

## 2011 COOPERATIVE ENDEAVOR AGREEMENT

This 2011 Cooperative Endeavor Agreement (this "Agreement") is made and entered into this 1<sup>st</sup> day of March, 2011 by and between Hospital Service District No. 1 of the Parish of Ouachita, State of Louisiana, hereinafter referred to as the "District", and the Living Well Foundation, a Louisiana nonprofit corporation hereinafter referred to as the "Foundation".

### WITNESSETH:

WHEREAS, the Foundation has been established for the purpose of holding and using funds for appropriate health care purposes consistent with the District's statutory purposes, including the support and promotion of health care in the District and the community, the provision of health care to the disadvantaged, the uninsured, and the underinsured, and the provision of benefits to the affected community to promote improved health care; and the Foundation is broadly based in the community and representative of the affected community;

WHEREAS, the Foundation also constitutes a program of social welfare for the aid and support of the needy within the meaning of Article VII, Section 14(B)(1) of the Constitution of the State of Louisiana;

WHEREAS, the District previously transferred \$44,199,651.52 to the Foundation pursuant to a Cooperative Endeavor Agreement made and entered into between the District and the Foundation (then named the Ward Five Healthcare Foundation) on January 31, 2007 (the "2007 Cooperative Endeavor Agreement");

WHEREAS, the District, having received more funds than anticipated in 2007 from the ongoing winding up of Glenwood Resolution Authority, Inc. ("GRA"), the non-profit corporation previously named Glenwood Regional Medical Center ("GRMC") that operated the hospital of the same name, and seeking to take advantage of the Foundation's purpose, structure, and expertise, desires to transfer another \$2,000,000 to the Foundation pursuant to this Agreement on terms and conditions substantially similar to those set forth in the 2007 Cooperative Endeavor Agreement;

WHEREAS, the District desires to transfer the \$2,000,000 to the Foundation, on the terms and conditions set forth in this Agreement, in accordance with Article VII, Section 14 of the Constitution of the State of Louisiana, La. R.S. 46:1077, and other applicable law, including but not limited to the doctrines enunciated in *Guste v. Nicholls College Foundation*, 564 So.2d 682 (La. 1990), *Safety Net for Abused Persons v. Segura*, 692 So.2d 1038 (La. 1997), and *Board of Directors of Industrial Development Board v. All Taxpayers*, No. 2005-C-2298 (La. 9/6/2006);

WHEREAS, Article VII, Section 14(C) of the Constitution of the State of Louisiana provides that **"For a public purpose, the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual."**;

WHEREAS, the District desires to cooperate with the Foundation in the manner as hereinafter provided;

WHEREAS, the District has a legal obligation and right to pursue its objects and purposes set forth in La. R.S. 46:1052, to wit:

- (1) To own and operate hospitals for the care of persons suffering from illnesses or disabilities which require that patients receive hospital care.
- (2) To administer other activities related to rendering care to the sick and injured or in the promotion of health which may be justified by the facilities, personnel, funds and other requirements available.
- (3) To promote and conduct scientific research and training related to the care of the sick and injured insofar as such research and training can be conducted in connection with the hospital.
- (4) To participate so far as circumstances may warrant in any activity designed and conducted to promote the general health of the community.
- (5) To cooperate with other public and private institutions and agencies engaged in providing hospital and other health care services to residents of the district.

WHEREAS, the District chooses to execute its legal obligation and right by contracting with the Foundation;

WHEREAS, the Foundation has a legal obligation and right, pursuant to its Articles of Incorporation, to pursue the same objects and purposes as the District and to assist the District in pursuing those objects and purposes, and the Foundation chooses to execute this legal obligation and right by contracting with the District;

WHEREAS, the public purpose to be derived from this legal obligation is the furtherance of the objects and purposes of the District, as set forth in La. R.S. 46:1052, all of which are public purposes;

WHEREAS, the actions of the District and the Foundation will result in a public benefit, described in detail below, not disproportionate to the consideration in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the legal obligation, the public purpose, and the public benefit, the parties hereto agree as follows:

