

CHIEF EXECUTIVE OFFICER EMPLOYMENT AGREEMENT

THIS CHIEF EXECUTIVE OFFICER EMPLOYMENT AGREEMENT (“Agreement”), made effective July 1, 2019 (“Effective Date”), is by and between the Washington Township Health Care District, a local Health Care District organized under the laws of the State of California, doing business as Washington Hospital Healthcare System (“District”), and Kimberly Hartz, (“Hartz”).

RECITALS

A. The District desires to employ Hartz, and Hartz desires to be employed by the District, as the District’s Chief Executive Officer.

B. The District and Hartz desire to enter into this Agreement in order to fully set forth the terms of her employment by the District.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and conditions herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Employment and Term. The District hereby agrees to employ Hartz, and Hartz hereby accepts employment by the District, on the terms and conditions hereinafter set forth. Hartz’s term of employment by the District under this Agreement (the “Term”) shall commence on the Effective Date and end on the fourth anniversary thereof.

2. Position, Duties and Responsibilities.

(a) *Position and Duties.* During the Term, the District shall employ Hartz as Chief Executive Officer. Hartz shall have, subject to the general direction of the District’s Board of Directors (the “Board”), general overall authority and responsibility for administration of the District, including but not limited to the duties specified in Exhibit A. Hartz shall also have such other duties, powers, and authority as are commensurate with her position as Chief Executive Officer and such other duties and responsibilities that are commensurate with her position as reasonably delegated to her from time to time by the Board. Hartz shall report only to the Board, and all employees of the District shall report to Hartz or her designee(s).

(b) *Exclusive Services and Efforts.* Hartz agrees to devote her efforts, energies, and skill to the discharge of the duties and responsibilities attributable to her position and, except as set forth herein, agrees to devote substantially all of her professional time and attention to the business and affairs of the District. Notwithstanding the foregoing, Hartz shall be entitled to engage in (a) service on the board of directors of not-for-profit organizations, provided that she shall not serve on the board of any entity that materially competes with the District (b) other charitable activities and community affairs, (c) management of her personal and family investments and affairs, and (d) any other activity that may be approved by the President of the

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Board and that does not materially competes with the District, in each case to the extent such activities do not, either individually or in the aggregate, materially interfere with the performance of her duties and responsibilities to the District.

(c) *Compliance with District Policies.* To the extent not inconsistent with the terms and conditions of this Agreement and with due regard for her position, Hartz shall be subject to the District Bylaws, policies, practices, procedures, and rules of the District, including those policies and procedures set forth in the District's Code of Professional Conduct, but in no event shall anything in such documents be construed to expand the definition of Cause as specified in Section 5 of this Agreement.

3. Compensation.

(a) *Base Salary.* During the first year of the Term, the District shall pay to Hartz an annual salary of Seven Hundred and Twelve Thousand Dollars (\$712,000) ("Base Salary"). The Base Salary shall be paid in biweekly installments consistent with the timing of payments to District employees generally. Thereafter, the Board shall consider increases in Base Salary for subsequent years in connection with performance and a review of compensation provided at peer organizations, which companies shall be subject to review on a continuing basis (the "Peer Group"), and taking into account District and individual performance objectives; provided, however, Hartz's Base Salary shall not be decreased (including after any increases pursuant to this Section 3(a)) without Hartz's written consent.

(b) *Incentive Compensation.* In addition to the Base Salary referenced above, annually, Hartz shall be eligible for annual incentive compensation of up to Twenty-Five Percent (25%) of Base Salary. Hartz's eligibility for the incentive compensation each year shall be based upon measurable goals ("Annual Goals"), to be agreed upon by the Board and Hartz annually on or before the start of the District's fiscal year (6/30), and to be completed by Hartz within the contract year; provided, however, in the first contract year, the Board and Hartz agree that the Annual Goals will be agreed upon on or before August 30, 2019.

