

**AMENDED AND RESTATED  
AGREEMENT FOR OPERATION AND FUNDING OF THE PARTNERS IN  
WOMEN'S HEALTH PROGRAM BETWEEN  
INDIAN RIVER COUNTY HOSPITAL DISTRICT  
AND INDIAN RIVER MEMORIAL HOSPITAL, INC.**

THIS AMENDED AND RESTATED AGREEMENT FOR OPERATION AND FUNDING OF THE PARTNERS IN WOMEN'S HEALTH PROGRAM (this "Agreement"), is made this 31<sup>st</sup> day of December, 2018, by and between INDIAN RIVER COUNTY HOSPITAL DISTRICT, an independent special taxing district of the State of Florida, hereinafter referred to as DISTRICT, and INDIAN RIVER MEMORIAL HOSPITAL, INC., d/b/a INDIAN RIVER MEDICAL CENTER, a Florida not-for-profit corporation, hereinafter referred to as MEDICAL CENTER (collectively, "Parties").

WHEREAS, pursuant to Chapter 61-2275, Laws of Florida, as amended and as codified at Chapter 2003-382, Laws of Florida ("Special Act"), DISTRICT has, inter alia, an obligation to prudently assess and raise taxes in order to support medical care to the indigent sick of DISTRICT, many of whom are treated by MEDICAL CENTER;

WHEREAS, pursuant to Section 2.1 of the Special Act, the Board of Trustees of DISTRICT is authorized and empowered to enter into contracts or agreements for the purpose of funding the health care provided to DISTRICT eligible patients;

WHEREAS, DISTRICT wishes to support all eligible mothers and newborn babies in receiving adequate pre-natal and obstetrical services at all stages of pregnancy;

WHEREAS, this Agreement amends and restates the Agreement for Operation and Funding of the Partners in Women's Health Program entered into by the Parties on October 15, 2015; and

WHEREAS, with the foregoing in mind, DISTRICT has determined that it is in the best interest of the citizens and taxpayers of Indian River County to enter into this Agreement with MEDICAL CENTER for continuing the funding of the Partners in Women's Health Program Clinic currently located at 1050 37th Place, Suites 101, 102, 103, Vero Beach, FL 32960;

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the sufficiency of which is acknowledged, the Parties intending to be legally bound, agree as follows:

**I. Preambles.** The Parties represent and warrant that the foregoing recitals are true and correct and are hereby made a part of this Agreement.

## **II. Definitions.**

2.1 **District** means the Indian River County Hospital District, a special tax district located in Indian River County, Florida, created and incorporated by Chapter 61-2275, Laws of Florida, as amended.

2.2 **Medical Center** means Indian River Memorial Hospital, Inc., d/b/a Indian River Medical Center, a Florida not for profit corporation.

2.3 **Net Direct Incremental Cost** equals the difference between the total revenue generated at the Program location and the incremental direct costs of operating the Program. While the operational costs of the Program are unique, the costs eligible for reimbursement are defined as only those that are separately identifiable Program costs.

2.4 **Program** means the Partners in Women's Health Program Clinic operated by Medical Center and located at 1050 37th Place, Suites 101, 102, 103, Vero Beach, FL 32960 (also referred to herein as the "Clinic").

2.5 **Eligible Mother** means a pregnant woman who qualifies for obstetrical medical services

(a) Under the DISTRICT'S qualifying guidelines including that she has been a resident of Indian. River County for six (6) months or longer at the time services are requested, and she has income less than 250% of the Federal poverty income guidelines published by the U.S. Department of Health and Human Services ("FPG"); OR

(b) She has private insurance that does not have a maternity benefit or is self-paying for Clinic services and has income of less than 400% of the FPG. Out of county residents eligible for Medicaid are eligible for the Program, but are not eligible for DISTRICT funding.

2.6 **Services** means those services listed in Section IV of this Agreement.

2.7 **Special Act** means Chapter 61.2275, Laws of Florida, as amended and as codified at Chapter 2003.382, Laws of Florida.

## **III. Collaboration of DISTRICT and MEDICAL CENTER.**

It is the intention of the Parties in entering into this Agreement to memorialize the terms by which the direct costs of operating the Program funded in return for MEDICAL CENTER'S provision of quality-driven services to DISTRICT qualified Program patients.

