

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (hereafter "MOA") is signed this ____ day of _____, 2017 by and between Mohawk Valley Health System, (hereafter "MVHS") a New York Not For Profit Corporation with offices at 1656 Champlin Avenue, New Hartford, New York 13502, the City of Utica, New York, (hereafter "City") a municipal corporation under the laws of the State of New York with offices at 1 Kennedy Plaza, Utica, New York 13502, and the County of Oneida, (hereafter "County") a municipal corporation under the laws of the State of New York with offices at 800 Park Avenue, Utica, New York 13501.

RECITALS

1. **Purpose:** MVHS is a not for profit corporation and legal affiliation of Faxton-St. Luke Healthcare and St. Elizabeth Medical Center engaged in providing hospital and related medical services to residents in both Oneida County and throughout the general region. MVHS presently operates and provides medical services at St. Elizabeth Medical Center located in the City of Utica, and Faxton-St. Luke's Healthcare composed of the former Faxton Hospital campus in Utica, New York and the St. Luke's Hospital Campus in New Hartford, New York. The 2016-2017 New York State Budget has made available to MVHS funding in the amount of three hundred million dollars (\$300,000,000) for the purpose of developing and constructing a consolidated, up to date hospital facility in downtown Utica to replace existing structures which have become outmoded. ("the new hospital project"). The estimated cost for the project is five hundred twenty three million five hundred seventeen thousand eight hundred seventy five and no/100ths dollars (\$523,517,875), which includes the refurbishment of Kennedy Garage and the development of the proposed parking facility discussed herein, with funding above and in addition to the state grant to be from additional public and private funding to be secured by MVHS with the assistance of City, County, and Mohawk Valley EDGE.

The development of such a consolidated hospital campus will achieve operational efficiencies and create opportunities for greater development of clinical research and medical education programs. Further, it has been determined that locating the new, consolidated hospital campus in downtown Utica would present opportunities for enhanced medical care for the community as well as economic revitalization of the downtown area. The proposed hospital site has generally been identified as the area bounded by Oriskany, Columbia and State Streets, and Broadway. The signatories to this MOA seek to identify and commit to ways in which they can cooperate to fulfill these purposes.

2. **Intent of this MOA:** This MOA is to be signed by Scott H. Perra in his capacity as Chief Executive Officer of MVHS, Robert M. Palmieri in his capacity as Mayor of the City of Utica, and Anthony J. Picente, Jr. in his capacity as County Executive of Oneida County. It is the intent of this MOA to identify, delineate, and agree to a plan for cooperation by and among MVHS, City, and County to further the purpose of a consolidated and new hospital campus in downtown Utica, to work cooperatively toward that purpose, and to contribute financially, through in kind and monetary contributions, and otherwise toward that purpose. All of the signatories to this MOA acknowledge and agree that the primary purpose of this MOA is to specify, give definition, and agree to ways and means by which the parties may cooperate and contribute to achieve the purpose of a new hospital campus. It is understood and agreed that at this time various elements of funding the proposed parking garage hereafter mentioned are dependent upon completion of a process of application, award, and release of funding. Once this information becomes known, the parties will enter into an agreement or agreements (the "Definitive Agreement(s)") more specifically identifying funding sources and amounts, together with further schedules and details with regard to mutual obligations of the parties with regard to contributions towards, and payment of, debt service.

3. **Cooperative Parking Agreement:**

General Description: The parties to this MOA recognize that the effective and convenient utilization of a downtown Utica site for the new hospital project will require additional parking. Further, the parties recognize and acknowledge that in addition to the needs of hospital staff, related medical personnel that locate within the medical office facility, patients, visitors, and others conducting business within the hospital, that additional parking in downtown Utica would confer significant public benefits upon City and County to meet the needs of the general public availing themselves of professional, commercial, entertainment, recreational and government services concentrated in the downtown Utica area. Accordingly, the parties recognize that the new hospital project together with existing and projected increased parking needs for the general public would create a need for a municipal parking facility providing approximately 1550 new parking stalls, which would be approximately apportioned between 1150 parking stalls for hospital use and public use for other outpatient services that would be part of the MVHS project, and 400 parking stalls for general public use including persons visiting or doing business with physicians in the facility used for private medical practices.

