers and agents. Upon WCJC's request, HOSPITAL shall provide WCJC with evidence of such insurance coverage.

ARTICLE IV

DISTRICT RESPONSIBILITIES

4.1 **Renovation and Improvements of Campus-Based Clinic Facility.** HOSPITAL may recommend renovations or improvements of the Clinic Site to WCJC based on the needs of the Clinic. Upon written agreement of the parties, WCJC shall coordinate and oversee the completion of all renovations or improvements to the Clinic Site. All costs and expenses associated with renovations or improvements to the Clinic Site shall be paid by HOSPITAL, upon request for reimbursement submitted to HOSPITAL by WCJC.

4.2 **Custodial and Grounds Maintenance.** WCJC, at its sole cost and expense, will provide general custodial services and grounds maintenance service for the Clinic Site in conjunction with that provided to the WCJC Campus. HOSPITAL shall be responsible for the disposal of all medical waste relating to the operation of the Clinic.

4.3 **Support Services.** WCJC shall provide building support services, including, but not limited to, custodial services as provided in Section 4.2 of this Agreement, grounds and other routine maintenance for the Clinic Site at no charge to HOSPITAL, in conjunction with that routinely provided to the WCJC Campus.

4.4 **Utilities.** WCJC shall provide heating, water, electricity and internet/Wi-Fi to the Clinic Site as provided for in this Agreement at WCJC's sole expense. Beginning with the date of occupancy of the Clinic Site by HOSPITAL, WCJC agrees to pay for all electricity, water and other utilities utilized for clinic operations.

4.5 **Security and Fire Monitoring.** WCJC agrees that it will maintain fire alarms. WCJC agrees to provide security for the Clinic Site consistent with the security provided to the WCJC Campus. In the course of providing such security, WCJC agrees to notify local law enforcement of any suspicious activity observed or apparent intrusion into the Clinic Site, and to provide assistance as necessary and requested by local law enforcement. Concurrent with the execution of this Agreement, HOSPITAL will provide WCJC with a call-out list for those services, such that the HOSPITAL staff would be notified in the event of such alarms. In agreeing to provide such services, WCJC does not accept liability for any damage or theft to the Clinic Site or any HOSPITAL property caused by the criminal acts of third parties.

4.6 **Climate Control.** WCJC, at its sole cost and expense, will continue to provide remote climate control and monitoring of the Clinic Site through the existing system and software.

ARTICLE V

OPERATIONS

5.1 **Hours of Operation** Hours of operations at the Clinic shall be generally Monday through Friday 7:30 a.m. to 4:00 p.m. These initial hours of service for the Clinic maybe by changed with written agreement of both parties hereto based upon Clinic utilization.

ARTICLE VI
BILLING, DATA COLLECTION AND SUBMISSION OF DATA

6.1 **Billing for Clinical Services.** HOSPITAL shall bill the Enrollee's insurance company, Medicaid or Medicare for any service provided, as applicable. Enrollee is responsible for payment of services.

6.2 **Reporting Requirements.** HOSPITAL shall provide to WCJC the following information on a quarterly basis.

6.2.1 Number of Enrollees served and the types of services;

6.2.2 Number of Enrollees referred to other health services and the type of services.

ARTICLE VII
MEDICAL RECORDS AND CONFIDENTIALITY

7.1 **Confidentiality and Informed Consent.** HOSPITAL shall assure that all services rendered to Enrollees shall be confidential in nature and any records generated as a result of any services being rendered to Enrollees shall be confidential and not disclosed without prior written authorization, except as otherwise required by State and Federal law. Confidential services shall be provided in compliance with HOSPITAL'S HIPAA Policies and Procedures Manual.

7.2 **HIPAA Compliance.** The parties agree that HOSPITAL is a covered entity for purposes of the Health Insurance Portability and Accountability Act ("HIPAA") and subject to 45 CFR Parts 160 and 164. While no services are being provided to HOSPITAL by WCJC pursuant to this Agreement, because the parties will be working in collaboration, this Agreement may be deemed to create a "business associate" relationship as that term is defined in 45 CFR §160.103.