In furtherance of the mutual goals hereunder, the Parties agree to form a collaborative committee composed of senior management from the MEDICAL CENTER, the DISTRICT'S Executive Director, legal counsel, and one (1) Trustee and one (1) member of the MEDICAL CENTER'S Board of Directors

(the "Collaborative Committee"). During the term of this Agreement, the Collaborative Committee shall meet no less than three times per fiscal year to review the Program, its funding, as well as the scope of services offered to Program patients.

**IV. Scope of Services.**

MEDICAL CENTER will be responsible for all operations of the Program including providing office and clinic space, hiring and supervising employees within the Clinic, and supervising the delivery of healthcare services while providing monthly accounting of Net Direct Incremental Costs.

In return for the funding hereunder granted by DISTRICT, MEDICAL CENTER agrees to operate the Program and to provide the following medical professional services to DISTRICT qualified patients served at the Clinic. Such medical professional services include:

- Preconception care and counseling
- Prenatal care
- Obstetrical care
- Post-partum care and counseling
- Qualification of uninsured mothers for appropriate financial assistance programs.
- Professional services of a pediatric hospitalist at the MEDICAL CENTER while the newborn and mother are admitted to the hospital following birth
- Gynecology services for eligible patients of child bearing age
- Professional services of perinatologist(s) for high risk patients, including Level 2 ultrasound services may be provided, assuming such professionals are available to Program patients and adequate funding is allocated, according to additional terms memorialized and agreed upon between DISTRICT and MEDICAL STAFF via an addendum to this Agreement.

**V. Funding of the Program.**

**5.1 Annual Block Grant.**

In consideration of the Services hereunder provided by MEDICAL CENTER to the Program's patients, DISTRICT intends to annually appropriate an amount sufficient to cover MEDICAL CENTER'S Net Direct Incremental Costs as such term is herein defined. MEDICAL CENTER shall submit the Program's budgeted costs to DISTRICT on an annual basis prior to the beginning of the applicable budget year. DISTRICT shall consider and, in its sole discretion, determine such fiscal year's annual appropriation (the "Annual Appropriation") which may be less than MEDICAL CENTER's projected Net Direct Incremental Costs. The Annual Appropriation shall be set forth in the format of the annual budget labeled Schedule 5.1-1 herein incorporated by reference. The Annual Appropriation amount shall be paid by DISTRICT to MEDICAL CENTER in equal installments at the end of each calendar month during

each fiscal year. DISTRICT and MEDICAL CENTER acknowledge that the Annual Appropriation for DISTRICT's fiscal year during which this Agreement becomes effective has been made and MEDICAL CENTER's Net Incremental Costs incurred after October 1, 2018 and prior to the effective date of this Agreement are covered by such Annual Appropriation.

In the event MEDICAL CENTER's expenditure of funds appropriated for the Program in a fiscal year is less than the amount of the Annual Appropriation for such fiscal year, such unexpended funds shall be applied as part of the Annual Appropriation for the next succeeding fiscal year, except such unexpended funds shall be returned to DISTRICT by MEDICAL CENTER within thirty (30) days after the termination or expiration of the Agreement.

MEDICAL CENTER may petition DISTRICT for reimbursement costs of operation that exceed the Annual Appropriation which DISTRICT may or may not approve at the DISTRICT's sole discretion. As a steward of the Indian River County taxpayers, DISTRICT will review Net Direct Incremental Costs incurred in the care and treatment of Program patients.

**VI. Term and Termination.**

The term of this Agreement shall continue as long as both Parties agree that the Program should continue. In the event either Party wishes to terminate its rights and obligations under this Agreement, it shall provide the other Party with two (2) years prior written notice and an opportunity for discussion regarding the future of the Program, including but not limited to termination of the Program.

**VII. Representations of MEDICAL CENTER.**

MEDICAL CENTER represents that it is a not-for-profit charitable organization skilled in the operation and management of a full-service general acute care hospital. Further, MEDICAL CENTER represents that the person or persons executing this Agreement for or on behalf of MEDICAL CENTER are authorized and empowered to enter into this Agreement for and on behalf of MEDICAL CENTER.

**VIII. Representations of DISTRICT.**

DISTRICT represents that the person or persons executing this Agreement for or on behalf of DISTRICT are authorized and empowered to enter into this Agreement for and on behalf of DISTRICT.

