

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2021-27**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA CONTINUING TO SUPPORT THE CREATION OF A SPECIAL TAXING DISTRICT BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS TO SUPPORT THE INFRASTRUCTURE OF CONSTRUCTING AND OPERATING A NEW HOSPITAL IN MARATHON**

**WHEREAS**, the City of Marathon recognizes the importance of and supports retaining a community hospital for quality health care in Marathon and the Middle Keys while aiding in the investment in our community and preserving our home values by maintaining health care service and the construction of our community hospital; and

**WHEREAS**, Fisherman's Community Hospital is closed due to the effects of Hurricane Irma; and

**WHEREAS**, Baptist Health South Florida, which owns Fisherman's Community Hospital, has announced plans to build an entirely new hospital in Marathon; and

**WHEREAS**, special districts ensure accountability of public resources, since special districts are held to the same high standards as municipalities and counties; and

**WHEREAS**, this Council is in support of the creation of a special taxing district from the 47<sup>th</sup> mile marker to the 63<sup>rd</sup> mile marker for a term of ten years or less at a millage rate of 0.5 mils or less; and

**WHEREAS**, the Board of County Commissioners of Monroe County has enacted an ordinance creating a municipal service taxing unit (MSTU) within Monroe County to levy and collect ad valorem taxes for indigent health care services within designated incorporated and unincorporated areas of Monroe County, including properties located within Marathon County Election Precincts 18 through 22 and 23.01, 23.02, 23.03, and 23.04, approximately corresponding to mile markers 40 through 66 inclusive; and

**WHEREAS**, the City Council of the City of Marathon voted to consent to the inclusion of the incorporated area of Marathon, Florida within the MSTU subject to annual review according to Ordinance 2018-08; and

**WHEREAS**, this Council has determined that it would be in the best interest of the owners of properties within the incorporated area of Marathon, Florida to extend said consent for an additional year.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA THAT:**

**SECTION 1.** The above recitals are true, correct, and incorporated herein by this reference.

**SECTION 2.** The City Council continues to support the creation of a special taxing district for a term not to exceed ten years and at a millage rate not to exceed 0.5 mils to support the infrastructure investment of constructing and operating a new hospital in Marathon.

**SECTION 3.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13<sup>th</sup> DAY OF APRIL, 2021.**

**THE CITY OF MARATHON, FLORIDA**

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**Luis Gonzalez, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

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Steven Williams, City Attorney

## HEALTHCARE SERVICES AGREEMENT

**THIS HEALTHCARE SERVICES AGREEMENT** (this "Agreement") is entered into this \_\_\_ day of May, 2019 (the "Effective Date"), by and between **FISHERMEN'S HEALTH, INC.**, a Florida not-for-profit corporation ("Fishermen's"), and **MONROE COUNTY**, a political subdivision of the State of Florida ("County"). Fishermen's and County each are called a "Party," and together are called the "Parties."

### RECITALS

**WHEREAS**, County has created the Middle Keys Health Care Municipal Services Taxing Unit (the "MSTU") pursuant to Ordinance No. 012-2018 (the "Ordinance"), to ensure the availability of hospital services within the area covered by the MSTU (the "MSTU Area") by financially supporting the delivery of hospital services to patients who are unable to pay the full costs of such services; and

**WHEREAS**, the City of Marathon and the City of Key Colony Beach have consented by ordinances adopted by their respective municipalities to be included within the MSTU; and

**WHEREAS**, the Ordinance authorizes County to levy and collect taxes within the MSTU Area, and to enter into contractual obligations to accomplish the MSTU's purpose; and

**WHEREAS**, Fishermen's is controlled by Baptist Health South Florida, Inc.; and

**WHEREAS**, Fishermen's is currently operating Fishermen's Community Hospital (the "Hospital"), a critical access hospital consisting of a temporary modular facility within the MSTU Area and serving the healthcare needs of citizens of and visitors to the MSTU Area; and

