

MEMORANDUM OF UNDERSTANDING

March __, 2009

THIS MEMORANDUM OF UNDERSTANDING (the "Memorandum") is entered into by THE FULTON-DEKALB HOSPITAL AUTHORITY, a public body corporate and politic, created and existing under the laws of the State of Georgia (the "Authority"), and FULTON COUNTY, GEORGIA, a political subdivision of the State of Georgia ("Fulton"), regarding clarifications to the hereinafter defined Operating Contract. All defined terms shall have the meaning ascribed to such terms under the Operating Contract unless herein defined.

1. Purpose.

1.1 The Authority and Fulton (collectively, the "Parties") each confirm that they are entering into this Memorandum for the purpose of clarifying the provisions of a Contract, dated June 20, 1984, as amended by Amendment Number 1 to Contract, dated December 30, 1987, by Amendment Number 2 to Contract, dated July 14, 1988, by Amendment Number 3 to Contract, dated December 29, 1988, by Amendment Number 4 to Contract, dated June 22, 1989 and by Amendment Number 5 to Contract, dated December 14, 1989 (collectively, the "Operating Contract"), under the terms of which the Authority has agreed that it will at all times during the term of the Operating Contract provide facilities for the indigent sick and emergency services on behalf of Fulton and DeKalb County, Georgia (collectively, the "Counties") in exchange for payment from the Counties for such care and services.

1.2 Fulton has heretofore also entered into certain service agreements relating to the provisions of additional facilities for the indigent sick of Fulton. For purposes of this Memorandum, "Service Agreements" mean (i) the Crestview Nursing Home Operating Agreement between Fulton and the Authority; and (ii) the contract or contracts between Fulton and the Authority relating to outpatient clinics located in Fulton.

1.3 The Parties further acknowledge that the Authority entered into that certain Lease and Transfer Agreement, dated as of April 7, 2008, and effective as of May 20, 2008, between the Authority and the Grady Memorial Hospital Corporation (the "Corporation"), as may be amended (the "Lease Agreement"). Under the terms of the Lease Agreement, among other things, the Authority leased its facilities to the Corporation which now operates such facilities. However, the Service Agreements have not been assigned under the Lease Agreement. The Operating Contract and Service Agreements are herein collectively referred to as the "Agreements". The Authority has appointed the Corporation as its agent to perform the services under the terms of the Agreements among other things.

1.4 The parties desire to enter into the Memorandum in order to provide guidance in interpreting certain terms or provisions in the Agreements without amending the Agreements, in a manner intended to (i) preserve and protect the historic role and mission of Grady Memorial Hospital in the provision of health care services to the indigent and poor populations of Fulton

and (ii) promote levels of financial transparency and accountability sufficient to permit continued financial support of Grady Health System by Fulton County in accordance with the Agreements.

2. Definitions.

2.1 The following terms shall have the following meanings and shall be applicable to the Agreements unless the context indicates a different meaning.

“Certification of Need”: Written evidence showing that a low-income patient who is a verified resident of Fulton met the criteria established and maintained by the Corporation under its current written policies and procedures pertaining to qualification of patients for free or discounted services. The certification process shall apply to patients whose individual or family income is less than 250% of the Federal Poverty Limit Guidelines and therefore eligible to receive the services provided on a sliding scale basis, with those patients at or below 125% of the Federal Poverty Limit Guidelines receiving a 100% discount.

“Costs”: The amount of expenditures to provide an item or service, including but not limited to allocable Overhead Costs.

“Eligible Patient”: A patient who is a verified resident of Fulton who 1) has resided in Fulton for at least thirty (30) days at the time of provision of services by the System; 2) has a Certification of Need, and 3) received services at the System.

“Federal Poverty Limit Guidelines”: Guidelines for determining financial eligibility for certain federal programs as issued each year in the Federal Register by the Department of Health and Human Services.