**IX. Default.**

The failure by either DISTRICT or MEDICAL CENTER to do or perform any substantial act required of such Party by the terms of this Agreement, the material breach of either Party of its covenants and representations made under this Agreement, or the failure of DISTRICT to make any payment required hereunder on or before its due date, time being of the essence, shall constitute a default of the obligations of such Party under this Agreement. If any proceedings in bankruptcy or insolvency are filed against MEDICAL CENTER or if any writ of attachment or writ of execution is levied upon MEDICAL CENTER and such proceedings or levies are not released or dismissed within ninety (90) days thereafter,

or if MEDICAL CENTER makes an assignment for the benefit of creditors or voluntarily institutes bankruptcy or insolvency proceedings, then any such act shall constitute a default on the part of MEDICAL CENTER under this Agreement.

**X. Curing of Defaults.**

Whenever MEDICAL CENTER or DISTRICT takes an action or fails to act and such action or failure to act constitutes a material default of the obligations of such Party under this Agreement, the Party not in default shall give the defaulting Party written notice thereof ("Notice of Default"). Such Notice of Default shall be set forth with specificity and describe in detail both the reasons why the non-defaulting Party believes that the defaulting Party has materially breached the terms and conditions of this Agreement and the proposed resolution for curing such default. The Party not in default shall grant the defaulting Party a period of ninety (90) days from and after receipt of such notice within which to cure such default. If the default specified is not the failure to pay money and it is not possible to correct such default within such ninety (90) day period, then such period shall be extended from time to time as long as the defaulting Party exercises and continues to exercise due diligence to remedy such default. The giving of such written notice of default and the granting of such period within which to cure such default shall be a condition precedent to the exercise of any other right or remedy by the Party not in default.

**XI. Remedies.**

In the event that either Party shall become in default of its obligations under this Agreement, and in the further event that such Party shall fail to cure such default within the time provided therefor by the provisions of Articles IX and X of this Agreement, then upon the expiration of the period provided therein for the curing of such default, the Party not then in default under this Agreement may, at its option, exercise such remedies as are available to it in either law or equity.

**XII. Continuing Obligation to Keep DISTRICT and MEDICAL CENTER Informed.**

The Parties agree that their relationship will be enhanced and the possibility of misunderstandings or disputes will be reduced if they communicate on a regular basis. In particular, MEDICAL CENTER acknowledges the importance in keeping DISTRICT informed relative to the scope of Services it is hereunder providing to Clinic patients. MEDICAL CENTER will promptly notify DISTRICT, and DISTRICT must approve, prior to implementing any significant change(s) in the scope of the Services for the Program. Additional contemplated changes in the scope of services provided by MEDICAL CENTER shall be discussed by the Collaborative Committee and then presented to DISTRICT for review and discussion and shall not be implemented without DISTRICT'S consent. DISTRICT, similarly, shall keep MEDICAL CENTER informed and shall provide notice and an opportunity for a meeting and discussion between the Parties to discuss any possible changes to future budget cycle funding with regard to the Program.

**XIII. Books and Records.**

During the Term of this Agreement, MEDICAL CENTER agrees:

- (a) To maintain books, records, and documents in accordance with standard accounting procedures and practices which reflect all Program payments hereunder received by MEDICAL CENTER from DISTRICT.
- (b) To maintain and provide access for review of records generated pursuant to this Agreement. Such records shall be maintained by MEDICAL CENTER for a period of not less than four (4) years subsequent to the termination of this Agreement.

**XIV. Non-Waiver.**

The failure of either Party to insist upon strict performance of any of the terms, conditions and covenants hereunder by the other shall not be deemed to be a waiver of any rights or remedies that such Party may have and shall not be deemed a waiver of any breach or default in the terms, conditions and covenants herein contained except as may be expressly waived by such Party in writing.

**XV. Applicable Law, Venue and Remedies.**

This Agreement shall be interpreted and construed in accordance with the Laws of Florida. Any disputes arising under this Agreement shall be subject to resolution pursuant to the dispute resolution provisions set forth in Section 20 of the Lease (as hereinafter defined).

**XVI. Amendments.**

This Agreement may only be amended by a signed agreement of the Parties.

