

**FIFTH AMENDMENT TO THE  
MASTER AGREEMENT**



*Draft*  
*August 24, 2012*

FIFTH AMENDMENT TO THE  
MASTER AGREEMENT

BY AND BETWEEN

NUECES COUNTY HOSPITAL DISTRICT,  
a political subdivision of the State of Texas

AND

CHRISTUS SPOHN HEALTH SYSTEM CORPORATION,  
a Texas non-profit corporation

**FIFTH AMENDMENT TO THE  
MASTER AGREEMENT**

This Fifth Amendment to the Master Agreement, effective as of September 30, 2012 (“Fifth Amendment”), amends that certain Master Agreement between the Nueces County Hospital District (“Landlord”) and CHRISTUS Spohn Health System Corporation, formerly known as Spohn Health System Corporation (“Tenant”), dated August 6, 1996, as amended through May 25, 2007 (the “Agreement”). Unless otherwise indicated herein, all capitalized terms shall have the same meaning attributed to such terms in the Master Agreement and Related Agreements.

**RECITALS**

**WHEREAS**, Landlord and Tenant previously entered into that certain Agreement; and

**WHEREAS**, Landlord and Tenant desire to amend the Agreement as provided herein.

**NOW, THEREFORE**, in consideration of the premises, the mutual benefits to be derived from this Fifth Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I.**

**1.1** The following definitions in **Section 1.1** of the Agreement are added or amended and replaced in their entirety to read as follows:

“Indigent Care Agreement” shall mean the form of the Indigent Care Agreement dated as of the Closing Date between Landlord and Tenant, as revised and restated on November 18, 2005 and amended through September \_\_, 2012, and attached hereto as Exhibit F.

“Lease” shall mean the form of the Lease Agreement dated as of the Closing Date between Landlord and Tenant, as amended through September \_\_, 2012, and attached hereto as Exhibit G.

“Membership Agreement” shall mean the form of the CHRISTUS Spohn Health System Corporation Membership Agreement dated as of September \_\_, 2012, and attached hereto as Exhibit G-1.

“Related Agreements” shall mean the Lease, the Assignment and Assumption of Leases and Rents, the Indigent Care Agreement, the Membership Agreement, and the Bill of Sale.

**1.2** **Section 10.8** of the Agreement is amended in its entirety to read as follows:

**10.8 Disproportionate Share and Upper Payment Limit Funds.**

Landlord and Tenant hereby agree that all Medicare and Medicaid disproportionate share (“DSH”) funds paid in respect of periods prior to the Effective Time (“Designated Funds”) shall be the sole property of and shall accrue to the benefit of the Landlord. Landlord may, subject to the terms of this Agreement and the Related Agreement, use such Designated Funds for any lawful purpose as determined in the sole discretion of Landlord. With respect to the Designated Funds, Tenant may, from time to time, request in writing that Landlord apply such Designated Funds to specific projects sponsored by Tenant and relating to the Leased Assets or the provision of medical aid and hospital care under the Indigent Care Agreement. Landlord, in its sole discretion, may approve such request, and either deliver to Tenant the Designated Funds so allocated or construct the structure in accordance with Section 11.14 hereof. Upon Landlord’s written request, Tenant shall provide Landlord with a written accounting of the use of all such allocated Designated Funds. Landlord acknowledges and agrees that all Medicare and Medicaid DSH funds, Upper Payment Limit (“UPL”) funds, and funds from the 1115 Waiver titled “Texas Healthcare Transformation and Quality Improvement Program” (“Waiver”) paid in respect of periods after the Effective Time (except for Waiver development funds paid to or on behalf of Landlord, if any) shall be the property of Tenant and, subject to the terms of this Agreement and Related Agreements, including the requirements of Lease Agreement Sections 6.8 and 6.9 and Master Agreement Section 10.2, shall be expended by Tenant for any lawful purpose in the sole discretion of the Tenant. Landlord agrees to cooperate in causing the Hospitals at 2606 Hospital Boulevard to participate in the DSH program, UPL program, and/or Waiver program.<sup>1</sup> Landlord and Tenant hereby agree that, to the extent any Landlord intergovernmental transfers (“IGTs”) funding Tenant’s participation in the DSH, UPL, and/or Waiver programs may be subsequently disallowed for federal financial participation by federal and/or state authorities, any obligation to repay HHSC or the Centers for Medicare and Medicaid Services for funds received under the DSH, UPL, and/or programs shall rest solely and exclusively with Tenant and Tenant shall hold Landlord harmless for any claims that may be asserted by federal or state agencies or other parties against Landlord related to any such IGTs, including the Landlord’s response and defense costs related to such claims.