(c) *Timing of Annual Review.* On or before October of each year of the Term of Agreement (but not during the first contract year), the Board will conduct a performance evaluation of Hartz's performance, including a review of Annual Goals. The Board shall promptly inform Hartz of the results of the evaluation and make any adjustments to Base Salary and award of Incentive Compensation on or before October 31 of any given year.

(d) *Adjustment of Compensation.* At the time of the Annual Review, the Board will also consider any further adjustments to total potential cash compensation which may be appropriate to adjust given changes in total cash compensation of comparable organizations. The amount of percentage change for comparable organizations will be determined by annually using data from Integrated Healthcare Strategies (or a similarly qualified consultant). Total cash compensation for the purposes of the percentage increase shall include salary and any potential incentive compensation amount.

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4. Employee Benefits and Perquisites.

(a) *Benefits.* Hartz shall receive the same fringe benefits as are generally available to employees of the District, including but not limited to healthcare coverage, deferred compensation and retirement benefits, but which shall take into account Ms. Hartz's seniority.

(b) *Disability Insurance.* During the Term of the Agreement, the District agrees to provide Hartz with long term disability insurance coverage, which shall be mutually agreed upon by Hartz and the District and shall be consistent with long-term disability coverage provided to Chief Executive Officers at Peer Group organizations.

(c) *Auto Allowance.* Hartz shall receive an auto allowance of One Thousand Five Hundred Dollars (\$1,500) per month.

(d) *Supplemental Retirement Benefit.* During the Term of the Agreement, the District agrees to provide Hartz with a supplemental retirement benefit plan ("SRBP"), which shall be mutually agreed upon by Hartz and the District and shall be consistent with supplemental retirement benefits provided to Chief Executive Officers at Peer Group organizations. The SRBP will be implemented on or before September 30, 2019.

(e) *Other Fringe Benefits, Perquisites, and Earned Time Off.* During the Term of the Agreement, Hartz shall be entitled to participate in all fringe benefits and perquisites made available to other senior executives of the District, such participation to be at levels, and on terms and conditions, that are commensurate with her position, her seniority and responsibilities at the District and that are no less favorable than those applicable to other senior executives of the District. In addition, Hartz shall be eligible for earned time off ("ETO") per calendar year in accordance with the District's vacation and ETO policy, earned commensurate with her seniority and otherwise in the same manner as ETO days are accrued for employees of the District. Accrued and unused ETO days may be carried over consistent with existing District policy applicable to all employees.

(f) *Reimbursement of Expenses.* The District shall reimburse Hartz for all reasonable business and travel expenses incurred in the performance of her job duties and the promotion of the District's business, promptly upon presentation of appropriate supporting documentation and otherwise in accordance with the expense reimbursement policy of the District. Such expenses shall include reasonable expenses to maintain a home office, including the cost of a computer and internet expenses. Monthly but no less frequently than bi-monthly, the President of the Board will review and approve of Hartz's expenses.

5. Termination of the Agreement for Cause.

(a) *By District.*

(i) District reserves the right to terminate this Agreement if Hartz willfully and materially breaches or habitually and materially neglects the duties which she is

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required to perform under the terms of this Agreement or commits such acts of material dishonesty, fraud, misrepresentation or other acts of moral turpitude as would prevent the effective performance of her duties. District may terminate this Agreement for Cause by giving thirty (30) days' prior written notice of termination to Hartz, without prejudice, to any other remedy to which District may be entitled either at law, in equity, or under this Agreement, and giving Hartz a reasonable opportunity to cure the grounds for termination during the notice period if they are curable. The notice of termination required by this Section 5(a)(i) shall specify the grounds for the termination and shall be supported by a statement of relevant facts. If Hartz does not reasonably cure the grounds for termination within the notice period, Hartz's employment will terminate on the last day of the notice period.