**XVII. Assignment.**

MEDICAL CENTER shall be prohibited from sub-contracting, selling, assigning, or otherwise transferring its interest in this Agreement to any other person, governmental entity, firm or corporation except upon prior written agreement of DISTRICT, such consent not to be reasonably withheld. Notwithstanding the foregoing, MEDICAL CENTER may assign this Agreement to an entity that is a direct or indirect subsidiary of the Cleveland Clinic Foundation.

**XVIII. Severability.**

In the event that any one or more of the provisions or the terms of this Agreement shall for any reason be held to be unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such unenforceable provision had never been contained herein.

**XIX. Sovereign Immunity.**

This Agreement shall not be construed as constituting a waiver of any rights to sovereign immunity granted to DISTRICT under the Laws or Constitution of Florida. This Agreement shall not be

construed as granting or extending the sovereign immunity to which DISTRICT is entitled to MEDICAL CENTER or any other third party.

**XX. Notices.**

All notices, including changes in the following addresses, required to be given pursuant to this Agreement shall be given by mail, certified or registered, and return receipt requested, or by personal delivery, evidenced by a receipt signed by the recipient of such personal delivery, and shall be effective when received. If to DISTRICT, then address to the Executive Director of the DISTRICT at 3730 Seventh Terrace, Suite 204-B, Vero Beach, Florida 32960. If to MEDICAL CENTER, then address to the President/Chief Executive Officer at 1000 36th Street, Vero Beach, Florida 32960.

**XXI. Conflicts between Agreements.**

The Parties have separately entered into an Amended and Restated Lease of Hospital Facilities (the "Lease") and the Third Amended and Restated Agreement for Indigent Care Services (the "Indigent Care Agreement") contemporaneously with this the execution of this Agreement. The terms of the Lease and the Indigent Care Agreement remain in full force and effect and are not modified by the terms of this Agreement. This Agreement does not supersede either Party's rights or obligations under the Lease or Indigent Care Agreement.

**XXII. Entire Agreement.**

This Agreement contains all the terms and conditions agreed upon by the Parties with respect to the subject matter of this Agreement. No other agreements regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

**XXIII. Effective Date.**

This Agreement shall be effective on the 1<sup>st</sup> day of January, 2019.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officials, on the date first written above.

Kate Voss  
Witness

Jennifer Frederica  
Witness

(SEAL)

Lisa Linton  
Witness

Cynthia S. Goodrich  
Witness

(SEAL)

INDIAN RIVER COUNTY HOSPITAL  
DISTRICT

By: Marybeth Cunningham  
Marybeth Cunningham, Chairperson

Dated: DECEMBER 17, 2018

ATTEST:

By: Ann Marie McCrystal  
Ann Marie McCrystal, Secretary

INDIAN RIVER MEMORIAL  
HOSPITAL INC.

By: Wayne T. Hockmeyer  
Print Name: Wayne T. Hockmeyer, Ph.D.  
Chairman of the Board of Directors

Dated: DECEMBER 12, 2018

ATTEST:

By: Geraldine McPherson-Smith  
Print Name: Geraldine McPherson-Smith  
Secretary



**Schedule 5.1-1**  
**Annual Budget Format**

## SCHEDULE 5.1-1

**Indian River Medical Center  
IRCHD Indigent Care Reimbursement Trends  
Partners Program**

	<u>Actual</u>	<u>Projection</u>	<u>Request</u>
<b>Net Revenue</b>	2017	2018	2019
Physician Professional Fees – O/B			
Physician Professional Fees – Pediatrics			
District Outpatient Reimbursement			
<b>Total Patient Revenues</b>	<hr/>	<hr/>	<hr/>
<b>Clinical Operating Expenses</b>			
Salaries			
Benefits			
Insurance			
Billing			
Medical Supplies			
Rent			
Depreciation			
Other			
<b>Total Clinic Expenses</b>	<hr/>	<hr/>	<hr/>
Support Costs			
Pediatrics			
Medicaid Mothers and babies			
<b>Total Expenses</b>	<hr/>	<hr/>	<hr/>
<b>Funding (Shortfall) Excess</b>	<hr/>	<hr/>	<hr/>
<b>District Funding</b>	<hr/>	<hr/>	<hr/>
<b>Program – Net Shortfall</b>	<hr/>	<hr/>	<hr/>