**WHEREAS**, Fishermen's is committed to constructing a permanent hospital facility within the MSTU Area at a cost of approximately Forty Million Dollars (\$40,000,000.00); and

**WHEREAS**, the Parties desire to enter into this Agreement to provide for reimbursement to Fishermen's for inpatient and outpatient hospital services provided to Eligible Individuals, as defined below, at the Hospital from ad valorem taxes collected by the MSTU; and

**WHEREAS**, County is willing to provide funding to Fishermen's for its costs of providing healthcare services, directly or through one or more affiliates, within the MSTU Area (the "Services"), to individuals (1) who are indigent, meaning that their gross annual household incomes are less than or equal to 200% of the Federal Poverty Guidelines for Florida and less than or equal to \$75,000; (2) who are not enrolled in the Medicare Program or covered by commercial insurance, a commercial health maintenance organization, third party liability, or a self-funded employer plan, but who may be enrolled in the Medicaid Program or covered by a Medicaid health maintenance organization or Medicaid insurance plan; and (3) whose charges for the Services are reduced, or waived in their entirety, by Fishermen's based on their ability to pay ("Eligible Individuals"), in accordance with the terms and conditions of this Agreement; and

WHEREAS, County has determined that it is consistent with the terms of the Ordinance and is otherwise in the best interest of the health, safety, and welfare of the citizens and taxpayers within the MSTU Area to enter into this Agreement; and

WHEREAS, County has approved the signing of this Agreement at a duly noticed meeting of its Board of County Commissioners at which a quorum was present.

### OPERATIVE TERMS

NOW, THEREFORE, in consideration of the mutual promises set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

#### ARTICLE I DEFINITIONS

- 1.1 “Account” has the meaning set forth in Section 5.2.
- 1.2 “Agreement” has the meaning set forth in the opening paragraph above.
- 1.3 “AHCA” means the Florida Agency for Health Care Administration.
- 1.4 “Annual Costs” means all Quarterly Costs accrued by Fishermen’s during a Contract Year.
- 1.5 “Clerk” has the meaning set forth in Section 3.4.
- 1.6 “Commencement Date” shall mean October 1, 2019.
- 1.7 “Contract Year” means (a) the one-year period beginning on the Commencement Date; (b) each successive one-year period thereafter during the Term; and (c) if this Agreement expires or is terminated prior to the end of a one-year period described in clause (a) or (b) of this definition, the partial year commencing with the beginning of such period and ending on the date of expiration or termination of this Agreement.
- 1.8 “Contract Quarter” means (a) each three-month period during a Contract Year, with the first such period beginning on the first day of such Contract Year; and (b) if this Agreement expires or is terminated prior to the end of a three-month period described in clause (a) of this definition, the partial three-month period commencing with the beginning of such period and ending on the date of expiration or termination of this Agreement.
- 1.9 “County” has the meaning set forth in the opening paragraph above.
- 1.10 “County Budget Director” has the meaning set forth in Section 3.4.
- 1.11 “Custodian” has the meaning set forth in Section 8.1.
- 1.12 “Effective Date” has the meaning set forth in the opening paragraph above.

