



**GENERAL GOVERNMENT-GOVERNING BODY-PLEDGE OF ALLEGIANCE**

Chairman Inman invited the citizens in attendance to join the Board in the Pledge of Allegiance.

**CLOSED SESSION**

Chairman Inman entertained a motion to enter Closed Session for the following:

- To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged pursuant to G.S. 143-318.11(a)(3)

Commissioner Walker moved to enter Closed Session for the following:

- To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged pursuant to G.S. 143-318.11(a)(3)

Vice Chairman Booth seconded and the motion carried unanimously with Commissioner Lankford and Commissioner Jones voting via conference call.

The Board re-entered the open session of the May 19<sup>th</sup> Emergency Meeting.

Chairman Inman entertained a motion.

Vice Chairman Booth moved to approve the following Interim Management Services Agreement between Pioneer Health Services of Stokes County, Inc. and the County of Stokes as submitted by County Attorney Tyrone Browder at today’s meeting subject to approval by Pioneer Health Services of Stokes County and the Bankruptcy Court:

**INTERIM MANAGEMENT SERVICES AGREEMENT**

**THIS AGREEMENT FOR INTERIM MANAGEMENT SERVICES** (the “Agreement”) is made and entered into as of May \_\_\_\_, 2016 (“Effective Date”), by and between **PIONEER HEALTH SERVICES OF STOKES COUNTY, INC.**, a North Carolina corporation (“PHS”), and **THE COUNTY OF STOKES, NORTH CAROLINA** (“COUNTY”).

**WITNESSETH:**

**WHEREAS**, PHS operates a hospital, skilled nursing facility, medical office and other health care operations (the “Hospital”) located in Stokes County, North Carolina, in facilities that are leased from COUNTY pursuant to a Lease and Transfer Agreement dated July 1, 2011 (the “Lease”); and a medical

office building purchased by PHS and located in King, N.C. (the term "Hospital operations" as used herein also includes the operations at the medical office building in King, N.C.).

**WHEREAS**, the parties anticipate a transfer of operating management of the Hospital from PHS to a third party (the "**Transfer**");

**WHEREAS**, COUNTY intends to assume interim management services of the Hospital until the effective date of the Transfer; and

**WHEREAS**, PHS desires to engage COUNTY to arrange and provide for interim management services pursuant to the terms of this Agreement, and COUNTY and PHS desire that COUNTY arrange for the provision of such services to PHS for continued operation of the Hospital except for the Emergency Room in King, North Carolina;

**NOW, THEREFORE**, in consideration of the mutual covenants set out in this Agreement and other forms of consideration, the adequacy and receipt of which are hereby forever acknowledged, the parties, intending to be legally bound thereby, agree as follows:

**1. SCOPE OF SERVICES.** As of the Effective Date, PHS shall delegate to COUNTY and COUNTY shall assume, subject to the provisions hereof, general day-to-day operational responsibility for the Hospital in all respects as more fully set forth herein.

**2. RELATIONSHIP OF THE PARTIES.** The parties intend by this Agreement solely to effect the provision of interim management services to PHS as described herein. This Agreement is not intended to extend to or involve any other activities of either COUNTY or PHS. COUNTY shall act hereunder as an independent contractor, and the relationship between PHS and COUNTY created by this Agreement is one of principal and agent. No other relationship is intended to be created among the parties hereto, and nothing in this Agreement shall be construed as to make any party have the right to control or conduct the other's business in any manner, other than as is herein explicitly provided. COUNTY shall be the agent of PHS solely to perform COUNTY's obligations set forth in this Agreement.

**3. PHS RESPONSIBILITIES.**

**3.1 Representations and Warranties of PHS.** PHS represents and warrants that this Agreement has been duly authorized, executed, and delivered by PHS and represents the legal, valid, and binding agreement of PHS and is enforceable against PHS in accordance with its terms, except as such enforceability may be limited by equitable principles and by applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or similar laws relating to or affecting the rights of creditors generally.

**3.2 Employees.** During the Term of this Agreement, all Hospital personnel employed directly in Hospital operations, including, without limitation, the Hospital Chief Executive Officer (the "Hospital Personnel"), shall be and remain employees of PHS and shall be leased to COUNTY. PHS shall continue to provide all compensation and benefits to Hospital Personnel, and to make all payroll tax filings and payments, during the Term of this Agreement.

**3.3 Financial Reporting and Systems Management.** PHS will continue to provide all billing and collecting services for Hospital operations during the Term, and financial reporting and systems required for operation of the Hospital during the Term of this Agreement. COUNTY may, at its option and upon written notice to PHS, hire staff to conduct billing and collection services in lieu of such services being provided by PHS, upon thirty (30) days prior written notice to PHS.

**3.4 Business Records.** PHS has made or will make available to COUNTY such of PHS's business records as COUNTY has or may request.

