

ORDINANCE NO. 01-05 AC CMS

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH ALLEN MEMORIAL HOSPITAL (DOING BUSINESS AS THE OBERLIN MEDICAL CENTER) WITH RESPECT TO THE CONTINUED OPERATION OF THE HOSPITAL IN THE CITY AND DECLARING AN EMERGENCY.

WHEREAS, the City, Allen Memorial Hospital, doing business as the Oberlin Medical Center and hereinafter referred to as the Oberlin Medical Center, and the Allen Memorial Hospital Foundation have received a proposal from Oberlin College and Community Health Partners of Ohio for the continued operation of the hospital facilities in the City formerly known as Allen Memorial Hospital and now operated as part of the Oberlin Medical Center (the "Hospital"); and

WHEREAS, this Council has determined that the arrangement for the operation of the Hospital as proposed by Community Health Partners of Ohio and Oberlin College represents the only viable alternative for the continued operation of the Hospital; and

WHEREAS, this Council seeks to take the actions necessary for the continued operation of the Hospital for the public purpose of enhancing the availability, efficiency and economy of hospital facilities in the City and the services rendered thereby, to be available to or for the service of the general public without discrimination by reason of race, creed, color or national origin, or by reason of disability, age, sexual orientation, marital status or gender; and

WHEREAS, in furtherance thereof, and in consideration of the financial commitments and other agreements of Oberlin College, the Oberlin Medical Center, the Allen Memorial Hospital Foundation and Community Health Partners of Ohio described in the Agreement referenced in Section 1, this Council has determined to enter into that Agreement with the Oberlin Medical Center to authorize the actions of the City necessary to accomplish the arrangement for the continued operation of the Hospital proposed by Oberlin College and Community Health Partners of Ohio, including the conveyance to the Medical Center of the City's rights, title and interests in the real property comprising the Hospital;

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths of all members elected thereto concurring, that:

Section 1. Pursuant to Ohio Revised Code Chapter 140 (the "Act"), and in particular Section 140.03, this Council has determined to authorize the City, as a "public hospital agency", to enter into an agreement (the "Agreement") with the Oberlin Medical Center, as a "nonprofit hospital agency", providing for the continued operation of the Hospital as "hospital facilities", to be available to the general public without discrimination by reason of race, creed, color or national origin, or by reason of disability, age, sexual orientation, marital status or gender. This Council authorizes and directs the City Manager to sign and deliver the Agreement, in substantially the form on file with the Clerk of Council, with such changes as the City Manager, in consultation with the City Solicitor, determines are not adverse to the City, the City Manager's signing and delivery of the Agreement being conclusive evidence that he has made such determination following such consultation.

Section 2. This Council authorizes and directs the City Manager to sign and deliver a quit claim deed conveying to the Medical Center all of the City's rights, title and interests in the real property described in Exhibit A of the Agreement (being the land and buildings constituting the Hospital and surrounding premises).

Section 3. This Council authorizes and directs the appropriate City officials to take such actions as are necessary to defer collection of charges for electricity at the Hospital for the period of time and under the conditions set forth in the Agreement.

Section 4. Pursuant to the Act, this Council finds and determines that the contribution to be made by the City under the Agreement will be fair consideration for the value and benefit to be derived by the City under the Agreement and that the Agreement will promote the public purpose stated in the Act.

Section 5. The City Manager, Clerk of Council, Auditor and other City officials are authorized and directed to deliver such certificates and other documents as may be necessary or appropriate to consummate the transactions contemplated by the Agreement.

Section 6. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an

open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 7. This Ordinance is an emergency ordinance necessary for the immediate preservation of the public peace, health or safety and in particular for the continued operation in the City of a hospital available to the general public without discrimination by reason of race, creed, color or national origin, or by reason of disability, age, sexual orientation, marital status or gender. Accordingly, this ordinance shall be in full force and effect immediately upon its passage.

Passed: 1st Reading – January 2, 2001
2nd Reading – January 8, 2001 (Special Meeting)(A)(E)

Attest:

Eugene F. Simon
Clerk of Council

Harold M. Bauman
Chair of Council

Posted: 1/9/2001

Effective Date: 1/9/2001

AGREEMENT

This Agreement is entered into as of JANUARY 9, 2001 between the City of Oberlin, a municipal corporation of the State of Ohio and a "public hospital agency" as defined in Ohio Revised Code Section 140.01 (the "**City**"), and Allen Memorial Hospital, an Ohio nonprofit corporation and a "nonprofit hospital agency" as defined in Ohio Revised Code Section 140.01 and doing business as the Oberlin Medical Center (the "**Medical Center**") under the following circumstances.

Background

The City is the owner of certain real property described in Exhibit A on which is situated an acute care hospital formerly known as Allen Memorial Hospital and now known as the Oberlin Medical Center (that real property together with all improvements located thereon is referred to in this Agreement as the "**Hospital**").