- 1.13 “**Eligible Individual**” has the meaning set forth in the Recitals.
- 1.14 “**Federal Poverty Guidelines**” are the standard of the same name issued annually by the Department of Health and Human Services, which is used to determine eligibility for certain federal government programs and benefits.
- 1.15 “**Fishermen’s**” has the meaning set forth in the opening paragraph above.
- 1.16 “**Governmental Authority**” means any government, or any agency, bureau, board, commission, court, department, political subdivision, tribunal, special district, or other instrumentality of any government, whether federal, state, or local.
- 1.17 “**HIPAA**” has the meaning set forth in Section 9.1.
- 1.18 “**Hospital**” has the meaning set forth in the Recitals.
- 1.19 “**Included Records**” has the meaning set forth in Section 8.1.
- 1.20 “**Law**” means any constitutional provision, law, statute, rule, regulation, code, ordinance, binding resolution, order, ruling, policy, or directive adopted or issued by any Governmental Authority.
- 1.21 “**MAC**” means Fishermen’s Medicare Administrative Contractor.
- 1.22 “**MSTU**” has the meaning set forth in the Recitals.
- 1.23 “**MSTU Area**” has the meaning set forth in the Recitals.
- 1.24 “**Ordinance**” has the meaning set forth in the Recitals.
- 1.25 “**Party**” or “**Parties**” has the meaning set forth in the opening paragraph above.
- 1.26 “**Person**” means any individual, corporation, trust, limited liability company, general partnership, limited partnership, limited liability partnership, association, joint stock association, joint venture, firm, business trust, land trust, cooperative, foreign association, or similar legal organization.
- 1.27 “**Quarterly Costs**” means the aggregate costs accrued by Fishermen’s as a result of providing the Services to Eligible Individuals during a Contract Quarter, less any Third Party Payments received by Fishermen’s during the same Contract Quarter. “Quarterly Costs” shall be construed broadly to include any and all direct and indirect costs that reasonably relate to the provision of the Services to Eligible Individuals, including overhead, administrative, and home office costs as generally defined by Medicare reasonable cost principles at 42 C.F.R. Part 413. For purposes of determining the funding available to Fishermen’s under this Agreement, however, the cost for services to Eligible Individuals shall be determined using the most current interim rates established by the MAC pursuant to 42 C.F.R Part 413, Subpart E, §413.64(a), typically established as a per diem rate for routine inpatient care, and as a percentage of charges for inpatient ancillary services and general outpatient services. Such interim rates, as updated by

the MAC from time to time, shall be deemed the final determination of "Quarterly Costs," without any retrospective settlement for reconciliation to actual costs, as is done for Fishermen's Medicare reimbursement determination. In the case of an Eligible Individual whose charges are reduced, but not waived in their entirety, by Fishermen's, only the percentage of Fishermen's costs that is directly proportional to the percentage by which the Eligible Individual's charges were reduced by Fishermen's shall be included in the calculation of Quarterly Costs.

1.28 "**Request**" has the meaning set forth in Section 3.4.

1.29 "**Services**" has the meaning set forth in the Recitals.

1.30 "**Term**" has the meaning set forth in Section 7.1.

1.31 "**Third Party Payor**" means any individual, entity, or program (other than County and this Agreement) that is, or may be, obligated to pay for all or a part of the Services provided to Eligible Individuals, including, without limitation, any workers' compensation carrier, tortfeasor, insurer of a tortfeasor, or government entity, including, without limitation, the Medicaid program or Medicaid health maintenance organizations or Medicaid insurance plans.

1.32 "**Third Party Payment**" means any funds paid by a Third Party Payor to or for the benefit of Fishermen's, whether by contract, court judgment, settlement agreement, or other arrangement, with respect to Fishermen's provision of the Services to Eligible Individuals.

## **ARTICLE II FISHERMEN'S REPRESENTATIONS AND WARRANTIES**

In order to induce County to enter into this Agreement, Fishermen's makes the following representations and warranties to County, each of which shall survive the execution and delivery of this Agreement, and will be and remain true and correct at all times:

2.1 **Lawful Existence.** Fishermen's is a Florida not-for-profit corporation validly existing under the Laws of the State of Florida and duly authorized to operate in the State of Florida; it has full power and capacity to own its properties, to carry on its business as presently conducted by it, and to enter into the transactions contemplated by this Agreement.

2.2 **Authorized Action.** Fishermen's execution, delivery and performance of this Agreement have been duly authorized by all necessary individual, partnership, corporate and legal actions, and do not and will not conflict with or constitute a default under any indenture, agreement, or instrument to which Fishermen's is a party or by which Fishermen's may be bound or affected.

