

Draft
August 24, 2012

SECOND AMENDMENT TO THE
REVISED AND RESTATED INDIGENT CARE 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

**SECOND AMENDMENT TO THE REVISED AND RESTATED
INDIGENT CARE AGREEMENT**

This Second Amendment to the Revised and Restated Indigent Care Agreement, effective as of September 30, 2012 (“Second Amendment”), amends that certain Revised and Restated Indigent Care Agreement between the Nueces County Hospital District (the “District”) and CHRISTUS Spohn Health System Corporation (“Provider”), effective as of November 18, 2005 as amended through May 25, 2007 (“Agreement”). Unless otherwise indicated herein, all capitalized terms shall have the same meaning attributed to such terms in the Agreement.

RECITALS

WHEREAS, the District and Provider previously entered into that certain Agreement;
and

WHEREAS, the District and Provider desire to amend the Agreement as provided herein.

NOW, THEREFORE, in consideration of the premises, the mutual benefits to be derived from this Second 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 **Section 1.25** of the Agreement is amended in its entirety to read as follows:

1.25 Universal Governmental Plan. As used in this Agreement, the term “Universal Governmental Plan” shall mean a state or federal program adopted after September 30, 1996, which provides for payment to the Provider for providing Health Care Services to Indigents by Provider, which program may constitute a material restructuring of Medicaid, Medicare or other existing governmental programs that provides coverage to significant number of indigent or uninsured individuals including, without limitation, any state or federal program adopted pursuant to the Patient Protection and the Affordable Care Act or the Health Care and Education Reconciliation Act.

1.2 **Section 4.1(f)** of the Agreement is amended in its entirety to read as follows:

4.1(f) Annual Reconciliation Process. At the District’s expense, all payments made by the District and all claims submitted with a Billing Date during the applicable Year by Provider shall be subject to an annual reconciliation (“Annual Reconciliation Process”) with respect to each Year under this Agreement. As part of the Annual Reconciliation Process, the District shall finalize its Alternative Pricing Review promptly following the end of each Year. The Annual Reconciliation Process shall be completed within one hundred fifty (150) days of the end of such Year. Within thirty (30) days of the completed Annual Reconciliation Process, the District and Provider shall by signature affirm their

agreement to the amount of Allowable Claims Experience for the preceding Year. Within thirty (30) days of the District's and Provider's execution of such agreement affirming the amount of Allowable Claims Experience for the preceding Year, Provider shall refund the monthly payments made by the District to Provider under Section 4.1(i) below, if any, that exceed the Allowable Claims Experience.

1.3 **Section 4.1(g)** of the Agreement is amended in its entirety to read as follows:

4.1(g) Maximum Annual Amount. (i) Subject to Section 4.1(g)(ii), for the Year commencing on January 1, 2013, and for each subsequent Year, the term "Maximum Annual Amount" shall mean \$31,351,692 per twelve (12) month Year, as such amount may be increased as provided in Section 4.1(h), less the aggregate amount paid by the District in any Year to any qualified provider or Governmental Entity with respect to medical aid and hospital care services rendered to indigent residents of the County, outside the limits of the County, for which the District is liable pursuant to any applicable Legal Requirement; provided, however, the deductions from the Maximum Annual Amount permitted by the immediately preceding clause in any Year shall not exceed five percent (5%) of the Maximum Annual Amount computed without regard to such deductions. The District shall provide on a monthly basis, as part of the Monthly Operating Committee meeting, an accounting of any amounts, if any, actually paid to qualified providers or Governmental Entities as permitted by the terms of this paragraph. The Maximum Annual Amount shall be prorated for any partial year.

(ii) Notwithstanding anything herein to the contrary, the parties acknowledge and agree that the parties may terminate this Agreement contemporaneously with the parties' execution of that certain CHRISTUS Spohn Health System Corporation Membership Agreement ("Membership Agreement") between the District, Provider, and CHRISTUS Health. In the event the parties terminate the Agreement upon the execution of the Membership Agreement and the Agreement is subsequently reinstated in accordance with the terms and conditions of that certain Memorandum of Understanding Relating to the Termination of the Membership Agreement ("MOU"), the parties agree that the amount of the Maximum Annual Amount shall be adjusted under Section 4.1(h) following the reinstatement of the Agreement to take into account the amount by which the Maximum Annual Amount would have been adjusted during the period in which the Agreement was not in effect, except for the adjustment otherwise applicable for calendar year 2013. The parties further agree that in the event of such reinstatement of the Agreement occurs in accordance with the MOU, the District's obligation to pay to Provider the remaining pro-rata portion of the Maximum Annual Amount under Section 4.1(g)(i) of this Agreement for the year of reinstatement shall be contingent on the District's review of the District's then current fiscal year budget to confirm the District's financial ability to pay under