(b) *By Hartz.*

(i) Hartz reserves the right to terminate this Agreement in the event there is: (A) a significant and material negative change in the employment relationship based upon the conduct of directors of the District which conduct would be considered actionable in either a criminal, administrative or civil forum; (B) any material breach by District of this Agreement; (C) a significant and material negative change in Hartz's authority, duties or responsibilities as the Chief Executive Officer and Administrator of the District or any other action by District that results in substantial diminution in Hartz's authority, duties or responsibilities (including, without limitation, having any other executive employee of the District report directly to District's Board of Directors rather than Hartz); (D) a requirement that Hartz relocate her place of employment more than thirty miles; (E) a significant and material reduction in compensation; or (F) the cessation of the District operating as a health care district. Hartz may terminate this Agreement on any of these grounds by giving at least thirty (30) days' prior written notice of termination to District, without prejudice to any other remedy to which Hartz may be entitled either at law, in equity, or under this Agreement. The notice of termination required by this Section 5(b)(i) shall specify the grounds for the termination, shall be supported by a statement of relevant facts, and shall be provided to District within ninety (90) days of the initial existence of such grounds. Upon receipt of such notice from Hartz, District shall have the right to remedy the grounds during the notice period. If District fails to remedy the grounds during the notice period, then this Agreement shall terminate at the end of the notice period, and Hartz shall be entitled to the Severance Benefit defined in this Agreement.

(ii) During the Term of this Agreement, Hartz reserves the right to terminate this Agreement in the event that the remaining Term of this Agreement, together with any extensions hereto by written agreement of the parties, drops to eighteen (18) months or less. Hartz shall thereafter be entitled to the Severance Benefit defined in this Agreement.

6. Termination of the Agreement Without Cause.

(a) This Agreement shall terminate upon the death of Hartz. Any sums that may be due her by operation of this Agreement as of the date of death shall be paid to Hartz's executors, trustees, administrators, heirs, personal representatives, successors and assigns.

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(b) District reserves the right to terminate this Agreement within six (6) months (but no sooner than three (3) months) after Hartz suffers any physical or mental disability that would substantially prevent the performance of her duties under this Agreement with or without reasonable accommodation. Such a termination shall be effected by giving thirty (30) days' written notice of termination to Hartz. Termination pursuant to this provision shall not prejudice Hartz's rights to continuing Disability Benefits as defined in this Agreement.

(c) District reserves the right to terminate this Agreement based upon its good faith assessment of the performance of Hartz. District's determination regarding her performance shall be factually based, made reasonably, and in good faith. On sixty (60) days' advance written notice, District may terminate this Agreement on this basis. Hartz shall be entitled to the Severance Benefit defined in this Agreement if so terminated.

(d) On one hundred eighty (180) days' advance written notice to the District, Hartz may terminate her obligations under this Agreement without cause. If, as a result of a transition to a new CEO or otherwise, Hartz is asked to leave before the passage of the one hundred eighty (180) day period, she shall nevertheless receive all existing compensation and benefits through the end of the one hundred eighty (180) day period.

7. Severance Benefit. The Severance Benefit payable to Hartz pursuant to the terms and conditions of this Agreement shall be all of the following:

(a) For a period that is eighteen (18) months, continuation and payment by the District for Hartz, her spouse, and her eligible children in the coverage of its medical, major medical, hospital, dental, and eye care insurance. This Section shall not diminish any rights Hartz may have under COBRA or other similar rights afforded by the existing benefit programs of District.

(b) Payment by the District of an amount equal to Hartz's then-current monthly salary (without incentive compensation) multiplied by eighteen (18) months, with standard applicable withholding and deduction calculations.

(i) To the extent permitted by law on the date of termination, the District will allow Hartz to continue to defer compensation into any and all deferred compensation plans to the extent such continued deferral does not violate the terms of such plans or result in adverse tax consequences to Hartz under Section 409A of the Internal Revenue Code of 1986 (as from time to time amended) and any regulations and guidance promulgated thereunder or any other applicable tax law.

(c) The following terms shall govern the payment of the Severance Benefit by District pursuant to Section 5 (Termination for Cause) and Section 6 (Termination Without Cause):

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(i) The payment of the Severance Benefit in Section 7(b) shall be paid fourteen (14) days following the date of termination.