2.3 **No Pending Proceedings.** Except as otherwise previously or concurrently disclosed to County in writing, there are no actions, suits or proceedings now pending or (to the best of Fishermen's knowledge) now threatened against or affecting Fishermen's or its property before any court of Law or equity or any administrative board or tribunal or before or by any Governmental Authority.

2.4 **Valid and Binding Obligation.** This Agreement constitutes the valid and binding obligation of Fishermen's, enforceable against Fishermen's, and its successors and assigns, in accordance with their respective terms, subject to bankruptcy, insolvency, and other similar Laws affecting the rights of creditors generally.

2.5 **Performance of Duties.** Fishermen's, intending to be legally bound, hereby promises to County the due and punctual observance, performance, and discharge of any and all obligations of Fishermen's contained in this Agreement.

### ARTICLE III FISHERMEN'S OBLIGATIONS

3.1 **Construction of Permanent Hospital Facility.** Fishermen's intends to construct a permanent hospital facility in Marathon, Florida on approximately the schedule set forth in **Exhibit A.** Fisherman's understands that, as provided in Section 5.4, prior to completion of construction, ongoing construction of a permanent hospital facility on approximately the schedule set forth in **Exhibit A** is a condition to receipt of the payments set forth in Section 5.3.

3.2 **Provision of Services to Eligible Individuals.** During the Term, Fishermen's shall provide the Services to Eligible Individuals.

3.3 **Third Party Payments.** Fishermen's shall make reasonable efforts to ascertain whether each Eligible Individual is eligible for any Third Party Payment with respect to the Services provided by Fishermen's to such Eligible Individual and, if so, Fishermen's shall use reasonable efforts to recover from the applicable Third Party Payor the amount of such Third Party Payment before looking to County for reimbursement for the Services.

3.4 **Requests for Reimbursement.** After the last day of each Contract Quarter, Fishermen's shall give notice to the Monroe County Budget Director ("County Budget Director") of its request for payment of its Quarterly Costs for the immediate prior Contract Quarter (each a "Request"), which Request shall be in a form reasonably satisfactory to the County Budget Director and the Monroe County Clerk of Court (the "Clerk"), and shall state, with respect to each Eligible Individual who (a) received Services from Fishermen's during the applicable Contract Quarter, (b) received Services from Fishermen's during a previous Contract Quarter and was determined by Fishermen's to be an Eligible Individual during the applicable Contract Quarter, or (c) received Services from Fishermen's during a previous Contract Quarter and Fishermen's received a Third Party Payment during the applicable Contract Quarter:

- ✓• Date of Service
- ✓• Unique Patient Identifier *ECID #*
- ✓• Patient Zip Code *XXXXXXXX*
- ✓• General Description of Services Provided *- need (DRG?)*
- Total Cost of Services Provided *-*
- Efforts to Obtain Third Party Payments *- policy per dia*
- ✓• Third Party Payments Received *- website budget*
- ✓• Net Amount Due to Fishermen's

Fishermen's shall make reasonable efforts not to request duplicate payments from County for any Services furnished to Eligible Individuals, and County shall not be required to make duplicate payments for any such Services. Fishermen's shall submit its Request for the final Contract Quarter no sooner than ninety (90) days, and no later than one hundred and eighty (180) days, after the expiration or termination of this Agreement. Fishermen's Request for the final Contract Quarter shall include Third Party Payments received during the final Contract Quarter or within ninety (90) days after the expiration or termination of this Agreement.

3.5 **Compliance with Laws.** In performing all of its obligations contained in this Agreement, Fishermen's shall at all times comply with federal, state, and local Laws.

#### **ARTICLE IV COUNTY'S REPRESENTATIONS AND WARRANTIES**

In order to induce Fishermen's to enter into this Agreement, County makes the following representations and warranties to Fishermen's, each of which shall survive the execution and delivery of this Agreement, and will be and remain true and correct at all times:

4.1 **Lawful Existence.** County is a political subdivision of the State of Florida, duly organized and validly existing under the Laws of the State of Florida. County has full power and capacity to carry on its business as presently conducted by it, and to enter into the transactions contemplated by this Agreement.