this Agreement for the remainder of such fiscal year. In the event the District's obligation to make payment to Provider of the remaining pro-rata portion of the Maximum Annual Amount following the reinstatement of the Agreement is not reinstated during the remainder of such initial fiscal year as a result of the District's budgetary limitations, the parties agree that Provider shall have no entitlement to a writ of mandamus under Section 7.4 of this Agreement.

1.4 **Section 4.1(h)** of the Agreement is amended in its entirety to read as follows:

4.1(h) Maximum Annual Amount Adjustment.

The Maximum Annual Amount shall be adjusted effective as of January 1 of each Year commencing January 1, 2014, to reflect the Annual Inflation Adjuster (not to exceed 7.99% in any given Year) or an amount that may be mutually agreed to between the District and Provider in any given year (*i.e.*, the Maximum Annual Amount for the applicable Year shall mean an amount equal to the sum of the prior Year's Maximum Annual Amount multiplied by the Annual Inflation Adjuster (not to exceed 7.99% in any given Year) plus the prior Year's Maximum Annual Amount).

1.5 **Section 4.1(i)** of the Agreement is amended in its entirety to read as follows:

4.1(i) Monthly Payments. Subject to the provisions of Sections 4.1(i), 4.2 and 4.3 of the Agreement, by no later than the first business day of each calendar month during each Year under this Agreement, beginning January 1, 2006, the District will pay Provider an amount equal to one-twelfth of the Maximum Annual Amount for such Year as payment for Health Care Services to be rendered during such month pursuant to the terms of this Agreement.

1.6 **Section 9.14** of the Agreement is amended in its entirety to read as follows:

9.14 Notices. All notices, requests, and communications required or permitted hereunder shall be in writing and shall be sufficiently given and deemed to have been received upon personal delivery or delivery by overnight courier or, if mailed, upon the first to occur of actual receipt or seventy-two (72) hours after being placed in the United States mail, postage prepaid, registered or certified mail, receipt requested, addressed to the parties as follows:

District:	Nueces County Hospital District 555 N. Carancahua St., Suite 950 Corpus Christi, Texas 78401 Attention: Administrator Telecopy No.: (361) 808-3274 Telephone No.: (361) 808-3300
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with a copy to: William DeWitt Alsup
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 LLP
1100 Louisiana, Suite 4000
Houston, TX 77002
Telecopy No.: (713) 751-3290
Telephone No.: (713) 751 3207

Provider: CHRISTUS Spohn Health System Corporation
1702 Santa Fe St.
Corpus Christi, Texas 78404
Attention: President
Telecopy No.: (361) 855-0566
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

Notice of a change in address of one of the parties shall be given in writing to the other party as provided above, but shall be effective only upon actual receipt.

ARTICLE II.
SAVINGS CLAUSE

Section 9.20 of the Agreement is amended in its entirety to read as follows:

9.20 Savings Clause. Except as expressly modified by the Second Amendment, the terms and conditions of the Agreement shall remain in full force and effect subsequent to the effective dates of the Second Amendment. In the event that any provisions of the Second Amendment irreconcilably conflict in a material manner with provisions in the Agreement, or other relevant agreement(s) between the parties, that are not amended by the Second Amendment, the provisions of the Second Amendment shall control on or after the effective date of the applicable provision of the Second Amendment. Should issues arise concerning the parties' rights, obligations, and responsibilities under the Agreement for periods prior to the effective date of the Second Amendment, such rights, obligations, and responsibilities shall be governed by the provisions of the Agreement as it existed prior to the Second Amendment.

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

PROVIDER:

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

By: _____

DISTRICT:

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

By: _____

Draft
August 24, 2012

Jonny F. Hipp, Administrator/CEO

**APPROVED BY THE NUECES COUNTY
COMMISSIONERS COURT**

By: _____