(ii) It is the intent of the parties that a termination by District without Cause or a termination by Hartz for Cause shall constitute an involuntary separation of service under Section 409A and that the payment of the Severance Benefit shall, to the extent possible, qualify for the short-term deferral exception, the separation pay plan exception, or other applicable exception to Section 409A, and any ambiguities herein will be interpreted to so comply. Each installment payment of the Severance Benefit shall be deemed a separate payment under this Agreement.

(iii) To the extent the payment of the Severance Benefit is covered by Section 409A, the Severance Benefit shall be paid or provided to Hartz only if and as of the date Hartz experiences a "separation from service" as defined in the applicable regulations promulgated under Section 409A.

(d) Notwithstanding any language in this Agreement to the contrary, any cash settlement related to the termination of employment shall be fully reimbursed to the District if Hartz is convicted of a crime involving an abuse of her office or position and shall be subject to the limitations of California Government Code § 53260 *et seq.*

8. Indemnity. To the fullest extent provided by law, District shall indemnify, defend and hold harmless Hartz for all losses, claims, damages, liabilities, actions, suits, demands, costs and expenses, including without limitation, reasonable attorneys' fees, resulting from the discharge of Hartz's duties on District's behalf or incurred within the scope of Hartz's employment with the District (including any positions she holds with other entities because of her employment with the District) to fullest extent permitted by applicable law. This indemnity provision shall survive termination of this Agreement.

9. Protection of Confidential Information. Hartz understands that Hartz's work as an employee of the District creates a relationship of trust and confidence between Hartz and the District. During and after the period of Hartz's employment with the District, Hartz will not use or disclose or allow anyone else to use or disclose any Confidential Information relating to the District, its products, services, suppliers or patients except as may be necessary in the performance of Hartz's work for the District. "Confidential Information" shall include, but not be limited to, information consisting of research and development, patents, trademarks and copyrights and applications thereof, technical information, computer programs, software, methodologies, innovations, software tools, know-how, knowledge, designs, drawings, specifications, concepts, data, reports, processes, techniques, documentation, pricing, marketing plans, customer and prospect lists, trade secrets, financial information, salaries, business affairs, suppliers, profits, markets, sales strategies, forecasts, employee information and any other information not available to the general public, whether written or oral, which Hartz knows or has reason to know the District would like to treat as confidential for any purpose, such as maintaining a competitive advantage or avoiding undesirable publicity. Hartz will keep

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Confidential Information secret and will not allow any unauthorized use of the same, whether or not any document containing it is marked as confidential. These restrictions, however, will not apply to Confidential Information that has become known to the public generally through no fault or breach of Hartz's, that the District regularly gives to third parties without restriction on use of disclosure, that is disclosed to Hartz without restriction by a third party who rightfully possesses the information, unless such disclosure violates a duty of confidentiality, or that is independently developed by Hartz, following her employment with the District and without use of the District's Confidential Information.

10. District Property. All records, files, lists, including computer generated lists, drawings, documents, software, equipment, and similar items relating to the District's business that Hartz shall prepare or receive from the District and all Confidential Information shall remain the District's sole and exclusive property ("District Business Property"). Upon termination of this Agreement, Hartz shall promptly return to the District all property of the District in her possession, including District Business Property.

11. Non-Competition. During the Term of her employment with the District, Hartz shall not directly own, manage, operate, join, control, or participate in or be connected with, as an officer, employee, partner, stockholder or otherwise, any other hospital, medical clinic, integrated delivery system, health maintenance organization, or related business, partnership, firm, or corporation (all of which hereinafter are referred to as "Entity") that is at the time engaged principally or significantly in a business that is, directly or indirectly, at the time in competition with any business of the District within the service area of District. The service area is defined as Alameda, Santa Clara, Contra Costa, San Mateo, Santa Cruz, San Francisco, Marin, Monterey, Solano, Napa, and Sonoma counties in California. Nothing herein shall prohibit Hartz from acquiring or holding any issue of stock or securities of any such Entity that has any securities listed on a national securities exchange or quoted in a daily listing of over-the-counter market securities, provided that at any one time Hartz, her spouse or children do not own more than one percent (1%) of any voting securities of any such Entity. This covenant shall be construed as an agreement independent of any other provision of this Agreement, and the existence of any claim or cause of action, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the District of this covenant. In the event of actual or threatened breach by Hartz of this provision, the District shall be entitled to an injunction restraining Hartz from breach of the obligations described in this paragraph.

12. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of Hartz by District and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this Agreement acknowledges that no representation, inducements, promises, or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other Agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

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13. Survival. The covenants and agreements contained in, or made pursuant to, this Agreement, unless otherwise provided herein, shall survive the cessation of the employment relationship or the termination or expiration of this Agreement.

14. Modifications. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

15. Law Governing the Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Attorney Fees and Costs. If any action at law, or in equity, or any arbitration proceeding is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, and costs, in addition to any other relief to which that party may be entitled. This provision shall survive expiration or termination of this Agreement.

17. Notices. Any notices to be given hereunder by either party to the other shall be, in writing, and may be transmitted by personal delivery or by mail registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing below the party's signature. In the case of Hartz, a courtesy copy will be sent to by mail and email to Rob Thomas Esq., Doty Barlow Britt & Thieman LLP, 260 Sheridan Ave., Suite 200, Palo Alto, CA 94306, email address: Rob@dotylaw.com. Each party may change that address by written notice in accordance with this Section. Notices delivered personally shall be deemed communicated as of the date of actual receipt; mailed notices shall be deemed communicated as of five (5) days after the mailing date to the address appearing below the party's signature. Either party shall have the right to change its address to which notice shall be given by notices similarly sent.

18. Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

19. Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument. Signatures delivered by facsimile or PDF shall be effective for all purposes.

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[SIGNATURE PAGE TO CHIEF EXECUTIVE OFFICER EMPLOYMENT AGREEMENT]

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the date first appearing above.

**Washington Township Health Care
District**

By: 
Name: Bernard Stewart
Its: President, Board of Directors

Date: 6/17/19

Kimberly Hartz

By: 
Name: Kimberly Hartz

Date: 6/17/19

Address:

Washington Township Health Care District
2000 Mowry Avenue
Fremont, CA 94538
Attention: President, Board of Directors

Address:

Ms. Kimberly Hartz
Chief Executive Officer
2000 Mowry Avenue
Fremont, CA 94538

EXHIBIT A

The authority and duties of the Chief Executive Officer shall include:

1. To perfect and submit to the Board for approval a plan or organization of the personnel and others concerned with the operation of the District and to establish methods of procedure concerning the internal operation of the District.
2. To prepare an annual budget showing the expected receipts and expenditures, as required by the Board of Directors.
3. To select, employ, control, and discharge all employees serving in positions, as authorized by the Board of Directors.
4. To see that all physical properties are kept in good state of repair and operating condition.
5. To supervise all business affairs, such as the records of financial transactions, collection of accounts, and purchase and issuance of supplies; and to ensure that all funds are collected and expended to the best possible advantage.
6. To exercise her professional abilities in such a manner that all those concerned with the rendering of professional service in the Washington Township Health Care District cooperate to the end that the best possible care may be rendered to all.
7. To submit regularly to the Board or its authorized committees, periodic reports showing the professional service and financial activities of the District and to prepare and submit such reports as may be required by the Board of Directors and/or its functioning committees.
8. To attend all meetings of the Board of Directors and its committees provided, however, that the Board may meet in executive session without the presence of the Chief Executive Officer, with the reasonable advance notice to the Chief Executive Officer.
9. To perform any other duty that may be necessary in the best interest of the District.
10. To serve as the liaison officer and channel of communication for all official communications between the Board of Directors or any of its committees, and the Medical Staff.
11. To provide overall administrative direction to the District's adjunct organizations.
12. To prepare, revise and amend a strategic plan for the Board's consideration.
13. To work with the Board President to set the agendas for Board meetings.