7.3 **Campus-Based Health Records.** WCJC shall have access to the records of the Clinic relating to the health care services provided to Enrollees, only if written authorization has been obtained from Enrollee and all other HIPAA requirements are met.

7.4 **Student Information.** HOSPITAL agrees to protect student information pursuant to the requirements of the Family Educational Rights and Privacy Act, 20 USC §1232g and 34 CFR Part 99.

ARTICLE VIII
**LEASE TO USE WCJC FACILITY
FOR HOSPITAL/CAMPUS BASED HEALTH CENTER**

8.1 **Grant of Lease.** Subject to the terms, conditions and limitations contained in this Agreement and the policies of the WCJC Board of Trustees, which are hereby incorporated into this Agreement, WCJC hereby demises and leases to HOSPITAL approximately 760 sq. ft. of office space located at the WCJC Campus at 911 E Boling Highway, Wharton, Texas 77488 ("WCJC Campus"), as more particularly described on Exhibit A attached hereto (the "Clinic Site"). During the term of this Agreement, HOSPITAL may use the Campus Site for the

operation of a campus-based health care program and clinic to provide the healthcare services”), in accordance with this Agreement, solely to Enrollees (“Clinic”) and for no other purpose without the prior written consent of WCJC, which consent may be given or withheld in WCJC’s sole and absolute discretion.

8.2. Rent and Other Consideration for Lease.

8.2.1 Monthly Rent. HOSPITAL covenants and agrees to pay WCJC, at the address specified for WCJC in Section 10.8.1, or such other place as WCJC may from time to time designate in writing, rent for using and occupying the Clinic Site in the amount of \$900.00 per month (“Rent”) without demand, deduction, offset or counterclaim. Further, all costs and expenses which HOSPITAL assumes or agrees to pay and any other sum payable to WCJC pursuant to this Agreement, shall be in addition to the Rent. The Rent is due and payable in advance on the Commencement Date and in full by that same date each month thereafter, through the expiration of the term or earlier termination of this Agreement.

8.2.2 Other In-Kind Additional Consideration. The parties hereto agree that as additional consideration for its use of the Clinic Site, HOSPITAL shall provide all of the services set out in Article III, the Clinical Staff and Physicians for the Health Care Team, and certain furniture, fixtures and equipment, and supplies for the Clinic, all in accordance with the requirements of this Agreement.

8.2.3 Equivalent Value. The parties hereto acknowledge that the Rent and all other fees and responsibilities assumed and in connection with the lease of Clinic Site has been calculated, and that the value of such other consideration provided for in this Agreement represent approximately equivalent value and benefit to each of the respective parties, there being significant value to WCJC in the services which HOSPITAL will provide to WCJC and its Enrollees.

8.3 Improvements. HOSPITAL shall not make or allow to be made any alterations or physical additions in or to the Clinic Site without first obtaining the written consent of WCJC. Any improvements or alterations made to the Clinic Site by HOSPITAL, shall be completely removed by HOSPITAL upon termination of this Agreement (and the Clinic Site shall be repaired to the condition existing upon the Commencement Date). If HOSPITAL fails to remove any alterations, improvements or other property placed on the Clinic Site by HOSPITAL upon the expiration or termination of this Agreement, WCJC, in its sole discretion, may remove and dispose of such property at WCJC’s expense or deem such property to be abandoned and retain title to such property. HOSPITAL shall not be deemed to be the agent or representative of WCJC in making any such alterations, physical additions or improvements to the Clinic Site, and shall have no right, power or authority to encumber any interest in Clinic Site or WCJC Campus in connection therewith.

8.4 Casualty/Condemnation. Upon any casualty which damages the Clinic Site, WCJC shall be permitted to immediately terminate this Agreement upon written notice to HOSPITAL and under no circumstances shall WCJC be obligated to repair or restore the Clinic Site unless WCJC elects to do so. Upon the occurrence of a condemnation or eminent domain proceeding with respect to the Clinic Site or other portions of the WCJC Campus, WCJC shall be permitted to immediately terminate this Agreement upon written notice to HOSPITAL and HOSPITAL shall

have no right to any of the condemnation proceeds.

