



# CCMH Foundation

310 W. South Street  
Henrietta, Texas 76365

*"Supporting Healthcare in Clay County"*

## CO-EMPLOYMENT AGREEMENT

**Clay County Memorial Hospital Foundation**, hereinafter referred to as Foundation, and **Clay County Memorial Hospital**, hereinafter referred to as Co-Employer, wish to enter into a contract for the provision of employment services by Foundation for Co-Employer. Both parties understand and agree that Foundation will not assume the responsibility of providing employment services without adequate security by Co Employer. Titus, Co-Employer's payment of Foundation's initial Service Fee and Administrative Fee is regarded as a condition precedent to the parties' duty to perform and right to receive the obligations and benefits set forth below. Co-Employer's failure to satisfy the condition precedent abrogates the parties' rights and liabilities under the terms of this Agreement. Co-Employer retains the obligation to provide worker's compensation insurance, payroll, and all other employee benefits if: (1) it fails to disclose any employee to Foundation; or (2) it fails to make any payment to Foundation as required under the Agreement.

### TERMS AND CONDITIONS

#### 1. Purpose

Foundation agrees to provide employment services as described herein and Co-Employer agrees to accept such service, and both parties, jointly and severally, agree to abide by the covenants and terms hereinafter set forth.

#### 2. Term or Agreement

This Agreement shall remain in effect from pay period to pay period. At the conclusion of each pay period, Co-Employer's payment of Foundation's Service Fee and Account Reserve, and any applicable Administrative Fee, is a condition precedent to the parties' continued duty to perform and right to receive the obligations and benefits under the Agreement. Co-Employer's failure to satisfy the condition precedent abrogates the parties' rights and liabilities under the terms of this Agreement. However, Co-Employer's failure to satisfy the condition precedent shall not affect the financial obligations of the parties, which have accrued prior to such failure.

#### 3. Services

By this Agreement, Foundation agrees to assume certain of Co-Employer's common law employer responsibilities and liabilities. Foundation further agrees to hold Co-Employer harmless, subject to the terms of this Agreement, with respect to all such responsibilities and liabilities assumed. In that regard, Foundation and Co-Employer shall act as joint co-employers with respect to the employees of Co-Employer. Foundation is specifically responsible for payment of employee payroll; employer federal, state and local taxes; specified employee benefits; and all required federal, state and local employee payments or withholdings from wages.

Co-Employer and Foundation agree to the extent that Co-Employer has established and maintained an employee welfare benefit plan as defined by the Employee Retirement Income Security Act of 1974 as amended (ERISA), and to the extent that Co-Employer elects to provide, through such plan, welfare benefits for its employees

Foundation will hold and indemnify Co-Employer for direct, out-of-pocket costs, which result from Foundation's failure to pay any required benefit, or other payment specified. Direct out-of-pocket costs as hereinabove set forth shall not include, nor shall Foundation be responsible for, Co-Employer's loss of profit, business goodwill, consequential, special or incidental damages.

#### **4. Administration**

*Foundation may exercise the right to control and direct certain management functions including, but not limited to, recruiting, hiring, training, evaluation, supervision, discipline, replacement, termination of employees and the conducting of safety programs.* Co-Employer agrees to hold harmless, defend and indemnify Foundation for any expenses including court costs and legal fees incurred in defending any claims resulting from the willful misconduct or criminal activities of employees co-employed with Foundation and which occurred in the course of the co-employee's employment. Co-Employer will:

- a. periodically review and evaluate performance and wages of employees,
- b. verify all employee time submissions and assume responsibility for correct wage and hour submissions made to Foundation,
- c. administer unemployment claims and labor complaints,
- d. comply with all local, state and federal guidelines for taxes, wages, work rules, Fair Labor Standards Act, Equal Employment Opportunities, and discrimination rules.

#### **5. Insurance**

Co-Employer shall furnish and keep in full force and effect during the term of this Agreement, Workers' Compensation insurance covering all employees.

If any employer is to drive a vehicle of any kind in the context of covered employment, Co-Employer shall furnish liability insurance. The policy shall insure against public liability for bodily injury and property damage.

Co-Employer agrees to keep in full force and effect at all times during the term of this Agreement a comprehensive general liability insurance policy insuring Co-Employer against bodily injury and property damage liability caused by Co-Employers premises-operations, completed operations and/or products.

Co-Employer shall provide evidence of the insurance coverage required by this Section by causing the insurance carrier to issue a certificate of insurance to Foundation, allowing not less than thirty (30) days advance notice of cancellation or material change.

#### **6. Approval of Employees**

Foundation shall have no obligations under this Agreement to Co-Employer or to employees co-employed with Co-Employer unless Co-Employer obtains and delivers to Foundation all documentation required:

- a. under the terms and conditions set forth in the Immigration and Naturalization Laws of the United States;
- b. by the Internal Revenue Service, including a properly completed W.4;
- c. under the laws or regulations of any agency or jurisdiction.

#### **7. Safe Work Environment**

Co-Employer agrees to comply, at its expense, with any laws, regulations, ordinances, rules or directives imposed by any controlling federal, state or local government agency having jurisdiction over the work place, health and safety, or any worker's compensation carrier which may insure Co-Employer.