1.3 **Section 10.9** of the Agreement is amended in its entirety to read as follows:

**10.9 Non-interference; Sole Provider Status.**

To the greatest extent permitted by law, Landlord agrees that during the Term of the Lease, Landlord shall not directly or indirectly, without Tenant’s prior written consent, which Tenant may withhold in its sole discretion, (i) own, lease, manage, operate or participate in the management or operation of any hospital, ambulatory surgery center, clinic or other health facility located in Nueces County, Texas; or (ii) invest or

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<sup>1</sup> Consistent with the requirements of the Waiver rules, to the extent Landlord has available, adequate, liquid funds (as determined in the sole discretion of Landlord), Landlord may, through the use of periodic IGTs to the Texas Health and Human Services Commission (“HHSC”), make intergovernmental transfers (“IGTs”) in support of Tenant’s participation in the DSH, UPL, or Waiver programs.

participate in any other health care facilities or health care organizations in Nueces County, Texas; (iii) provide inpatient, outpatient or any other medical service in Nueces County, Texas other than at the Hospitals in accordance with this Agreement and the Lease. In the event that Tenant has elected not to exercise its rights under Section 10.11, Landlord may provide or fund the delivery of medical aid or hospital care to the indigent residents of Nueces County that was not then provided by Tenant to the residents of Nueces County at the time Tenant elected not to exercise its rights of first refusal under Section 10.11. Landlord hereby acknowledges and agrees that prior to Landlord's transfer, distribution, allocation or payment of Two Million Dollars (\$2,000,000) or more of Landlord's funds, including, without limitation any Medicaid disproportionate share funds, in one or a series of transactions, to an Affiliate of the Landlord or any Governmental Entity (other than the Texas Health and Human Services Commission), Landlord shall cause such Affiliate or Governmental Entity to enter into a non-compete agreement with Tenant on terms substantially similar to those set forth in this Section 10.9.

Except as otherwise agreed by Landlord and Tenant or as results from implementation of the Waiver in Nueces County and the surrounding region, Landlord hereby acknowledges and agrees that, during the Term, Tenant shall be the exclusive provider, subject to the specific exceptions set forth in Schedule 10.9(a) of all services funded and or provided by Landlord to residents of Nueces County.

**1.4** **Section 11.12** of the Agreement is amended in its entirety to read as follows:

**11.12** *Notices.*

Any notice, request, instruction, demand or other communication to be given hereunder by either party hereto to the other shall be given in writing and shall be delivered either by hand, by telecopy or similar facsimile means (with follow-up hard copy sent by U.S. Mail), or by registered or certified U.S. mail, postage prepaid, return receipt requested, as follows:

(a) If to Landlord, addressed to:

Nueces County Hospital District  
Attention: Administrator  
555 N. Carancahua St., Suite 950  
Corpus Christi, Texas 78401  
Telecopy No.: (361)808-3274  
Telephone No.: (361)808-3300

with a copy to:

William Dewitt Alsup, Esq.  
Alsup and Alsup

555 N. Carancahua St., Suite 1560  
Corpus Christi, Texas 78401  
Telecopy No.: (361) 884-6000  
Telephone No.: (361) 884-6321

and

Gary W. Eiland, Esq.  
King & Spalding L.L.P.  
1100 Louisiana, Suite 4000  
Houston, Texas 77002  
Telecopy No.: (713) 751-3207  
Telephone No.: (713) 751-3290

(b) If to Tenant, addressed to:

CHRISTUS Spohn Health System Corporation  
1702 Santa Fe St.  
Corpus Christi, Texas 78404  
Attention: President/CEO  
Telecopy No.: (361) 885-0566  
Telephone No.: (361) 881-3405

with a copy to:

CHRISTUS Health  
919 Hidden Ridge  
Irving, Texas 75038  
Attention: President  
Telecopy No.: (214) 492-8518  
Telephone No.: (214) 492-8500

and

Gjerset & Lorenz, LLP  
2801 Via Fortuna, Suite 500  
Austin, Texas 78746  
Attention: Lance J. Ramsey  
Telecopy No.: (512) 899-3939  
Telephone No.: (512) 899-3995

or to such other address or number as either party shall have previously designated by written notice given to the other party in the manner hereinabove set forth. Notices shall be deemed given when received, if sent by telecopy or similar facsimile means, and when delivered and receipted for, if mailed or hand-delivered.

**ARTICLE II.**  
**SAVINGS CLAUSE**

Section 11.25 of the Agreement is amended in its entirety to read as follows:

11.25 Savings Clause.

Except as expressly modified by the Fifth Amendment, the terms and conditions of the Agreement shall remain in full force and effect subsequent to the effective date of the Fifth Amendment. In the event that any provisions of the Fifth Amendment irreconcilably conflict in a material manner with provisions in the Agreement, or other relevant agreement(s), that are not amended by the Fifth Amendment, the provisions of the Fifth Amendment shall control on or after the effective date of the applicable provision of the Fifth Amendment. Should issues arise concerning the parties' rights, obligations, and responsibilities under the Agreement for periods prior to the effective date of the Fifth Amendment, such rights, obligations, and responsibilities shall be governed by the provisions of the Agreement as it existed prior to the Fifth Amendment. Notwithstanding anything herein to the contrary, the provisions in Section 10.8(a)-(f) of the Third Amendment to the Master Agreement shall be applicable to any IGTs made by Landlord in support of Tenant's participation in the DSH, UPL, or Waiver programs made prior to the effective date of the Membership Agreement.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**



IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed duplicate originals of this Fifth Amendment on September \_\_, 2012, to be effective as of the date and year first set forth above.

**LANDLORD:**

**NUECES COUNTY HOSPITAL DISTRICT,**  
a political subdivision of the State of Texas

By: \_\_\_\_\_  
Jonny F. Hipp, Administrator/CEO

**TENANT:**

**CHRISTUS SPOHN HEALTH SYSTEM CORPORATION,** a Texas non-profit corporation

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

**APPROVED BY THE NUECES COUNTY COMMISSIONERS COURT**

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