8.5 Default by Hospital/Events. Defaults by HOSPITAL are (a) failing to pay to WCJC any Rent or any other monetary charge due from HOSPITAL hereunder as and when due and payable, and (b) failing to perform, observe or comply with any of the terms, provisions, agreements, covenants or conditions of this Agreement, and such failure continuing for fifteen (15) days after written notice from WCJC to HOSPITAL of such failure; provided, however, that WCJC (x) shall not be required to provide such notice with respect to any default which is by its nature incurable, or (y) shall not be required to provide such notice more than two (2) times during the term of this Agreement with respect to any nonmonetary default (or substantially similar nonmonetary default), the third such default not requiring such notice by WCJC.

8.6 Default by HOSPITAL/WCJC's Remedies. Upon the occurrence of any default by HOSPITAL under this Agreement, WCJC may, at its sole discretion, have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Agreement (and without limiting the generality of the foregoing, HOSPITAL hereby specifically waives notice and demand for payment of Rent or other obligations due hereunder and waives any and all other notice or demand requirements imposed by applicable law):

(a) Terminate this Agreement in which event HOSPITAL shall immediately surrender the Clinic Site to WCJC and if HOSPITAL fails to do so, WCJC may, without prejudice to any other remedy which WCJC may have for possession or arrearages in rent, enter upon and take possession of the Clinic Site and expel or remove HOSPITAL and any other person who may be occupying the Clinic Site or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages thereof;

(b) Enter upon and take possession of the Clinic Site and expel and permanently exclude HOSPITAL and any other person who may be occupying the Clinic Site or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor with or without having terminated this Agreement. WCJC may, if it so elects, relet the Clinic Site on WCJC's terms and receive the rent therefor; and HOSPITAL agrees to pay to WCJC, on demand, any deficiency that may arise by reason of such reletting for the remainder of the term of this Agreement;

(c) Do whatever HOSPITAL is obligated to do under the terms of this Agreement (and enter upon the Clinic Site in connection therewith if necessary) without being liable for prosecution or any claim for damages therefor, and HOSPITAL agrees to reimburse WCJC upon demand for any expenses which WCJC may incur in thus effecting compliance with HOSPITAL's obligations under this Agreement, plus interest, and HOSPITAL further agrees that WCJC shall not be liable for any damages resulting to HOSPITAL from such action;

(d) Alter all locks and other security devices at the Clinic Site with or without terminating this Agreement. WCJC shall not be obligated to provide a key or other means of ingress to HOSPITAL or HOSPITAL's agents or to provide re-entry for any reason or under any circumstances whatsoever; and

(e) Exercise any and all other remedies available to WCJC in this Agreement, at

law or in equity.

8.7 Condition. WCJC will deliver possession of the Clinic Site to HOSPITAL, and HOSPITAL will accept the Clinic Site, in its then current condition (i.e., "AS IS" and "WITH ALL FAULTS").

8.8 Hospital Covenants. HOSPITAL covenants and agrees that during the term of this Agreement, at its own expense and risk, HOSPITAL will maintain the Clinic Site in good order and in a safe and clean condition, including but not limited to making all repairs and replacements necessary to keep the Clinic Site in such condition. HOSPITAL, at its own expense and risk, shall comply with (a) all laws, ordinances, rules and regulations (state, federal, municipal and other agencies or bodies having any jurisdiction thereof) relating to the use, condition or occupancy of the Clinic Site, (b) any requirements imposed by insurance companies covering the Clinic Site, (c) all of WCJC's commercially reasonable rules, regulations and security procedures as may be established by WCJC from time to time, and (d) comply with all laws, rules and regulations related to the use and storage of hazardous materials under applicable environmental laws.

8.9 Entry. HOSPITAL agrees that WCJC and WCJC's agents, and other representatives, shall have the right to enter into and upon the Clinic Site, or any part thereof, at all reasonable hours for the purpose of examining the same, providing services as required herein or making such repairs or alterations therein as WCJC may deem necessary or desirable, and HOSPITAL shall not be entitled to any abatement or reduction of Rent by reason thereof.