Co-Employer further agrees to:

- a. Provide or ensure the use of all safety equipment and/or personal protective equipment;
- b. Allow the inspection of its premises to examine whether employees are exposed to an unsafe work place or a peculiar risk of harm;
- c. Report immediately all employee accidents and injuries.

Nothing in this section shall constitute a release of Co-Employer's duties under the laws of any jurisdiction or as set forth in this Agreement. Further, by this section, Foundation assumes no duty to monitor workplace conditions, remedy unsafe conditions, or otherwise ensure the safety of employees.

#### **8. Hold Harmless**

Co-Employer agrees to indemnify, defend, and hold Foundation harmless from and against any and all liability, expense (including Court costs and attorney fees) and claims for damage of any nature whatsoever, whether known or unknown as though expressly set forth and described herein, which Foundation may incur, suffer, become liable for, or which may be asserted or claimed against Foundation as a result of the acts, errors, or omissions of the Co-Employer or employees of Co-Employer including, without limitation, any violation or breach of Section 7 by Co-Employer. This Section 8 shall be inclusive and not exclusive of any other part of this Agreement.

*In the event of any payment by Foundation of any liability of Co-Employer. Foundation shall be subrogated to the extent of such payment to all rights of recovery thereof, and Co-Employer shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable Foundation to effectively bring suit in the name of Co-Employer.*

#### **9. Miscellaneous Charges**

Foundation reserves the right to establish charges for returned checks or bank items, freight or delivery charges and/or miscellaneous charges incurred in the normal course of business.

#### **10. Material Breach**

The following actions or failure to act either singularly or jointly shall constitute material breach of this Agreement:

- a. Failure to pay the Service Fees when due or to comply with any payment of fee requirement of this Agreement;
- b. Failure to provide insurance required by Section 5 of this Agreement;
- c. Failure to comply with any local, state or federal regulation or directive for wages, work rules, discrimination or employment opportunity as required by Section 4 of the Agreement;
- d. Failure to provide a safe work environment or comply with any directive regarding the health and safety of employees as required by Section 7 of this Agreement;
- e. Failure to comply with any other provision in this Agreement.

#### **11. Entire Agreement**

This Agreement constitutes the entire agreement between the parties as to this subject matter and may be executed by an Officer of Foundation. An Officer of Foundation must approve any modification, addition or deletion of this Agreement.

#### **12. Waiver**

Failure by either party to require performance or to claim a breach of the Agreement shall not constitute a waiver of any provision of this Agreement, any subsequent breach, nor prejudice either with regard to action for a subsequent breach.

### **13. Notices**

Any notice or demand required under this Agreement shall be given by personal delivery in writing, or registered or certified mail. The notice or demand shall be sent to the address specified by the recipient party and shall be effective 48 hours after mailing. In matters, which require immediate communication, telephone communication may be used with written confirmation.

### **14. Governing Law**

The laws of the state of Texas shall govern this Agreement.

### **15. Partial Invalidity**

Should any term, warrant, covenant, condition or provision of this Agreement be held to be invalid or unenforceable, the balance of this Agreement shall remain in full force and shall stand as if the unenforceable provision did not exist.

### **16. Dispute Resolution**

Foundation and Co-Employer mutually contract and agree that any and all claims, disputes or controversies, whether based on contract, quasi-contract, tort, offenses, quasi-offices or otherwise arising out of or in any way relating to this contract or the breach or termination of same, whether based on the Constitution, statutes, Code(s), or common law of the United States or of any State, including the arbitrability of any claim, dispute or controversy, shall be exclusively resolved by the parties first trying to settle in a Mediation under the Mediation Rules of, administered by and conducted by the Neutrals of the National Association for Dispute Resolution, Inc., failing which, settlement of the dispute shall be by binding arbitration conducted under the commercial Arbitration Rules of, administered by and conducted before an Arbitration Tribunal of Neutrals of the National Association for Dispute Resolution, Inc.

### **17. Attorney Fees**

If suit is brought by either party regarding a breach, default, or to enforce the terms of this Agreement, the prevailing party in such action shall receive reasonable attorney's fees and costs, interest and such other relief as a court may determine.

### **18. Section Headings**

The Section headings of this Agreement are for reference only and shall not be considered in the interpretation of this Agreement.

### **19. Termination of the Agreement**

This Agreement may be terminated by either party upon thirty (30) days notice to the other party. Foundation may terminate this Agreement at any time in the event of a "material breach." as described in Section 10, by Co-Employer.

Termination of the Agreement shall terminate the co-employment relationship between Foundation, Co-Employer and their co-employees. This includes, but is not limited to, any and all benefits provided under the Agreement. Termination of this Agreement shall not affect the financial obligations of the parties, which have accrued prior to such termination.

### **20. Fees for Service and Reserves**

The following fees and charges are subject to change:

- a) set-up fees for initial enrollment of employees will be \$25 per employee,
- b) set-up fee for each subsequent new hire will be \$25,
- c) administrative cost of three percent (3%) of gross payroll.

**Clay County Memorial Hospital Foundation**

Signature Peggy Wines  
Printed Name Peggy Wines  
Title Foundation Chairman

**Co-Employer**

Signature Man Ruddy  
Printed Name Man Ruddy  
Title Board Chairman

Date November 24, 2003  
Executed at Denette Tx