The City acquired title to the real property described in Exhibit A under a deed dated July 1, 1954 from Oberlin College (the "**College**") , as grantor, to the City, as grantee, recorded in Volume 602, Page 278 of the [Deed Records] of Lorain County and a deed dated December 1, 1970 from the College, as grantor to the City, as grantee and recorded in Volume _____ Page _____ of the [Deed Records] of Lorain County (together, the "**Deed**"). The Deed provides, among other things, that the City will cause a hospital to be operated on the property in accordance with various requirements and that if the City fails to do so the College may reacquire the property upon payment to the City of the depreciated value of certain improvements on the property.

The Hospital has been operated, maintained, expanded and improved by the Medical Center, at the Medical Center's expense, under lease agreements with the City, the most recent being the lease dated as of December 1, 1970 between the City and the Medical Center (then known as Allen Memorial Hospital), the term of which ended November 30, 2000.

The Medical Center has had and continues to have significant losses from operations of the Hospital. The Medical Center solicited proposals from other healthcare organizations in Ohio and elsewhere to operate the Hospital or otherwise assist the Medical Center in the operation of the Hospital, but no expressions of interest from other healthcare organizations were received.

Subsequently the City, the Medical Center and Allen Memorial Hospital Foundation (the "**Foundation**") received a proposal from the College and Community Health Partners of Ohio ("**CHP**"), a nonprofit Ohio corporation and an affiliate of Catholic Healthcare Partners, for the acquisition of the property by the College for lease to the Medical Center and operation of the Hospital by CHP under a management agreement, subject to the City's agreement to convey title to the Hospital, the City's agreement to defer charges for electricity service at the Hospital, and various agreements of the Medical Center and the Foundation all as hereinafter described.

Agreement

Section 1. The City has determined to enter into this Agreement with the Medical Center under authority of Ohio Revised Code Chapter 140 (the "**Act**") and in furtherance of the public purpose of enhancing the availability, efficiency and economy of hospital facilities and the services rendered thereby to be available to or for the service of the general public without discrimination by reason of race, creed, color or national origin, or by reason of disability, age, sexual orientation, marital status or gender. The City has authorized this Agreement by Ordinance No. 01-05 AC CMS passed January 8, 2001 and the Council of the City has found and determined in that ordinance that the contribution to be made by the City under this Agreement will be fair consideration for the value and benefit to be derived by the City under this Agreement and that this Agreement will promote the public purpose stated in the Act.

Section 2. In furtherance of the continued operation of the Hospital as "hospital facilities" (as defined in the Act), to be available to the general public as described in Section 1, and in consideration of the agreements of the College, the Medical Center, the Foundation and CHP described in the Letter of Intent attached as Exhibit B, the City agrees that upon satisfaction of the conditions set forth in this Agreement, the City will convey all of its rights, title and interests in the Hospital to the Medical Center by quit claim deed on a date to be mutually agreed upon by the

parties for the execution and delivery of the deeds, lease and management agreement described in Section 6 of this Agreement (the "**Closing Date**"). The City makes no representations or warranties as to the existence of any liens or encumbrances on the property and shall have no obligation to take any other actions with respect to the conveyance of title to the Hospital other than the authorization, signing and delivery of the quit claim deed.

The Medical Center agrees that on the Closing Date and immediately following the conveyance by the City by quit claim deed to the Medical Center of the City's interests in the Hospital, (i) the Medical Center will convey all of its rights, title and interests in the real property comprising the Hospital to the College for the purchase price of Two Million Dollars (\$2,000,000) and the agreement by the College to lease the Hospital to the Medical Center for a rental of One Dollar (\$1.00) per year, (ii) the Medical Center will lease the Hospital from the College for operation of the Hospital as "hospital facilities" as defined in the Act and pursuant to the lease described in the Letter of Intent (the "**Lease**"), and (iii) the Medical Center will enter into a management agreement with CHP as described in the Letter of Intent (the "**Management Agreement**").

Section 3. The Medical Center will cause its governing board to be reorganized as described in the Letter of Intent, including provision for at least one trustee of the Medical Center to be appointed by the Council of the City.

Section 4. Payment of charges for electricity service to the Hospital for account number 26.04724.1 will be deferred by the City for an 18-month period, beginning with usage from October 6, 2000 and ending with usage on April 5, 2002. No penalties or interest will accrue on such unpaid amounts provided that CHP performs its agreements under the Management Agreement and continues to operate the Hospital under the Management Agreement. CHP shall guarantee to a lender a two million dollar line of credit on behalf of the Medical Center. If, however, the Medical Center is unable to obtain a two million dollar line of credit with CHP's guarantee, CHP will guarantee the greatest amount under any line of credit that is reasonably available. In the event that CHP fails to make such guarantee or CHP or the Medical Center terminates the Management Agreement prior to the expiration of the 18-month deferral period, the deferred electricity charges shall be immediately due and payable unless the Medical Center enters into another arrangement that is reasonably satisfactory to the City or unless the Management Agreement terminates by virtue of a merger or consolidation between CHP and the Medical Center.

