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4/23/13

cc: Bob
Steve
David
Christy
Russ

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
APRIL 24, 2013

The Henderson County Board of Commissioners reconvened its April 23, 2013 closed session meeting in open session at the facilities of Henderson County Hospital Corporation's Pardee Hospital at 6:00 p.m.

Those present were: Chairman Charlie Messer, Vice-Chairman Tommy Thompson, Commissioner Larry Young, Commissioner Mike Edney, Commissioner Grady Hawkins, County Manager Steve Wyatt, County Attorney Russ Burrell, and PIO Christina Hallingse.

CALL TO ORDER/WELCOME

Chairman Messer called the meeting to order and welcomed all in attendance.

An informal joint meeting of the Board of Commissioners, UNC Healthcare President Gary Park, and the Hospital Corporation Board of Directors was held in the lobby of the Henderson County Hospital Corporation's Pardee Hospital.

The Board of Commissioners gave unanimous final approval on motion by Chairman Messer of the Memorandum of Understanding and Agreement with Henderson County Hospital Corporation and UNC Healthcare.

The Board of Commissioners, UNC Healthcare President Gary Park, and Chairman of the Hospital Corporation Board of Directors Bill Moyer all signed the agreement and made brief remarks.

ADJOURN

Commission Thompson made the motion to adjourn at 6:05 p.m. All voted in favor and the motion carried.

Attest:

Teresa L. Wilson, Clerk to the Board

Charles D. Messer, Chairman

DATE APPROVED:



**Memorandum of Understanding and Agreement
Among
Henderson County Hospital Corporation,
The University of North Carolina Health Care System,
and
The County of Henderson**

I. Purpose

Henderson County Hospital Corporation ("HCHC"), the University of North Carolina Health Care System ("UNCHCS"), and the County of Henderson ("the County") enter into this Memorandum of Understanding and Agreement ("MOU") in order to provide for an extended and revised Management Services Agreement. UNC Hospitals at Chapel Hill ("UNCH"), which is part of UNCHCS, currently provides management services to HCHC under an existing agreement. This new understanding and agreement, replacing the existing agreement, will replace UNCH with UNCHCS, thus enabling more flexibility for the provision of services, extend past the duration of the existing agreement, and allow UNCHCS greater direct involvement with HCHC's clinical, business, and financial operations. It will provide for the potential for investment in HCHC facilities and operations by UNCHCS, and the maintenance and expansion of clinical facilities at HCHC.

II. Background

The County is the owner of the physical facilities (real estate) of Margaret R. Pardee Memorial Hospital and other affiliated facilities ("Pardee"). HCHC leases these facilities and operates Pardee on a not-for-profit basis. UNCH provides management services for Pardee pursuant to a 2011 agreement among the parties. The parties are pleased with this arrangement, and wish to extend and strengthen this relationship.

III. Future Action

The parties agree that future documentation of the terms of this MOU will be forthcoming, including but not limited to a new Management Services Agreement, modifications to HCHC's Articles of Incorporation, modifications to HCHC's By-laws, and revisions to the Lease Agreement by and between the County and HCHC. The parties further agree that they will cooperate in obtaining other approvals and permissions as required or advisable, including but not limited to opinions of bond counsel for HCHC and agreements of HCHC's affiliates or joint venture partners. As used herein, "MOU" shall include this document as well as any other future documentation required by or undertaken in accord with this document.

IV. Ownership and Corporate Structure under this MOU

A. The County and HCHC shall continue to own and control Pardee's physical facilities (except as is otherwise agreed regarding UNCHCS's future investment), consistent with the lease agreement between the County and HCHC.

B. HCHC shall continue to lease all the real property of Pardee from the County and operate the same subject to the management of UNCHCS. HCHC's leases of Pardee's real property from the County shall extend for the full duration of the Management Services Agreement resulting from this MOU. If necessary, HCHC and the County will execute an amendment to the Lease Agreement between HCHC and the County so that the term of the Lease is consistent with the term of the revised Management Services Agreement.