### **1. Scope of Services**

The Foundation hereby agrees to administer activities related to rendering care to the sick and injured or in the promotion of health, to cooperate with other public and private institutions and agencies engaged in providing hospital and other health care services to residents of the district, and to participate in activities designed and conducted to promote the general health of the community, including but not limited to the following services:

(1) Identifying, selecting, funding and conducting clinical or other programs to improve the health of the residents of the District and the community – e.g., clinics to provide health care services to the indigent, uninsured, underinsured, elderly, and other needy segments of the District and the community (routine inoculations, prescription medications, pre-natal care, etc.);

(2) Identifying, selecting and providing grants to nonprofit charitable organizations and public agencies that provide health and wellness related services in the District and the community – e.g., disaster relief healthcare services, bioterrorism response, epidemic management, etc.;

(3) Promoting, supporting and conducting educational programs that enable residents of the community to improve their health and wellness – e.g., proper diet and exercise, substance abuse counseling, domestic abuse sheltering and counseling, etc.;

(4) Engaging in fund raising activities for the support of the Foundation and that assist in achieving its goals of community health and wellness;

in each case to the extent the Foundation reasonably deems justified by the facilities, personnel, funds and other requirements available and warranted by the circumstances. The Foundation acknowledges and agrees that the District's transfer to the Foundation of \$2,000,000 pursuant to this Agreement increases the funds of the Foundation and that the Foundation therefore is both enabled and obligated to perform an additional amount of the foregoing services beyond the amount previously contemplated under the 2007 Cooperative Endeavor Agreement.

## **2. Funds Transfer and Performance Monitoring**

A. In consideration of the additional amount of services described above, the District hereby agrees to transfer to the Foundation a single, lump-sum fee of \$2,000,000.00 (the "Funds") in connection with the execution of this Agreement.

B. In order to ensure the Funds are held and used properly by the Foundation for the achievement of the benefits intended under this Agreement, the Foundation covenants and agrees to the following provisions:

(1) Adherence to Section 2.B. of the 2007 Cooperative Endeavor Agreement. The Foundation will adhere to the provisions of Section 2.B. of the 2007 Cooperative Endeavor Agreement, as amended from time to time.

(2) Additional Support to District. The Foundation shall pay or reimburse all liabilities, costs, and expenses of the District (including reasonable attorneys fees) incurred in connection with or arising out of or relating to the District's administration or enforcement of, or compliance with, this Agreement.

### **3. Term of Agreement**

This Agreement shall begin on the date of this Agreement as first set forth above and shall terminate on the final completion of the dissolution and liquidation of the Foundation.

### **4. Taxes**

The Foundation hereby agrees that the responsibility for payment of any taxes from the Funds thus received under this Agreement shall be the Foundation's obligation and identified under the Foundation's federal tax identification number.

### **5. Termination Clause**

A. Notwithstanding any other provision of this Agreement, the District shall not terminate this Agreement, except only for cause based upon a "Material Default" (which term shall mean the persistent failure of the Foundation to substantially comply with the material terms and/or conditions of this Agreement) and then only if the terms and conditions of this Section 5.A and of Section 16.C are met. The District shall give the Foundation, each director of the Foundation, and the chief executive officer of the Foundation written notice under this Section 5.A. specifying the Foundation's asserted Material Default. If within ninety (90) days after receipt of such notice, the Foundation shall not have either corrected such asserted Material Default or commenced to correct such asserted Material Default, or in the latter case if the Foundation fails to proceed diligently after such period to complete such correction, then the District may bring an action against the Foundation seeking a judgment declaring the Foundation to be in Material Default of this Agreement. If and only if a court of competent jurisdiction renders a final judgment, no longer appealable, declaring that the District has cause to terminate this Agreement based upon the actual Material Default of the Foundation, the District may then give the Foundation a written notice declaring the Foundation to be in Material Default of this Agreement and may proceed in accordance with Section 16.C.