4.2 **Authorized Action.** County's execution, delivery, and performance of this Agreement have been duly authorized by all necessary legal actions and do not and will not conflict with or constitute a default under any indenture, agreement, or instrument to which County is a party or by which County may be bound or affected.

4.3 **Valid and Binding Obligation.** This Agreement constitutes the valid and binding obligation of County, enforceable against County, and its successors and assigns, in accordance with their respective terms, subject to bankruptcy, insolvency, and other similar Laws affecting the rights of creditors generally.

4.4 **Performance of Duties.** County, intending to be legally bound, hereby promises to County the due and punctual observance, performance, and discharge of any and all obligations of County contained in this Agreement.

#### **ARTICLE V COUNTY OBLIGATIONS**

5.1 **Bond Validation.** If County files a bond validation proceeding, pursuant to chapter 75, Florida Statutes, arising out of or relating to this Agreement, County shall make all reasonable efforts to obtain a prompt final judgment from the trial court validating this Agreement. If this Agreement is invalidated by the trial court, County shall make reasonable efforts to appeal the final judgment. If a final judgment invalidating this Agreement is affirmed on appeal, and no further appeal is available, this Agreement shall be void *ab initio*.



5.2 **Levy of Taxes.** On an annual basis, commencing on the Effective Date, County intends, but is not obligated, to levy sufficient taxes to pay (a) all anticipated payments under Section 5.3 for the next Contract Year, plus (b) the amount of Annual Costs that remain unpaid for one or more prior Contract Years. Fishermen's may submit to County, and County shall consider, but is not bound by, an estimate of Fishermen's Annual Costs for each Contract Year. County shall deposit and hold any tax funds collected pursuant to the Ordinance in a separate fund or account (the "Account") from other County funds. This Agreement is subject to annual appropriation by the Board of County Commissioners.

5.3 **Payments.** County shall review any Request submitted by Fishermen's pursuant to Section 3.4 within thirty (30) days of receipt. Within ten (10) days after the expiration of such thirty (30) day period, County Budget Director shall notify Fishermen's if any deficiencies are present, and otherwise shall notify the Clerk to make payment to Fishermen's in the amount of the Quarterly Costs for the applicable Contract Quarter, plus the amount of Quarterly Costs that remain unpaid for one or more prior Contract Quarters; provided, however, that (a) each payment shall be limited to the balance of funds collected by County and maintained in the Account, and (b) the total amount of all payments to Fishermen's during the Term shall not exceed Fifteen Million Dollars (\$15,000,000). Pursuant to section 218.74(2), Florida Statutes, the Clerk shall make payment within forty-five (45) days after receiving such a request from County Budget Director, upon presentation of a proper invoice in a form acceptable to the Clerk. The Clerk shall make the payment to Fishermen's by check, to an address, routing number, and account number supplied to County by Fishermen's. The payments are solely to pay for the overall public benefit served by Fishermen's provision of the Services. Nothing in this Agreement shall be construed to create any right, interest, or claim for Eligible Individuals, or to impose any liability on County or Fishermen's except as provided under this Agreement.

5.4 **Payments Prior to Completion of Construction.** County Budget Director shall not be required to notify the Clerk to make payment to Fishermen's prior to completion of the construction of a permanent hospital facility by Fishermen's, if the construction is not proceeding on approximately the schedule set forth in **Exhibit A**. If County Budget Director does not notify the Clerk to make payment to Fishermen's pursuant to this Section 5.4, County Budget Director shall, within ten (10) days after County Budget Director becomes aware that the construction is back on approximately the schedule set forth in **Exhibit A**, or is completed, notify the Clerk to make payment to Fisherman's.

5.5 **Compliance with Laws.** In performing all of its obligations contained in this Agreement, County shall at all times comply with federal, state, and local Laws.