At the end of that 18-month period, the City and the Medical Center will review the results of operations at the Hospital. In the event the excess of revenues over expenses with respect to Hospital operations for the year ended December 31, 2002 is expected to be at least \$300,000, the Medical Center will begin paying bills received from the City for current charges for electricity used in the operation of the Hospital and will begin making payments in monthly installments on the arrearage accumulated during the 18-month deferral in the amount of 5% of the arrearage.

In the event that at the end of that 18-month period the excess of revenues over expenses is expected to be less than \$300,000, the City will determine a suitable payment plan after meeting with the Medical Center.

Section 5. The Medical Center will cause the Hospital to be operated as "hospital facilities", within the meaning of the Act, and in accordance with the Lease between the Medical Center and the College and the Management Agreement between the Medical Center and CHP. Each shall require the operator of the Hospital to maintain, at a minimum, emergency medical services.

Section 6. Not less than two business days prior to the Closing Date, the City will deliver to the Medical Center the form of quit claim deed from the City, as grantor, to the Medical Center, as grantee. Not less than two business days prior to the Closing Date the Medical Center will cause to be delivered to the City Solicitor: (i) the final, execution forms of the following documents: the deed from the Medical Center to the College, the Lease from the College to the Medical Center, the Management Agreement between the Medical Center and CHP, (ii) evidence of the necessary actions having been taken by the governing boards of the College, the Medical Center, CHP and the Foundation to authorize the actions required of each under the Letter of Intent and of the Medical Center under this Agreement; (iii) evidence that the Medical Center and CHP each is an organization described in Section 501(c)(3) of the Internal Revenue Code and each is an Ohio nonprofit corporation in good standing, (iv) the current Articles of Incorporation and By-Laws or Code of Regulations of the Medical Center, certified by an officer of the Medical Center to be the current governing documents and an incumbency certificate setting forth the current trustees and officers of the Medical Center; (v) a certificate of the College evidencing that the conditions precedent to the College's purchase of the Hospital and lease of the Hospital to the Medical Center have been satisfied; and (vi) the current Articles of Incorporation and By-Laws or Code of Regulations of CHP,

certified by an officer of CHP to be its current governing documents and an incumbency certificate setting forth the current trustees and officers of CHP.

Section 7. The obligations of the City to convey the Hospital to the Medical Center as described in Section 1 and to defer charges for electricity as described in Section 4 are subject to the satisfaction of the following conditions on or prior to the Closing Date:

(a) the Medical Center shall have delivered to an escrow agent mutually satisfactory to the parties (the "Escrow Agent") the executed deed from the Medical Center to the College;

(b) the Medical Center and the College each shall have authorized, signed and delivered the Lease in the form previously delivered to the City Solicitor;

(c) the Medical Center and CHP each shall have authorized, signed and delivered the Management Agreement in the form previously delivered to the City Solicitor; and

(d) the College shall have deposited in escrow for payment to the Medical Center the purchase price for the Hospital.

Section 8. The Medical Center agrees that, for the period from the expiration of the lease dated as of December 1, 1970 between the City and the Medical Center through the date of recording the quit claim deed from the City to the College described in Section 1, the covenants of the Medical Center in Section 6 of that lease (concerning insurance and indemnification of the City) shall be in force and effect and are incorporated in this Agreement as if fully rewritten herein.

Section 9. Subject to Section 8 above, the City acknowledges that, except for any indemnity or contribution obligations to the City in connection with any claims asserted against the City relating to the leased premises, the Oberlin Medical Center has no obligations or liabilities of any kind to the City with respect to the Lease dated as of December 1, 1970 between the City and Oberlin Medical Center.



Section 10. This Agreement shall be binding upon the City and the Medical Center and its successors.

CITY OF OBERLIN, OHIO




By: City Manager

OBERLIN MEDICAL CENTER

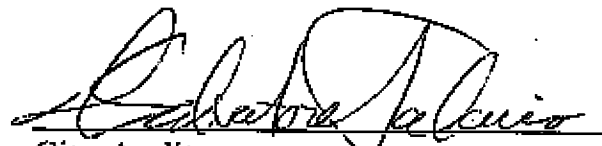

Title: 

Approved as to form and correctness:


Eric R. Severs, City Solicitor

FISCAL OFFICER'S CERTIFICATE

The amount required to meet the obligations of the City under the foregoing Agreement in the fiscal year ending December 31, 2001 has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances.


City Auditor