B. The Foundation may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the District to comply with the terms and conditions of this Agreement; provided that the Foundation shall give the District written notice specifying the District's failure and a reasonable opportunity for the District to cure the failure.

C. Upon any termination of this Agreement, the Foundation shall promptly transfer, turn over, deliver, and relinquish to the District a sum of money equal to 2/46ths (or 1/23rd) of all of the Foundation's funds at the time of termination.

### **6. Ownership**

All records, reports, documents and other material related specifically to this Agreement delivered or transmitted to the Foundation by the District shall remain the property of the District, and shall be returned by Foundation to the District at the Foundation's expense, at termination or expiration of this Agreement. All records, reports, documents, or other material

related specifically to this Agreement shall become the property of the District and be returned by the Foundation to the District at termination of this Agreement.

#### **7. Nonassignability**

The Foundation shall not assign any interest in this Agreement, or in the income derived from the Funds, by assignment, transfer, or novation, or otherwise, without prior written consent of the District.

#### **8. Auditors Clause**

The Foundation need not segregate the funds from other funds of the Foundation and need not account for the Funds or their disposition separately from other funds of the Foundation. It is hereby agreed that the Legislative Auditor of the State of Louisiana shall have the option of auditing all accounts of the Foundation, whether or not they relate to this Agreement.

#### **9. No Further Funding**

The District shall have no obligation to provide any funding at any time in addition to the single, lump-sum payment specified in the "Compensation" section.

#### **10. Indemnification; Insurance**

A. The Foundation shall indemnify and save harmless the District against any and all claims, losses, liabilities, demands, suits, causes of action, damages, and judgments of sums of money to any party accruing against the District growing out of, resulting from, or by reason of any act or omission of the Foundation, its agents, servants, independent contractors, or employees while engaged in, about, or in connection with the discharge or performance of the terms of this Agreement. Such indemnification shall include the District's fees and costs of litigation, including, but not limited to, reasonable attorney's fees.

B. The Foundation shall provide and bear the expense of all reasonable or required personal and professional insurance related to its duties arising under this Agreement.

#### **11. Discrimination Clause**

A. The Foundation agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and the Americans with Disabilities Act of 1990.

B. The Foundation agrees not to discriminate unlawfully in its employment practices, and will render all of its services under this Agreement without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities.

C. Any act of discrimination committed by the Foundation, or failure to comply with these statutory obligations when applicable, as established by a final judgment of a court of competent jurisdiction, shall be a failure to perform an obligation under this Agreement.

## **12. Partial Invalidity; Severability**

If any term, covenant, condition, or provision of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

## **13. Entire Agreement; Modification**

A. This Agreement expresses the entire agreement between the parties with respect to the transfer of \$2,000,000 provided in Section 2.A. and supersedes any and all agreements or contracts previously entered into between the parties with respect to such transfer. No representations were made or relied upon by either party relating to the transfer of \$2,000,000 provided in Section 2.A., other than those that are expressly set forth in this Agreement. This Agreement does not supersede or amend the 2007 Cooperative Endeavor Agreement, which will continue to remain in full force and effect after execution of this Agreement.

B. This Agreement may be modified or amended at any time by mutual consent of the parties, provided that, before any modification or amendment shall be operative and valid, it shall be reduced to writing, approved by the Board of Commissioners of the District and by the Board of Directors of the Foundation by the affirmative vote of at least three-fourths of the directors then in office, and signed by an authorized representative of each party.

## **14. Controlling Law**

The validity, interpretation, and performance of this Agreement shall be controlled by and construed in accordance with the laws of the State of Louisiana.

## **15. Legal Compliance**

Subject to Section 2.B(13)(c) of the 2007 Cooperative Endeavor Agreement, the Foundation shall comply with all federal, state, and local laws and regulations, including, specifically, the Louisiana Code of Governmental Ethics (R.S. 42:1101, et seq.) in carrying out the provisions of this Agreement.