C. The corporate documents of HCHC will be revised to provide for a Board of Directors (also known as Trustees) for a structure of fifteen (15) Directors, the appointment and terms of which are as follows:

1. Ex Officio Members with full voting rights and full rights to be members of all Committees as assigned by the Chair of the Board of Directors:

- (a) President of UNCH or his/her designee
- (b) A designated Henderson County Commissioner
- (c) Chief Executive Officer of HCHC
- (d) Chief of Medical Staff of HCHC

2. The following additional full members:

<u>SEAT DESIGNATION</u>	<u>TERM IN YEARS (Initial, full)</u>	<u>BODY NOMINATING</u>
Seat No. 1	One year initially, then three	UNCHCS
Seat No. 2	One, then three	BOC
Seat No.3	One, then three	HCHC
Seat No.4	One, then three	HCHC
Seat No. 5	Two, then three	UNCHCS
Seat No. 6	Two, then three	BOC
Seat No. 7	Two, then three	HCHC
Seat No. 8	Two, then three	UNCHCS
Seat No. 9	Three, then three	BOC
Seat No. 10	Three, then three	HCHC
Seat No. 11	Three, then three	HCHC

For seats to be nominated by UNCHCS, UNCHCS shall present its nominees to the County, who shall appoint such nominees to the Board of Directors, without the requirement for consent or approval by the County or HCHC.

Nominees for seats designated to be nominated by HCHC shall be presented to UNCHCS for review and approval as a slate. Should UNCHCS fail to approve the slate of nominees within a reasonable period of time, HCHC shall present a new slate to UNCHCS for review and approval. This process shall continue until UNCHCS approves a complete slate of nominees. The slate of nominees approved by UNCHCS shall then be presented to the County for review by the Board of Commissioners. The County shall either approve and appoint the slate as a whole, or reject the

entire slate. If the County rejects the slate, the process shall repeat itself until an entire slate of nominees is appointed.

UNCHCS shall provide the initial slate of nominees, including the HCHC recommended candidates, to the County on or before June 1, 2013, to allow for installation at the July 1, 2013 meeting of the Board of Commissioners.

No HCHC Board Member or nominee shall serve concurrently or within one year after service on the Board of Trustees on any other Board for any entity which would be deemed to be in competition with HCHC.

The terms of the Directors, other than the Pardee chief executive officer and the chief of the medical staff of Pardee, shall be three years, and no such Director may serve more than two consecutive terms without an intervening period of at least one year. At least seventy-five percent (75%) of the Directors shall be residents of Henderson County.

During the term of the revised Management Services Agreement, removal of any HCHC Board member may be done only with the consent of both the County and UNCHCS.

UNCHCS's appointment and removal authority of the HCHC Board of Directors shall terminate immediately upon termination of the Management Services Agreement between HCHC and UNCHCS, unless the parties mutually agree otherwise.

V. Term

The revised Management Services Agreement shall be for an initial term of twenty-five years, and may be extended by mutual agreement for up to three additional periods of ten years each.

VI. Management of Pardee

The chief executive officer of Pardee will be an employee of UNCHCS, contracted to HCHC at UNCHCS's actual cost. UNCHCS may employ other members of the management staff, as appropriate.

VII. Management Services

UNCHCS will add significantly more resources to the day-to-day management of Pardee, as compared to the existing Management Services Agreement. The new Management Services Agreement will increase UNCHCS's direct involvement in Pardee's operations, including direct responsibility of business, financial, and clinical operations, with financial terms to reflect this enhanced relationship. HCHC will appoint UNCHCS as its managing agent and will delegate to UNCHCS the authority to control and direct its assets and operations, including Pardee Hospital and any and all affiliated enterprises except Pardee Hospital Foundation.

VIII. Management Fee

HCHC will contract with UNCHCS to provide existing and enhanced management services to Pardee for an annual management fee, with metrics built in for incentive payments to UNCHCS based on operating performance.