This is in addition to another 2,000 + surface parking spaces that will be incorporated into the overall site plan for the MVHS downtown campus and the refurbishment of Kennedy Garage that would support supplemental parking needs for one or more Medical Office Buildings that would be developed by MVHS or by private developers working collaboratively with MVHS and provide additional parking that is proximal to the new MVHS healthcare facility.

The location for the proposed parking facility will be determined by mutual agreement of MVHS, City and County with the primary objective being to situate the parking facility so that it optimizes, in order of priority, the parking needs for MVHS and then the

downtown Utica general public. The location for the parking facility will be incorporated into the Definitive Agreement(s).

4. **Estimated Cost:** The parties understand and agree that the current estimated cost of such a parking facility is forty million five hundred and seventeen thousand eight hundred seventy five dollars (\$40,517,875.00). Additionally, the parties also agree to work cooperatively to repair and restore the Kennedy Parking Garage at an estimated cost of three million dollars (\$3,000,000.00).

5. **Sources of Funding:**

(a.) The parties agree that there will be a debt financing component estimated at thirty seven million five hundred seventeen thousand eight hundred seventy five dollars (\$37,517,875.00), consisting of twenty seven million four hundred five thousand eight hundred fifty three dollars (\$27,405,853.00) in general obligation bonds to be issued by County and ten million one hundred twelve thousand twenty two dollars (\$10,112,022.00) in funding generated from the allocation of New Market Tax Credits (NMTC) or other funds obtained for the project.

County and City will in the Definitive Agreement apportion the annual debt service on the project between them with County paying sixty (60%) per cent and City (40%) forty per cent. The Definitive Agreement(s) shall set forth the time and manner of City's payments to County.

(b.) City shall reprogram an existing one million five hundred thousand dollars (\$1,500,000.00) grant through Empire State Development Program to City to be used for the parking facility project. Additionally, a New York State Assembly sponsored one million dollar (\$1,000,000.00) grant from the State Assistance Municipal Program (SAM) and five hundred thousand dollars (\$500,000.00) from an expected Upstate Revitalization Initiative Grant (URI) shall be used for the parking facility project.

(c.) An additional three million dollars (\$3,000,000.00) will be allocated from the expected URI grant for repair and restoration of Kennedy Parking Garage.

6. **Cooperative Municipal Parking Program:** The parties to this agreement agree to support a cooperative parking program, the designated roles of each party being contemplated as follows:

(a.) County will act as the primary developer to arrange necessary financing for the parking facility and to oversee its construction. County will hold the fee title to the parking facility. Under a lease agreement with County or other suitable arrangement, MVHS will operate the parking facility for its needs and the needs of members of the general public conducting business, recreational or personal pursuits in the downtown Utica area. The facility will be open and available for use on a 365 day per year/twenty four hour per day basis.

(b.) MVHS shall, in consultation with County and City establish a general municipal parking agreement and plan which may include a parking fee structure. MVHS shall receive all revenue generated by the operation of the garage and be responsible for the costs for maintenance and operation of the garage as well as establishing a reasonable repair and capital reserve fund

(c.) MVHS, City, and County agree to negotiate in good faith a plan for the disposition and sharing between City and County of any parking facility generated revenues over and above costs of operation, maintenance and reasonable contributions to a capital reserve fund ("the excess revenues."). Such excess revenues shall be allocated in the same proportion as City and County's respective contributions to debt service for the parking facility (60/40 as discussed in section 5a. above). The parties agree that the method of calculating such revenue and its allocation, the method and frequency of payment, the term of the agreement and any renewal and/or extension provisions and remedies of the parties in the event of any breach of the agreement to share the excess revenues shall be incorporated in the Definitive Agreement(s).

(d) City is the owner of Kennedy Garage and will act as the developer and oversee the improvements to Kennedy Garage. The parties hereto agree to work together to include Kennedy Garage in the general municipal parking plan mentioned above.

(d.) It is understood that the utilization of New Market Tax Credits and other funding mechanisms may require the establishment of one or more Community Development Corporations or the creation of collaborations between new and existing Community Development Corporations. The parties to this MOA agree to work cooperatively to establish this framework.