8.10 Waste or Nuisance. HOSPITAL shall not commit or suffer to be committed any waste upon the Clinic Site or any nuisance or other act or thing which may disturb the quiet enjoyment of the students, faculty or staff in the WCJC Campus. HOSPITAL shall not use or permit to be used, any medium that might constitute a nuisance, such as loud speakers, sound amplifiers, phonographs, radios, televisions, or any other sound producing device which will carry sound outside the Clinic Site.

8.11 Mechanics Liens. HOSPITAL shall have no authority to place any lien upon the Clinic Site or the WCJC Campus or any portion thereof or any interest therein, nor shall HOSPITAL have authority in any way to bind WCJC, and any attempt to do so shall be void and of no effect. If, because of any actual or alleged act or omission of HOSPITAL, any lien, affidavit, charge or order for the payment of money shall be filed against WCJC, the Clinic Site or the WCJC Campus, or any portion thereof or interest therein, whether or not such lien, affidavit, charge or order is valid or enforceable, HOSPITAL shall, at its own cost and expense, cause same to be discharged of record by payment, bonding or otherwise no later than ten (10) days after notice to HOSPITAL of the filing thereof, but in any event prior to the foreclosure thereof.

8.12 Surrender. Upon termination of the term of this Agreement, HOSPITAL agrees that it will immediately surrender and deliver up to WCJC physical possession of the Clinic Site in the same condition as when received by HOSPITAL, with all personal property of HOSPITAL removed from the Clinic Site. HOSPITAL's removal of its personal property, shall comply with all applicable laws and HOSPITAL will repair any damage which may be occasioned to the Clinic Site by HOSPITAL's removal of its personal property from the Clinic Site.

8.13 Holdover. If HOSPITAL remains in possession of the Clinic Site after the expiration or termination of this Agreement with WCJC's written consent but without the execution of a new

lease, it shall be deemed to be occupying the Clinic Site as a tenant from month to month at a Rent equal to the Rent herein provided plus fifty percent (50%) of such amount and otherwise subject to all the conditions, provisions and obligations of this Agreement insofar as the same are applicable to a month to month tenancy. The foregoing shall not constitute WCJC's consent for HOSPITAL to holdover. If HOSPITAL remains in possession of the Clinic Site after the expiration or termination of this Agreement without WCJC's consent, it shall be deemed to be occupying the Clinic Site as a tenant at sufferance, and in addition to the foregoing holdover Rent, HOSPITAL shall also pay to WCJC all damages sustained by WCJC resulting from retention of possession by HOSPITAL.

8.14 Limitation of Warranties. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS AGREEMENT, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS AGREEMENT.

8.15 Non-Waiver. Failure of WCJC to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default nor constitute a waiver of any future default, but WCJC shall have the right to declare any such default at any time and take such action as might be lawful or authorized hereunder, either in law or in equity. Neither the acceptance by WCJC of Rent or any other payment hereunder, whether or not any default hereunder by HOSPITAL is then known to WCJC, nor any custom or practice followed in connection with this Agreement, shall constitute a waiver of any of HOSPITAL's obligations under this Agreement.

8.16 Quiet Enjoyment. WCJC agrees that if HOSPITAL shall perform all of the covenants and agreements herein required to be performed by HOSPITAL, HOSPITAL shall, subject to the terms of this Agreement, at all times during the continuance of this Agreement have the peaceable and quiet enjoyment and possession of the Clinic Site, without hindrance from WCJC or any party claiming by, through, or under WCJC, but not otherwise.

ARTICLE IX

TERM AND TERMINATION

9.1 Term. The terms of this Agreement shall begin upon execution by both parties ("Commencement Date") and remain in force for twelve (12) months. Thereafter, this Agreement shall automatically renew for successive periods of twelve (12) months each, unless terminated by either party in accordance with Section 9.2 of this Agreement. Modifications may be made by written agreement between the parties.

9.2. Termination. Either party may terminate this Agreement without cause on sixty (60) days advance written notice by certified mail to the other party.

ARTICLE X

GENERAL PROVISIONS

10.1 Consent to Criminal Record Check. HOSPITAL will ensure that any employees, agents or consultants who provide services or have contact with WCJC students, faculty and/or staff

on WCJC property or at another location where WCJC students, faculty and/or staff are regularly located will have successfully passed a criminal history records check pursuant to WCJC Policies and applicable state or federal law, including but not limited to Texas Gov't Code §411 et seq. HOSPITAL agrees that any employees, agents or consultants who are ineligible under any of these provisions will not be allowed to have contact with WCJC students, faculty and/or staff under the terms of this Agreement.