## **ARTICLE VI INDEMNIFICATION**

Fishermen's shall indemnify and hold harmless County, and its officers, employees, directors, agents, contractors, consultants, and attorneys, from third party liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees and court costs at all trial and appellate levels, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Fishermen's and Persons employed or utilized by Fishermen's in the performance of this Agreement. This Article VI shall survive the expiration or termination of

this Agreement, or any portion of it. Nothing in this Article VI constitutes (1) a waiver of County's sovereign immunity or the liability limits stated in section 768.28, Florida Statutes; or (2) consent by County to be sued by any third party in any matter arising out of this Agreement.

## ARTICLE VII TERM AND TERMINATION

7.1 **Term.** Except as expressly stated herein, the "Term" shall mean that period beginning on the Commencement Date and ending ten (10) years after the Commencement Date.

7.2 **Termination.**

(a) **Mutual Agreement.** This Agreement may be terminated at any time upon the signed, written agreement of the Parties.

(b) **Change in Law.** If there is a change in Law that materially and adversely affects the legal relationship or financial arrangement between the Parties under this Agreement, the Parties shall negotiate in good faith to amend this Agreement so as to eliminate such material and adverse effect. If the Parties have not signed and delivered an amendment to this Agreement during the six (6) month period after such change in Law occurs, either Party may terminate this Agreement by giving the other Party a notice of termination, in which event this Agreement shall terminate thirty (30) days after the notice of termination has been given.

(c) **Material Breach.** If either Party is in material breach of this Agreement, the other Party may give the breaching Party notice of such material breach. If the breaching Party has not cured such breach within one-hundred twenty (120) days (or thirty (30) days in the case of a breach by County for the failure to make a payment required under Article III) after the notice of breach has been given to the breaching Party, the non-breaching Party may terminate this Agreement by giving thirty (30) days' prior notice to the breaching Party, and this Agreement shall terminate at the end of such thirtieth (30th) day.

(d) **Discontinuance of Operation of Hospital.** This Agreement shall terminate immediately if Fishermen's permanently ceases to operate the Hospital.

## ARTICLE VIII RECORDS AND AUDITS

8.1 **Records.** County acknowledges that (a) Fishermen's is a private corporation; and (b) pursuant to section 119.071(3)(a), Florida Statutes, Fishermen's is not required to respond to requests for public records directed by third parties to Fishermen's. If, however, County receives a request for public records directly and specifically relating to Fishermen's performance under this Agreement ("Included Records"), and County does not possess the requested Included Record, the County Custodian of Public Records identified below (the "Custodian") shall immediately notify Fishermen's of the request, and Fishermen's shall provide the requested Included Record to the Custodian within a reasonable time. Fishermen's shall provide Included Records stored electronically to the Custodian in a format compatible with County's information technology systems. Fishermen's shall ensure that Included Records that are exempt, or

confidential and exempt, from chapter 119, Florida Statutes are not disclosed except as authorized by Law. Fishermen's shall keep and maintain such Included Records, in accordance with generally accepted accounting principles, during the Term and for a period of five (5) years after the expiration or termination of this Agreement, and otherwise shall continue to comply with this Section 8.1 during such five (5) year period. IF FISHERMEN'S HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO FISHERMEN'S DUTY TO PROVIDE INCLUDED RECORDS RELATING TO THIS AGREEMENT, FISHERMEN'S SHALL CONTACT THE CUSTODIAN AT (305) 292-3470, [Bradley-brian@monroecounty-fl.gov](mailto:Bradley-brian@monroecounty-fl.gov), C/O MONROE COUNTY ATTORNEY'S OFFICE, 1111 12th STREET, SUITE 408, KEY WEST, FLORIDA 33040.