“Overhead Costs”: Costs not directly attributable to service to a particular patient, including utilities, maintenance, insurance (other than as limited in the following sentence), information technology systems and support, administration support, and other overhead costs contained in the annually approved Medicare Part A reimbursement forms filed by the System. Overhead Costs shall not include 1) payments by the Corporation to the Authority pursuant to the Lease Agreement; 2) interest and/or principal on any debt of the Corporation; and 3) costs or premiums associated with medical malpractice insurance for faculty or physicians affiliated with any medical school. Allocation of Overhead Costs is described in Section 4.1(b).

“System”: The meaning ascribed to such term in the Lease Agreement.

“Uncompensated Care”: The total amount of Costs resulting in nonpayment from any applicable source to the Corporation for services rendered. In calculating Uncompensated Care, credit shall be given for payments from the Georgia Indigent Care Trust Fund (ICTF) and any grants for services to the indigent, with such ICTF and grant funds distributed evenly on a monthly basis and with Fulton’s credited amount of such ICTF and grant funds being determined by using a fraction the numerator of which is the

total Costs for Eligible Patients from Fulton and using as a denominator the total Costs of indigent care for the System as a whole.

3. Standard of Care and Quality of Care.

3.1 Article II, Section A(4) of the Operating Contract provides that the rendering of medical aid and hospitalization as required under the Operating Contract shall be in keeping with *"usual services rendered by hospitals of like size and character and to the extent facilities are available."*

3.2 The Parties acknowledge that Section 5.4 of the Lease Agreement provides that the Corporation will (i) irrevocably, absolutely and unconditionally provide indigent care and charity care in accordance with the provisions of the Operating Contract and (ii) operate the hospital as a Safety Net Hospital. "Safety Net Hospital" means a hospital with the following characteristics: (i) an underlying mission to provide medical services to uninsured, underinsured or indigent patients; (ii) an open access policy for residents of the County regardless of their ability to pay; (iii) provision for significant uncompensated indigent or charity care; (iv) an open emergency room; (v) level of trauma services comparable to that currently provided at the hospital; and (vi) a mission to provide opportunities for the teaching of medical or health care professionals. Under the Lease Agreement, the Corporation covenants to aspire to reach, in the shortest time possible, *"a standard of healthcare quality and service benchmarked to and comparable with similar urban teaching hospitals in the southeastern United States."*

3.3 Recognizing the ambiguity and lack of objective standards of the provisions of the Operating Agreement and Lease Agreement described above in Sections 3.1 and 3.2, the parties hereby agree that the System shall achieve and maintain compliance with the following standards:

(a) The most current version of the Joint Commission's Hospital Accreditation Standards ("HAS") including but not limited to the following Requirements for Accreditation:

- Accreditation Participation Requirements (APR);
- Environment of Care (EC);
- Emergency Management (EM);
- Human Resources (HR);
- Infection Prevention and Control (IC);
- Information Management (IM);
- Leadership (LD);
- Life Safety (LS);
- Medication Management (MM);
- Medical Staff (MS);
- National Patient Safety Goals (NPSG);
- Nursing (NR);
- Provision of Care, Treatment, and Services (PC);
- Performance Improvement (PI);
- Record of Care, Treatment, and Services (RC);

- Rights and Responsibilities of the Individual (RI);
- Transplant Safety (TS); and
- Waived Testing (WT).

(b) The most current version of the Centers for Medicare and Medicaid Services' ("CMS") Conditions of Participation and Interpretive Guidelines.

3.4 In order to meet the requirements as set forth above, the Authority shall cause the Corporation as its agent to (i) maintain accreditation under The Joint Commission (ii) meet all appropriate federal, state and local operating licensure requirements, and (iii) in annual public meetings or otherwise, show evidence of progress towards or of meeting the standards described in this Article 3.

3.5 Within thirty (30) days of execution of this Memorandum, the Authority shall submit to Fulton County a plan that sets forth benchmarks and timelines for achieving full compliance with the standards of care described in this Article 3.

3.6 The parties hereby agree that in specific terms the System shall achieve and maintain the highest quality of care in patient safety and specialty areas including but not limited to compliance with Joint Commission 2009 National Patient Safety Goals.