10.2 Non-Discrimination. HOSPITAL shall ensure that no person on the basis of race, color, national origin, religion, sex, age, handicap, political affiliation, or any other protected characteristic will be excluded from participation in the Clinic or related programs, be denied any benefit to be provided under the terms of this Agreement, or be subjected to discrimination in connection with the operation of the Clinic, as provided under WCJC policies and procedures.

10.3. No Waiver of Immunity. WCJC does not waive or relinquish any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants contained herein.

10.4 Entire Agreement. This Agreement, together with any Exhibits attached hereto, constitutes the complete and exclusive understanding and agreement of the parties and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by the parties hereto.

10.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. A signature transmitted by facsimile or similar equipment shall be deemed an original signature.

10.6 Waiver and Consents. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver of consent shall be deemed to be or shall constitute a waiver of consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent.

10.7 Severability. In the event any provision of this Agreement shall be found invalid, void and/or unenforceable, for any reason, neither this Agreement generally nor the remainder of this Agreement shall thereby be rendered invalid, void and/or unenforceable, but instead each such provision, and (if necessary) other provisions hereof shall be reformed by a court of competent jurisdiction so as to effect, insofar as is practicable, the intention of the parties as set forth in this Agreement; provided, however, that if such court is unable or unwilling to effect such reformation, the remainder of this Agreement shall be construed and given effect as if such invalid, void and/or unenforceable provisions had not been a part hereof.

10.8 Notice. Any notice required by or permitted under this Agreement must be made in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid,

U.S. certified or registered mail, return receipt requested, when delivered in person, or when delivered by commercial messenger or courier and addressed to the intended recipient at the address shown in Section 10.8.1. Any address for notice may be changed by written notice delivered as provided herein. Such addresses may be changed or additional addresses added from time to time by written notice of such change given in accordance with this section.

10.8.1 Points of Contact. Notices and inquiries related to the operation of the Clinic or performance of the terms of this Agreement should be directed as follows:

EL CAMPO MEMORIAL HOSPITAL

Irma Rocha
303 Sandy Corner Road
El Campo, TX 77437
Telephone: 979-578-5250
Email: irocha@ecmh.org

WHARTON COUNTY JUNIOR COLLEGE

Betty A. McCrohan, President
Bryce Kocian, Vice President of Administrative Services
911 E. Boling Highway
Wharton, Texas 77488
Telephone: 979-532-4560
Email: BettyM@wcjc.edu, BryceK@wcjc.edu

10.9 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, including that body of law pertaining to conflict of laws. Venue for any dispute shall lie in Wharton County, Texas.

10.10 Non-Appropriation. The parties hereto acknowledge that HOSPITAL and WCJC are governmental entities subject to certain budgetary constraints and agree that, in the event funding for the provision of services or performance hereunder by either HOSPITAL or WCJC is not appropriated or provided for in the budget for its next fiscal year, HOSPITAL and WCJC may immediately terminate this Agreement without penalty and its duties hereunder shall cease to exist.

10.11 Assignment and Subletting. HOSPITAL shall not assign, sublease, mortgage, encumber, hypothecate, pledge, convey or otherwise transfer all or any part of HOSPITAL's interest in this Agreement or the Clinic Site, by operation of law or otherwise, without the prior written consent of WCJC, which consent may be withheld in its sole discretion.

10.12 No Third Party Beneficiary. This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Agreement.

10.13 **Headings.** The description headings used in this Agreement are inserted for reference only and do not and shall not be deemed to modify the construction of any of the provisions of this Agreement.

EL CAMPO MEMORIAL HOSPITAL

WHARTON COUNTY JUNIOR COLLEGE

By: _____

By: _____

Date: _____

Date: _____

Nathan Tudor, Chief Executive Officer

Betty A. McCrohan, President

El Campo Memorial Hospital

Wharton County Junior College

303 Sandy Corner Road

911 E. Boling Highway

El Campo, TX 77437

Wharton, TX 77488