## **16. Defaults; Remedies for Default**

A. The failure of the Foundation to perform any obligation, agreement, or covenant under this Agreement, which failure is not commenced to be cured within thirty (30) days after written

notice from the District under this Section 16.A. specifying the failure and either cured within such period or diligently pursued thereafter until corrected, shall constitute an ordinary default.

B. Whenever an ordinary default referred to in Section 16.A. shall have happened and be continuing, the District may take any one or more of the following remedial actions:

(1) require the Foundation to present to the District a written plan of correction to cure the failure and report periodically in writing to the District on the Foundation's progress in curing such failure until the failure is cured;

(2) refuse, without any further reason, to approve any strategic plan, budget, director or officer appointment, re-appointment, or salary raise, or other action or request of the Foundation requiring approval of the District; or

(3) take any lawful action at law or in equity to enforce the performance and observance of any obligation, agreement, or covenant of the Foundation under this Agreement.

C. Whenever a Material Default referred to in Section 5.A. shall have been declared in accordance with Section 5.A. and be continuing, the District may take any one or more of the remedial actions referred to in Section 16.B or, at the option of the District, may terminate this Agreement by sending written notice of termination to the Foundation.

D. While the Foundation is not in ordinary default and is not in material default, the District (i) shall not unreasonably withhold its consent or approval of any action proposed by the Foundation that is in accordance with the common purposes of the District and the Foundation, (ii) shall not take any affirmative action to prevent the Foundation from operating in accordance with such purposes, (iii) will, at the request and cost of the Foundation, use reasonable efforts to cooperate with the Foundation in order that the Foundation may operate in accordance with such purposes, and (iv) will use reasonable efforts to preserve and keep in full force and effect the District's own existence.

E. The failure of the District to perform any obligation, agreement, or covenant under this Agreement, which failure is not commenced to be cured within thirty (30) days after written notice from the Foundation under this Section 16.E. specifying the failure and either cured within such period or diligently pursued thereafter until corrected, shall constitute an ordinary default. Whenever an ordinary default referred to in this Section 16.E. shall have happened and be continuing, the Foundation may take any lawful action at law or in equity to enforce the performance and observance of any obligation, agreement, or covenant of the District under this Agreement.

## 17. Notices

All notices and other communications pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand delivery (and receipted for) or deposited in the United States mail, as certified mail, return receipt requested and postage prepaid, to the other party, addressed to the attention of its Chairman or Board Chair and at the location of its principal office.

## **18. Force Majeure**

Neither party shall be considered in default in the performance of its obligations to the extent that its performance of an obligation is prevented, hindered, or delayed by any cause beyond its reasonable control, including but not limited to acts of God, strikes, epidemics, floods, hurricanes, tornadoes, and power failures.

## **19. Interpretation**

This Agreement is intended to be a very long-term contract and, in light of the impossibility of foreseeing and dealing precisely with every possible contingency, is necessarily written in general terms. This Agreement is to be interpreted in light of the foregoing context and given a practical and equitable construction with a view toward furthering the common objects and purposes of the parties in a manner that is sensible, reasonable, and legal. Exceptions to the express language of this Agreement shall be implied where necessary or appropriate to achieve the foregoing purposes. All references to particular constitutional or statutory provisions shall be deemed to include future amendments to or replacements of or successors to such provisions.

*[Signatures on the following page]*

IN WITNESS WHEREOF, the parties have executed this Agreement on the day, month and year first written above.

WITNESSES:

Hospital Service District No. 1 of the Parish of Ouachita, State of Louisiana

Brandy N. Cooper  
Brandy N. Cooper

By: [Signature]  
Steve Hall  
Chairman of the Board of Commissioners

Living Well Foundation

Evanda R. Hattaway  
Evanda R. Hattaway

By: [Signature]  
Dave Norris  
Board Chair

Sworn to and subscribed before me, this 1<sup>st</sup> day of March, 2011.

[Signature]  
NOTARY

Print Name: Douglas C. Caldwell  
Notary/La. Bar No. LA Bar Roll #03783