**3.5 Licenses and Permits.**

a. PHS shall be responsible for obtaining and maintaining all licenses, permits, and approvals required for the operation of Hospital and shall at all times during the Term operate in compliance with all applicable material federal, state, and local laws and regulations. COUNTY shall take such actions that are reasonable and necessary to assist PHS in obtaining and maintaining all such licenses, permits, and approvals and shall operate in compliance with all applicable material federal, state, and local laws and regulations.

b. Without limiting the foregoing, PHS will maintain its status as a participating provider in the Medicare and Medicaid programs. During the Term, PHS shall be responsible for making all filings due to the Medicare and Medicaid programs. Unless otherwise required by applicable law, the County shall not file any reports or other documents or make any other filings in connection with Medicare and Medicaid reimbursement with respect to the Hospital, including but not limited to any cost reports, without allowing PHS at least thirty (30) business days to review any such filings and related documentation and without obtaining PHS consent for such filings.

c. PHS and COUNTY shall cooperate to obtain such authorizations, consents, or approvals as may be necessary to allow COUNTY to assume management of the Hospital operations as set forth herein, during the Term of this Agreement.

**3.6 Cooperation.** PHS shall cooperate with COUNTY in connection with provision of the COUNTY's services hereunder.

**3.7 Use of Facilities.** During the Term, COUNTY shall have full access to and use of all facilities, furniture, equipment and vehicles used in Hospital operations, and PHS shall maintain such items in good working order (at the expense of PHS), to include the PHS owned medical office building located in King, N.C. COUNTY may, in its discretion, perform routine maintenance and repairs to such items in order to maintain them in working order.

**4. FINANCIAL TERMS.** During the Term of this Agreement, financial matters shall be governed as follows:

**4.1 Revenue.** In consideration of the services provided by COUNTY hereunder, PHS shall pay COUNTY a management fee equal to all revenue from Hospital operations (including the skilled nursing facility) accruing during the Term of this Agreement. Such revenue shall be collected by PHS and swept on a daily basis to a COUNTY bank account. Any revenue that relates to a period that includes the Term of this Agreement and a period before or after such Term shall be prorated based on the number of days in each period, and allocated accordingly.

**4.2 Hospital Operating Expenses.** COUNTY shall be responsible for payment of the Ordinary Course Expenses (defined below) accruing during the Term of this Agreement, other than payroll and benefits of billing and collection staff. COUNTY shall have no responsibility for any expenses or liabilities of PHS that are not Ordinary Course Expenses. As used herein, "Ordinary Course Expenses" means expenses directly relating to Hospital operations arising in the ordinary course of business of Hospital operations, consistent with past practice, except for excluded expenses described below. Any Ordinary Course Expense that relates to a period that includes the Term of this Agreement and a period before or after such Term shall be prorated based on the number of days in each period, and allocated accordingly. Any

expense of PHS that includes operations other than Hospital operations (such as premiums for insurance coverage that includes operations of PHS affiliates) shall be allocated in an equitable manner (such allocation shall be subject to approval of COUNTY, and COUNTY shall be provided appropriate documentation to confirm such allocation). Without limitation:

- a. Ordinary Course Expenses shall include payroll and benefits of Hospital Personnel (other than unfunded benefits accruals, such as any paid time off payable upon termination of employment). For any personnel not working at the Hospital facilities who perform services for other PHS affiliates, the payroll and benefits shall be allocated as Ordinary Course Expenses based on the percentage of time spent performing services for Hospital. Hospital Personnel shall not include any corporate or management personnel of PHS or any affiliate of PHS not residing in Stokes County, except for billing and collection personnel providing services directly relating to Hospital operations.
- b. Ordinary Course Expenses shall not include (A) expenses arising from negligence of PHS or its employees or agents, (B) expenses arising from intentional misconduct of PHS or its employees or agents, (C) expense arising from non-compliance of PHS or its employees or agents with law or applicable billing and claims rules of any third party payor, (D) any capital expense, such as expenses for repair, maintenance or replacement of any facility, equipment or vehicle used in Hospital operations (except that repairs and replacement of necessary vehicles or equipment approved by COUNTY can be amortized over the useful life of the item and prorated as set forth in the first paragraph above), (E) any self-insured component of any liability for which PHS maintains insurance, (F) any principal or interest on any indebtedness of PHS for borrowed funds (other than regular monthly payments on capital leases of equipment located at facilities in Stokes County and used in Hospital operations), or (G) any inter-company expenses of PHS or amounts payable by PHS to any party directly or indirectly controlling, controlled by, or under common control with PHS.
- c. Each of PHS and COUNTY shall be responsible for their own expenses incurred in connection with the transactions contemplated under this Agreement.
- d. PHS shall provide COUNTY with access to and copies of any records or documentation requested by COUNTY to confirm the Ordinary Course Expenses, including all payroll records of PHS.