In consideration for additional services and enhanced management oversight, HCHC shall pay to UNCHCS a mutually agreeable percentage of Gross Operating Margin (the definition of which shall be agreed upon by the parties), or some other mutually agreed upon metric. The minimum Management Services Fee due to UNCHCS in any given year shall not fall below \$210,000, increased in each subsequent year by the Consumer Price Index-U, Medical Care Services, with any such annual increases not to exceed 5% of the then current fees.

Additionally, HCHC may pay a leasing fee to the County, as agreed by the parties and subject to legal and regulatory approval. Any leasing fee shall be treated by the County as a restricted fund used solely for capital improvements at Pardee.

IX. Termination Provisions

Either party may terminate the revised Management Service Agreement without cause at any time after one (1) year from the effective date, upon provision of one-year (twelve [12] months) written notice.

Either HCHC or UNCHCS may terminate the revised Management Service Agreement immediately if changes to the governance documents of either HCHC or UNCHCS, or to the lease between the County and HCHC, are made that, in the opinion of either party, alter the ability of either party to fulfill the terms of the Management Services Agreement or any other agreement. The revised Management Services Agreement shall contain other termination provisions, including termination in the case of a material breach and failure to cure by either party.

X. Other Matters

A. To the extent the transactional documents related to the joint venture between HCHC and Mission Health require notice and/or consent by Mission Health to the revised Management Services Agreement and/or amendment of HCHC's corporate documents, HCHC shall obtain from Mission Health, in writing, such acknowledgment and/or consent.

B. The parties hereto anticipate that, at some future date, UNCHCS may desire to make capital investments in Pardee or HCHC. The parties agree that, at such time as UNCHCS is ready, willing and able to make such investment, the parties shall amend any and all necessary documents to accommodate said investment.

C. UNCHCS shall partner with HCHC for health care teaching and educational opportunities and the provision of health care services in western North Carolina. To the extent UNCHCS plans to undertake such activities in western North Carolina, UNCHCS shall utilize HCHC's services and facilities to the maximum extent possible, including reasonably expanding HCHC's and/or Pardee's physical facilities to accommodate such activities, if mutually agreed upon by UNCHCS and HCHC.

D. Should Western Carolina University, the University of North Carolina at Asheville, or Appalachian State University be designated and developed as a medical school that is a constituent institution of the University of North Carolina, UNCHCS shall take all reasonable actions to sponsor Pardee as a teaching hospital in accordance with all relevant statutory, regulatory, and accreditation criteria, including but not limited to reasonably expanding HCHC's and/or Pardee's physical facilities to accommodate such designation, if mutually agreed upon by UNCHCS and HCHC.


E. With regard to the potential that UNCHCS may make an investment interest in HCHC, either as a part of an expansion of services by UNCHCS in western North Carolina, or related to the designation of Pardee as a teaching hospital, or for any other reason or purpose, the parties agree that any such investment interest shall comply with all applicable laws and regulations, including but not limited to NC General Statutes Chapter 131E, and will result in UNCHCS obtaining an equity interest in HCHC that is proportionate to the investment as a percentage of the total value of HCHC.

F. Within six months after the effective date of the revised Management Services Agreement, the parties shall explore the creation of a health maintenance organization centered on HCHC's facilities, with membership restricted to the employees of the County, HCHC, UNCHCS, and the Henderson County Board of Public Education, unless the parties mutually agree otherwise.

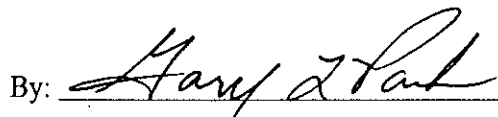
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The terms of this MOU are agreed to and accepted this 24th day of April, 2013.


HENDERSON COUNTY HOSPITAL CORPORATION

By: 
Title: Chairman

UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM

By: 
Title: President

COUNTY OF HENDERSON

By: 
Title: Chairman