8.2 **Audit.** Either Party may, during usual business hours after reasonable notice to the other Party, and at requesting Party's sole expense, audit, examine, and make copies of records directly and specifically relating to the other Party's performance under this Agreement; provided, however, that a Party may not conduct such an audit more than twice per Contract Year. If County finds that any payments to Fishermen's pursuant to section 5.3 were not earned through the provision of Services to Eligible Individuals during the Term, County promptly shall notify Fisherman's. If Fishermen's agrees in writing, or it is established by a non-appealable final judgment of a court of competent jurisdiction, that any payments to Fishermen's pursuant to Section 5.3 were not earned through the provision of Services to Eligible Individuals during the Term, Fishermen's promptly shall refund County, together with interest calculated pursuant to section 55.03, Florida Statutes, running from the date the funds were paid to Fishermen's.

## ARTICLE IX GENERAL PROVISIONS

9.1 **HIPAA and the HITECH Act.** To the extent applicable to this Agreement, the Parties shall comply with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, including, without limitation, the Standards for Electronic Transactions and Code Sets (45 CFR Parts 160 and 162), the Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164), the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Parts 160 and 164), and such other regulations that may, from time to time, be promulgated thereunder, including, without limitation, amendments to such Laws pursuant to the Health Information Technology for Economic and Clinical Health Act (part of the American Recovery and Reinvestment Act of 2009), and the regulations promulgated thereunder (collectively, "HIPAA"). Neither Party shall use or disclose any Protected Health Information or Individually Identifiable Health Information, as defined at 45 CFR § 160.103, other than as is permitted from time to time under HIPAA. The Parties have entered into a Business Associate Agreement pursuant to HIPAA, with Fishermen's as the Covered Entity and County as the Business Associate.

9.2 **Relationships of Parties.** Nothing contained in this Agreement shall be deemed to create the relationship of principal and agent, partnership, or joint venture. The relationship between the Parties under this Agreement is solely that of independent contracting parties.

9.3 **Rights and Remedies.** Upon any breach of this Agreement, which has not been cured within the applicable cure period set forth in Section 7.2(c), in addition to any remedies set forth in this Agreement, the non-breaching Party shall be entitled to all legal and equitable remedies.

9.4 **Attorneys' Fees and Expenses.** In the event of any dispute arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover from the other Party the prevailing Party's legal fees and expenses including, without limitation, such fees and expenses incurred before or during trial, on appeal, or in bankruptcy proceedings.

9.5 **Notices.** All notices or communications required or permitted hereunder shall be in writing, and shall be delivered personally, delivered by a recognized courier service, or sent by certified or registered mail, return receipt requested, postage prepaid, in any such case as follows:

If to County: Monroe County Administrator  
Gato Building  
1100 Simonton Street  
Key West, Florida 33040

With a copy (which shall not constitute notice) to: Monroe County Attorney  
111 12th Street  
Suite 408  
Key West, Florida 33040  
Attention: County Attorney

If to Fishermen's: Fishermen's Health, Inc.  
3301 Overseas Highway  
Marathon, Florida 33050  
Attention: Chief Executive Officer

With a copy (which shall not constitute notice) to: Baptist Health South Florida  
6855 Southwest 57th Avenue, Suite 500  
Coral Gables, Florida 33143  
Attention: General Counsel

or to such other address, or to the attention of such other individual or officer, as either Party may designate, by notice given in accordance with this Section 9.5. Notice shall be deemed to have been given and received when delivered personally or by recognized courier, or on the fifth day after such notice has been mailed, in accordance with this Section 9.5.

9.6 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of each Party and its successors and permitted assigns; provided, however, that neither Party may assign any of its rights or delegate any of its duties under this Agreement, voluntarily or involuntarily, or by operation of Law, without the other Party's prior written consent. Notwithstanding the foregoing, Fishermen's may assign any of its rights or delegate any of its duties under this Agreement to an affiliate without the prior written consent of County.

9.7 **Amendment or Waiver.** This Agreement may be amended, supplemented, or modified at any time only by a written instrument duly executed by both Parties. Any provision in this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but only by a writing that has been signed by the Party waiving such provision, and such waiver shall apply only to the extent set forth in such waiver.