4. Budgeting and Contributions of Fulton.

4.1 The Parties acknowledge that the method of estimating the contribution of Fulton each year shall be clarified as follows:

(a) In each year, an annual budget shall be presented to Fulton showing the proposed contribution of Fulton within an annual budget of the Corporation (as agent for the Authority pursuant to the Lease Agreement). A preliminary budget shall be prepared by the Corporation and submitted to the Authority, which shall then review, approve and present the same to Fulton by no later than October 1 of each year. A final annual budget shall be similarly prepared by the Corporation for review and approval by the Authority, which shall present the same to Fulton no later than November 1 of each year.

(b) The proposed contribution amount from Fulton for each year shall be determined as the total Uncompensated Care provided only to Eligible Patients less any allocable amounts for malpractice insurance premiums for medical school faculty physicians (the "Contribution Amount"). It is the intention of the Parties that the Contribution Amount includes a reasonable allocation applicable to Eligible Patients for Overhead Costs as defined in Section 2.1. For purposes of determining the proposed annual Contribution Amount, allocable Overhead Costs shall be determined by multiplying the System's total Overhead Costs by a fraction whose numerator is the total number of patient visits for Eligible Patients receiving services from the System in the preceding year, and whose denominator is the total number of patient visits for all patients (regardless of residency or indigency) receiving services from the System in the preceding year. Fulton will consider other allocated amounts necessary pursuant to applicable accounting principles. Additionally, Fulton reserves the right to determine a different

formula/standard for the calculation of Overhead Costs allocable to Fulton. If Fulton determines to use such a different formula/standard, Fulton will provide notice of such new formula/standard to the Authority no later than July 1st for use by the Authority in developing the proposed Contribution Amount for the ensuing budget year.

(c) The Contribution Amount for any year shall be determined based on actual amounts of the total Uncompensated Care provided only to Eligible Patients for the previous twelve months of the preceding year. For example, the fiscal year budget for 2010 shall be based on the results from October 1, 2008 to September 30, 2009

(d) Nothing herein shall limit the right of Fulton to decline, modify, or reduce the amount of their contribution under the Operating Contract as set forth in Article III, Section C(1)(a); provided, however, that compliance with the information reporting as set forth in Section 5.1 hereof shall be required prior to disbursement of the Contribution Amount on a month-by-month basis.

5. Information.

5.1 The Parties acknowledge that the Authority on behalf of Fulton may conduct an independent review of financial or other information reasonably necessary to verify the Contribution Amount (including all underlying computations) at the Authority's expense. In particular, (i) the Authority shall cause the Corporation in accordance with its written policies and procedures to provide monthly to the Authority, which shall review and present the same to Fulton in arrears, a report substantially containing income verification, residency documentation and other information relating to standard of care of Eligible Patients within thirty (30) days after the reported month (i.e. data through January 31 is due on or about March 1); and (ii) the Authority shall perform an annual audit conducted by an independent auditor verifying that the Contribution Amounts were expended for Eligible Patients. The Authority shall cause the Corporation to provide to Fulton a copy of the current written policies and procedures qualifying a patient for free or discounted services and for establishing residency. The Authority represents and agrees that, as the Authority's agent, the Corporation shall cooperate with the Authority or its agents to carry out the purposes of this Section 5.1 under the terms of Section 5.15(e) and (f) of the Lease Agreement or any other separate written agreement. To the extent prohibited by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or other applicable laws, the information (or such applicable parts) in this Section 5.1 shall not be required.

5.2 The Authority shall cause the Corporation to use its best efforts to negotiate written arrangements for payment from the other Georgia counties (based on total Uncompensated Care provided) whose residents have received Uncompensated Care from the System. A report on the results of such negotiations shall be prepared by the Corporation within ninety (90) days. Such report shall be presented to Fulton.

5.3 With the initial monthly report described in Section 5.1, the Authority shall provide to Fulton a copy of the current written policies and procedures referenced in Section 2.1, Certification of Need, and shall provide additional copies of such policies and procedures as they may be adopted or amended from time to time.