#### **4.3 Additional Fees by COUNTY.**

- a. The COUNTY shall pay a flat fee to PHS of 3.75% of collections for Hospital operations during the Term, for the billing and collecting services. This fee represents a Patient Financial Services director, three (3) billers, a posting clerk and other follow-up staff. This fee will no longer be payable if COUNTY hires its own billing and collecting staff upon sixty (60) days notice to PHS.
- b. The COUNTY shall pay a fee during the Term to PHS of Fifteen Thousand Dollars (\$15,000) per month. This amount covers compiling financials from the McKesson Paragon systems, American Healtech Nursing Home System and eClinical Works system to a consolidated financial report. Also, accounting and general ledger entries to support compiling financials. Lastly, providing payroll processing through the Kronos system to include benefits and tax payments per the standard payroll process.

**4.4 Payment.** For Hospital Personnel, PHS shall provide COUNTY with an invoice for the current payroll processing period the Wednesday prior to Friday's payroll. COUNTY shall Electronically Transfer Funds to PHS prior to close of business. Should COUNTY default on payment terms, PHS will not process payroll until the funds are available in the PHS account.

**5. TERM; Effect of Termination.** The term of this Agreement ("Term") shall begin on the Effective Date and terminate automatically on the earlier of (a) November 30, 2016 or (b) the date of the Transfer. Notwithstanding the foregoing, COUNTY may terminate this Agreement at any time upon sixty (60) days written notice to PHS. Upon termination of this Agreement, if a party acceptable in the reasonable judgment of COUNTY has not assumed the existing Lease and continued or agreed to continue Hospital operations immediately upon termination of this Agreement, then the COUNTY will have the option to take over Hospital operations upon termination of this Agreement. If COUNTY exercises such option, by written notice to PHS prior to the date of termination, then (A) all personal property (including furniture, vehicles and equipment) transferred to PHS pursuant to the Lease, and any replacement property for such items, shall be transferred for no additional consideration to COUNTY by PHS free and clear of all liens, encumbrances and liabilities of any nature whatsoever, as of the date of termination; (B) the rights and obligations arising after the termination date under all leases of personal property described in Schedule 5(B) hereto shall be assigned by PHS to COUNTY and assumed by County; (C) for any new personal property acquired for and used in Hospital operations that is not replacement property described in clause (A) above, which is listed in Schedule 5(C) hereto, COUNTY shall have the option to purchase such property from PHS at depreciated book value; and (D) COUNTY shall have the option to hire such Hospital employees as it shall determine to be needed for Hospital operations. During the period prior to termination of this Agreement, PHS shall cooperate with COUNTY and provide documentation and information needed by COUNTY for all applications, filings and requests for authorization and otherwise for transition of services as may be needed for COUNTY to assume Hospital operations.

**6. INDEMNIFICATION.**

**6.1 Insurance; Indemnification.**

a. PHS shall retain responsibility for quality of care at the Hospital and for compliance by Hospital with all applicable federal, state, and local laws. Neither COUNTY nor its agents or employees shall have liability or responsibility for patient care or compliance matters that remain PHS's responsibility as set forth herein. PHS shall at all times this Agreement is in effect maintain, at PHS's sole expense, all insurance coverages currently in place, including without limitation workers compensation; comprehensive general liability equal to \$1,000,000 per occurrence and \$3,000,000 in the aggregate; and professional liability equal to \$1,000,000 per occurrence and \$3,000,000 in the aggregate. This provision is subject to any willful misconduct or negligence of the COUNTY or its agents or employees with the exception to the extent that said actions or inactions are covered by insurance.

b. Each party hereby agrees to indemnify, defend, and hold harmless the other party, its officers, partners, employees, and agents from and against any and all claims, losses, damages, costs, expenses, liabilities, assessments, judgments, or deficiencies of any nature whatsoever, including, without limitation, reasonable attorneys' fees and other costs and expenses incident to any suit, action or proceeding, which may arise out of, result from, or constitute any breach of any representation, warranty, or covenant contained in this Agreement. This indemnification clause shall not apply to any breach of any representation, warranty or covenant set forth in the HIPAA Business Associate Addendum. Without limiting the foregoing, COUNTY shall have no responsibility or liability relating to any HIPAA violation by personnel employed by PHS.

**6.2 Limitation of Liability.** COUNTY shall not assume any liabilities of PHS arising from or during operation of the Hospital under this Agreement, and any assumption of Hospital liabilities by COUNTY shall be governed by a separate transfer agreement.

