

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
AND
THE HOSPITAL AUTHORITY OF THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY**

Whereas, the State of Tennessee (hereinafter "State") proposes that the Metropolitan Hospital Authority (hereinafter "MHA") enter into a revenue transfer agreement under which MHA will transfer to the State an amount not to exceed Thirteen Million Three Hundred Twenty-two Thousand Seven Hundred Seventy Dollars (\$13,322,770) for the period May 1, 2005 through June 30, 2005; and

Whereas, in return for the Revenue Transfer, the State agrees to pay to MHA on behalf of the Metropolitan Hospital Authority an Increased Reimbursement; and

Whereas, in return for the Revenue Transfer, the State agrees to pay two percent (2%) Additional Payment fee.

Therefore:

A. DUTIES OF THE PARTIES:

1. The Metropolitan Government of Nashville and Davidson County (hereinafter "Metro") agrees to transfer funds to MHA in the amount not to exceed Thirteen Million Three Hundred Twenty-two Thousand Seven Hundred Seventy Dollars (\$13,322,770) for the period of May 1, 2005 through June 30, 2005.

2. MHA agrees to the following:

- a) Accept the funds – Disproportionate Share Payment and the two percent (2%) Additional Payment;
- b) Deposit the funds in accordance with the Revenue Contract between MHA and the State;
- c) Accept the Increased Reimbursement;
- d) Accept the two percent (2%) Additional Payment; and
- e) Pay both the Disproportionate Share and the Additional Interest Payment back to Metro.

3. Metro further agrees to accept the payment of both the Increased Reimbursement and the Additional Payment from MHA.
4. Both parties agree that the entire transaction and all of the funds will be collected, administered, and distributed by the Department of Finance of the Metropolitan Government.
5. Disapproval of the Agreement. Should HCFA, or any agency or department of the United States Government, the federal, state or local courts, and/or the State of Tennessee and any of its departments, agencies or employees disallow any part of the intergovernmental transfer, the transfer will be reversed. The State will return all funds transferred from MHA under this Agreement back to MHA. MHA will then return all funds to Metro. Further, MHA will return the disproportionate share payment paid to Bordeaux Hospital Nursing facility to the State. MHA will return the two percent (2%) administrative fee paid under this Agreement to Metro. This paragraph shall survive the expiration or termination of this Agreement for a period of ten (10) years.
6. Voiding the Agreement. This Agreement shall be null and void if any of the following events occur:
 - a) The Revenue Transfer between MHA and the State for the intergovernmental transfer fails to be approved by all Parties and fully executed;
 - b) The Intergovernmental Agreement between the Metropolitan Government and MHA fails to be approved by all Parties and fully executed;
 - c) The legislation approving the transfer of funds from the Metropolitan Government to MHA is not approved by the Metropolitan Council; or
 - d) The legislation approving the Intergovernmental Agreement between the Metropolitan Government and MHA is not approved by the Metropolitan Council.

B. AGREEMENT TERM:

Agreement Term. This Agreement shall be effective for a period commencing on May 1, 2005 through June 30, 2005.

C. PAYMENT TERMS AND CONDITIONS:

1. The maximum intergovernmental transfer permissible under the terms of this Agreement shall not exceed Thirteen Million Three Hundred Twenty-two Thousand Seven Hundred Seventy Dollars (\$13,322,770) for the period of May 1, 2005 through June 30, 2005.

2. Any intergovernmental transfer made by Metro shall, under all circumstances, either be transferred to the State pursuant to the Revenue Transfer Agreement between the State and MHA or returned to Metro.

3. No payment shall be made under the terms of this Agreement without prior Health Care Financing Administration (HCFA) approval of the appropriate Title XIX Medicaid State Plan Amendment.

4. No payment shall be made under the terms of this Agreement without proper budget authority granted by legislative approval by the Council of The Metropolitan Government of Nashville and Davidson County.

D. STANDARD TERMS AND CONDITIONS:

1. Liability. MHA and Metro are governmental entities and as such any suit against either must be pursuant to the laws of the State of Tennessee including but not limited to Tenn. Code Ann. § 29-20-101, *et seq.* Neither Metro nor MHA will indemnify, defend or hold harmless in any fashion the State from any claims arising from any failure, regardless of any language in any attachment or other document that the State may provide.

2. Required Approvals. Metro is not bound by this Agreement until it is approved by the appropriate Metro officials and the Metropolitan Council.

3. Modification and Amendment. This Agreement may be modified only by a written amendment executed by all parties hereto and approved by the appropriate officials and the Metropolitan Council.

4. Termination for Convenience. The Agreement may be terminated by Metro by giving ten (10) days written notice to MHA. Said termination shall not be deemed a Breach of Contract by Metro. Should Metro exercise this provision, Metro shall have no liability to MHA.

5. Termination – Funding. Should funding for this Agreement be discontinued, Metro shall have the right to terminate the Agreement immediately upon written notice to MHA.

6. Termination for Cause. If either party fails to properly perform or fulfill its obligations under this Agreement in a timely or proper manner, or violates any terms of this Agreement, the non-breaching party shall have the right to immediately terminate the Agreement. The breaching party shall compensate the non-breaching party for completed services.

7. Subcontracting. Neither party may assign this Agreement or enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the other party. If such subcontracts are approved, they shall contain, at a minimum, sections of this Agreement pertaining to “Nondiscrimination” (section D.8).

8. Nondiscrimination and Compliance With the Law. MHA and Metro shall comply with all applicable state and federal laws and regulations in the performance of this Agreement. Both parties agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the parties on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. It is the policy of MHA and the Metropolitan Government not to discriminate on the basis of age, race, sex, color, national origin or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services or activities.

9. Records. MHA shall maintain documentation for its transactions with Metro under this Agreement. The books, records, and documents of MHA, insofar as they relate to work performed or money paid under this Agreement, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by Metro, or its duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

10. Strict Performance. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision.

11. Independent Contractor. The parties hereto, in the performance of this Agreement shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create an employer/employee relationship or to all either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. Both parties agree that they will be subject to the exclusive jurisdiction of the courts of Davidson County in actions that may arise under this Agreement.

13. Completeness. This Agreement is complete and contains the entire understanding between the parties relating to the subject matter to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

14. Severability. If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.

15. Communications and Agreements. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

Metro:

Mr. Gene Nolan
Metropolitan Department of Finance
Director's Office
225 Polk Avenue, Suite 210
Nashville, Tennessee 37203

MHA:

Metropolitan Hospital Authority
Chief Financial Officer
1818 Albion Street
Nashville, Tennessee 37208

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m., CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

16. Effective Date. This Agreement shall not be binding upon the parties until it has been signed first by MHA and then by the authorized representatives of the Metropolitan Government, approved by resolution of the Metropolitan Council, and has been filed in the Office of the Metropolitan Clerk. When it has been so signed and filed, this Agreement shall be effective as of the date first written above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY:

Bill Purcell, Metropolitan Mayor

ATTEST:

Marilyn Swing, Metropolitan Clerk

Date: _____

APPROVED AS TO AVAILABILTY OF FUNDS:

David Manning, Director of Finance

APPROVED AS TO FORM AND LEGALITY:

Metropolitan Attorney

METROPOLITAN HOSPITAL AUTHORITY:

RECOMMENDED:



Chief Executive Officer



Chairman, Board of Trustees