5.4 In addition to any other information required by this Article, the monthly reports and annual audits described in Section 5.1 shall include line items showing expenses and revenues related to Eligible Patients for each of the following: 1) Grady Hospital, 2) Crestview Nursing Home, 3) the neighborhood clinics, and 4) any other components of the System.

6. Miscellaneous.

6.1 This Memorandum shall be governed by, and construed and interpreted in accordance with, the laws of the State of Georgia.

6.2 Unless specifically clarified herein, the terms and provisions of the Agreements shall remain in full force and effect without any change whatsoever. This Memorandum shall not be construed in any manner as an amendment to the Agreements.

6.3 Should any provision of this Memorandum be determined to be illegal, unenforceable or in conflict with any law by a court of competent jurisdiction, such paragraph shall be deemed severed herefrom and the validity of the remainder of this Memorandum shall not be affected thereby.

6.4 This Memorandum may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

FULTON COUNTY, GEORGIA

By: _____
Chairman, Board of Commissioners

ATTEST:

Clerk

APPROVED AS TO FORM:

By: _____
Name:
Title:

THE FULTON-DEKALB HOSPITAL
AUTHORITY

By: Timothy S. Stephenson
Chairperson

RESOLUTION

WHEREAS, the Trustees of The Fulton-DeKalb Hospital Authority (the "Authority") have been presented with a form of Memorandum of Understanding between the Authority and Fulton County, Georgia (the "Proposed MOU");

WHEREAS, the Trustees have individually reviewed the Proposed MOU and met to discuss the Proposed MOU during an open, public meeting held on January 26, 2009;

WHEREAS, at the January 26, 2009, open meeting, the Trustees voted to authorize the Chairperson to complete negotiations of the Proposed MOU and to execute the Proposed MOU in its form on that date or in such other form as the Chairperson determined to be necessary or appropriate on behalf of the Authority;

WHEREAS, following January 26, 2009, the Trustees did receive, review, and discuss subsequent revised versions of the Proposed MOU; and

WHEREAS, the Fulton County Board of Commissioners had voted to place \$26 million in funding to The Grady Health System into a contingency fund, pending the Authority's execution of the Proposed MOU;

WHEREAS, the Trustees believed it to be in the best interest of The Grady Health System that the Chairperson of the Authority execute the final form of the Proposed MOU as expeditiously as possible;

WHEREAS, the Board of Directors and management of Grady Memorial Hospital Corporation requested that the Chairperson execute the Proposed MOU as expeditiously as possible; and

WHEREAS, on April 8, 2009, the Chairperson did execute and deliver to the Fulton County Board of Commissioners the Proposed MOU;

NOW, THEREFORE, BE IT RESOLVED, as follows:

RESOLVED, that the Trustees affirm their January 26, 2009 authorization of the Chairperson to finalize and execute the Proposed MOU on behalf of the Authority;

RESOLVED FURTHER, the Authority ratifies the action of the Chairperson in executing, pursuant to such prior authorization, the Proposed MOU in the form as approved by the Fulton County Board of Commissioners as of April 8, 2009, and attached hereto as **Exhibit A**; and

RESOLVED FURTHER, that the Chairperson is further authorized and directed to execute all other agreements, instruments, and documents and to do or cause to be done all such further acts or things, in the name of and on behalf of the Authority, as she may deem necessary or advisable to effect the matters described in the foregoing resolutions and carry into effect their

intent and purpose, and that all actions of the Chairperson so taken in connection with the transactions herein described are ratified, approved, and confirmed in all respects.

Adopted this 27th day of April, 2009.

THE FULTON-DEKALB HOSPITAL
AUTHORITY

(SEAL)

By: *Pamela S. Stephenson*
Name: Pamela S. Stephenson
Title: Chairperson

Attest:

By: *Frank H. Montefith*
Name: FRANK H. MONTEFITH
Title: ~~Secretary~~ Treasurer