9.8 **Entire Agreement; No Third Party Beneficiaries.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other prior or contemporaneous agreements, understandings, negotiations, representations, warranties, or letters of intent, whether written and oral, between the Parties as to the subject matter hereof. This Agreement is not intended to confer any rights or remedies hereunder upon any Person, including, without limitation, Eligible Individuals, other than the Parties and their successors and permitted assigns.

9.9 **Headings.** Headings to Articles, Sections, and Subsections herein are for purposes of reference only, and shall not limit, define, or otherwise affect the provisions hereof.

9.10 **No Inferences.** This Agreement is the result of negotiations between sophisticated parties of equal bargaining power represented by separate counsel, and no inference in favor of or against either Party shall be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such Party.

9.11 **Construction.** Unless the context clearly indicates otherwise, the terms "herein," "hereunder," and "hereof," and other similar terms, shall refer to this Agreement as a whole.

9.12 **Severability.** In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect, prejudice, or disturb the validity of the remainder of this Agreement, which shall be and remain in full force and effect, enforceable in accordance with its terms.

9.13 **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Florida, without regard to its principles of conflicts of Laws that would result in the application of the Laws of any other jurisdiction. ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE INSTITUTED SOLELY IN THE COURTS OF THE STATE OF FLORIDA LOCATED IN MONROE COUNTY, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION, OR PROCEEDING. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION, OR PROCEEDING IN SUCH COURT, AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT SUCH SUIT, ACTION, OR PROCEEDING BROUGHT IN SUCH COURT HAS BEEN BROUGHT IN AN IMPROPER OR INCONVENIENT FORUM.

9.14 **Waiver of Jury Trial.** EACH OF THE PARTIES IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

9.15 **Execution in Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.

9.16 **Ethics.** Both Parties agree that officers and employees of County are required to comply with the standards of conduct for public officers and employees set forth in section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's own agency; unauthorized compensation; misuse of public position; conflicting employment or contractual relationships; and disclosure or use of certain information.

9.17 **No Unauthorized Lobbying of County:** Fishermen's warrants that it has not employed, retained, or otherwise had act on its behalf any current or former County officer or employee in violation of 2-149 and 2-150 of the Monroe County Code. For material breach of this Section 9.17, County may, in addition to terminating this Agreement pursuant to Section 7.2(c), deduct from its payments under Section 5.3, or otherwise recover, the amount of any fee, commission, percentage, gift, or consideration paid by Fishermen's to the current or former County officer or employee.

9.18 **No Pledging of Credit.** Nothing in this Agreement or any other agreement, document or writing may be construed as a pledge or use of County's taxing power in violation of article VII, section 10, Florida Constitution. Fishermen's shall not pledge or use County's credit, make County a guarantor of payment or a surety for any contract, debt, obligation, lien, judgment, or any other form of indebtedness, or interfere with County's budgetary discretion in the appropriation of taxes and revenues; provided, however, that Fishermen's may provide input to County with respect to its appropriation of taxes and revenues, consistent with this Agreement.

9.19 **Authority to Sign.** Each signatory to this Agreement warrants that he or she has the requisite authority to bind his or her respective entity to the rights and obligations expressed in this Agreement.

[Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused this Healthcare Services Agreement to be executed as of the Effective Date.

(Seal)

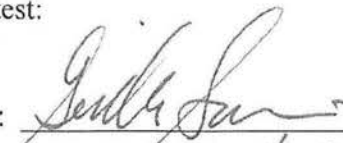
Attest: Kevin Madok, CPA, Clerk

MONROE COUNTY

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
SYLVIA J. MURPHY  
Monroe County Mayor

Attest:

By:   
Print Name: *Giselle Sanabria*

FISHERMEN'S HEALTH, INC.

By:   
RICK FREEBURG  
Chief Executive Officer

*K*