**7. CONFIDENTIALITY.**

**7.1 Confidentiality.** Each party hereto covenants and agrees that it shall not disclose the terms of this Agreement or any agreement supplementing this Agreement to third parties without the consent of the other party, except to the extent disclosure is required by court or administrative order or by applicable law or regulation or the North Carolina Public Records Act, provided each party may provide information to the extent necessary or appropriate to disclose such information to its accountants, attorneys, and other representatives in performing its obligations hereunder. Notwithstanding anything to the contrary set forth elsewhere herein, "confidential information" shall not include any information generally available to the public or any information already available to a party for a source other than the disclosing party. This provision shall survive any termination of this Agreement.

**7.2 HIPAA Compliance.** COUNTY, as a Business Associate of PHS, shall comply with the terms and conditions of the Business Associate Addendum attached hereto as **Exhibit A** and made a part hereof.

**8. MISCELLANEOUS.**

**8.1 Entire Agreement.** This Agreement constitutes the entire agreement among the parties regarding the subject matter hereof. Except as otherwise provided herein, the terms of this Agreement may be modified or amended only by written agreement of the parties.

**8.2 Access to Books and Records.** Until the expiration of four years (4) after the furnishing of services pursuant to this Agreement, the parties shall, upon written request, make available to the Secretary of Health and Human Services or the Comptroller General or their duly authorized representative the contract, books, documents, and records necessary to verify the nature and extent of the cost of such services. If any party carries out any of its obligations under this Agreement by means of a subcontract with a value of \$10,000 or more, that party agrees to include this requirement in any such subcontract.

**8.3 Counterparts.** This Agreement may be executed in one or more counterparts (electronic transmission or otherwise), each of which shall be deemed an original agreement and all of which shall constitute but one agreement.

**8.4 Compliance with Laws.** In performing their respective duties hereunder, COUNTY and PHS shall at all times conduct themselves in full accordance with all applicable state, federal and local laws and regulations. During the Term, if Medicare, Medicaid, or any other government, commercial or third-party payer requests or otherwise asserts a claim relating to Hospital operations (or any component thereof) for reimbursement of funds allegedly paid in error for services provided prior to the Term, COUNTY shall promptly notify PHS of such request or claim. If COUNTY reasonably determines that such reimbursement is due, then PHS agrees to promptly pay such reimbursement. In the event any statute, law, rule or regulation is promulgated or modified, or any administrative or judicial interpretation is issued or modified which prohibits structural and/or operational arrangements similar or analogous to those specified in this Agreement, the parties hereto shall renegotiate this Agreement in a manner intended to comply with such law, rule, regulation or interpretation or terminate this Agreement, without penalty to either party. The terms of this Section will survive the termination or expiration of this Agreement.

**8.5 Absence of Sanctions.** COUNTY and PHS each represents to the other that neither such party nor any of its employees, owners, or agents have been sanctioned by or excluded from participation in any federal or state health care program, including Medicare and Medicaid. If such party or any such individual associated with it should be sanctioned by or excluded from participation in any federal or state health care program, including Medicare and Medicaid, it shall immediately notify the other party of such event. In the event that either party is excluded from any federal health care program, then this Agreement will immediately terminate.

**8.6 Accounting.** In determining revenue and expenses of the Hospital for purpose of calculating the fee payable to COUNTY and the Ordinary Course Expenses payable by COUNTY as set forth herein, the parties shall use generally accepted accounting principles, consistently applied.

**8.7 Bankruptcy Court Approval.** This Agreement is subject to the approval of the United States Bankruptcy Court for the Southern District of Mississippi. PHS agrees to file a motion to shorten notice and other pleadings reasonably necessary to seek Bankruptcy Court approval of this Agreement on an expedited basis. This Agreement will become effective on the business day following the entry of a final written order approving its execution and performance in the pending PHS Chapter 11 proceedings, In re Pioneer Health Services of Stokes County, Inc., Case No. 16-01122-NPO, jointly administered with In re Pioneer Health Services, Inc., Case No.16-01119-NPO.

[SIGNATURE PAGE TO INTERIM MANAGEMENT SERVICES AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

PHS:

COUNTY:

**PIONEER HEALTH SERVICES OF STOKES  
COUNTY, INC.**

**THE COUNTY OF STOKES, NORTH  
CAROLINA**

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Commissioner Walker seconded and the motion carried unanimously with Commissioner Lankford and Commissioner Jones voting via conference call.

Chairman Inman noted that Commissioner Lankford, Commissioner Jones, and County Manager Morris attended today's entire Emergency Meeting via conference call.



**Adjournment**

There being no further business to come before the Board, Chairman Inman entertained a motion to adjourn the Emergency Meeting.

Vice Chairman Booth moved to adjourn the Emergency Meeting. Commissioner Walker seconded and the motion carried unanimously with Commissioner Lankford and Commissioner Jones voting via conference call.

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**Darlene M. Bullins**  
**Clerk to the Board**

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**J. Leon Inman**  
**Chairman**