7. **Dedication of Existing City-Owned Properties:** City is the owner of certain properties which have been acquired by the foreclosure of tax liens and by other means which are within the potential footprint of the proposed new hospital project.. In recognition of the general public benefit which will be conferred by the establishment of the new facility, City agrees to transfer all of its right title and interest in such properties to MVHS or any designated appropriate entity to be used for the sole purpose of establishing the new hospital facility and ancillary improvements related thereto. A list of these properties is attached hereto as **Exhibit A**. It is understood and agreed that this list (Exhibit A) may need to be modified according to the needs of the new hospital project and the parties agree to negotiate in good faith toward such end.

8. **Cooperation With Regard to Additional Funding:** The parties agree to work cooperatively to identify other public and/or private sources of funding which are or may become available for the new hospital facility project and related ancillary improvements. When such a funding source is or may be identified, the parties to this agreement, to the extent one or more of them may be a qualified applicant, shall agree to serve as such applicant and the parties shall cooperatively work to complete the appropriate application process.

9. **Additional items of Assistance to be Provided by County:** In addition to the other items set forth more specifically above, County shall provide the following assistance to the new hospital project at County's expense:

(a.) Provide a Planner in the Oneida County Planning Department assigned to the new hospital project and tasked with coordinating planning activities among City, County, the State of New York and other government entities; co-support and work with City on Planning of area Master Planning.

(b.) Coordinate and work with New York State Department of Transportation to provide full access at the intersection of Oriskany and Cornelia Streets.

(c.) Waive all applicable County fees or charges associated with construction and installation of improvements including but not limited to plan review, permits, impact fees, mitigation charges and the like.

10. **Additional Items of Assistance to be Provided by City:** In addition to the items set forth more specifically above, City shall provide the following assistance to the new hospital project at City's expense:

(a.) Contribute City-owned land within the boundaries of the new hospital campus as set forth above.

(b.) Provide appraisals for all City-owned land within the new hospital campus boundaries.

(c.) Relocate current parking west of Pine Street which is utilized for police parking and relocate to land to be contributed by MVHS (current Brandeles Property 50+/- spaces and remainder in the new parking garage facility (57+/- parking stalls).

(d.) Discontinue portions of Lafayette, Lee and Cornelia Streets within the new hospital boundaries and transfer to MVHS.

(e.) Enter into discussions to include in the Definitive Agreement plans to reroute existing City-owned utilities within the new hospital project boundaries, remove utilities and terminate use of existing easements and rights of way.

(f.) Consider in the development of the parking plan mentioned above, the dedication of at least 200 of the 450 parking stalls in Kennedy Parking Garage for Hospital use.

(g.) Assist displaced and affected businesses in relocating to other suitable locations within the City of Utica.

(h.) In view of the requirement of the New York State Department of Health and the Dormitory Authority of the State of New York to provide building and construction inspection, review and permitting, waive all fees for any building or zoning permits or any other such fee, at least to the extent such fees do not reflect actual costs necessarily incurred by City.

(i.) To the extent necessary, cooperate to secure necessary approvals for rezoning of MVHS property acquired for the new hospital project and adjacent strategic parcels to a PD-E classification which will meet the needs for current and future development.

(j.) Enter into discussions to provide in the Definitive Agreement(s) necessary improvements to Broadway, State Street, and Columbia Street such as new pavement, curbs, sidewalks, lighting and utilities.

(k.) Engage in conducting Strategic Master Planning study of downtown area adjacent to and surrounding the MVHS site in cooperation and coordination with the assigned County Planner.

(l) Provide a Planner assigned to the new hospital project and coordinate activities with County, State of New York and other governmental entities.

11. **Definitive Agreement(s):** The terms and provisions of this MOA are for the purpose of demonstrating the commitment and agreement of the parties with regard to supporting the proposed hospital project, and most particularly, the financing of the parking garage and the development and implementation of the general municipal parking plan. As available funding, costs, location of the proposed parking facility, and other factors related to the hospital project and the overall parking plan clarify and become known, the parties will enter into one or more Definitive Agreements setting forth those specifics.

12. **Publication and Publicity:** Releases to the news and media and any publicity or other communications shall be coordinated through MVHS and mutually agreed upon.

13. **Confidentiality:** The parties acknowledge and agree that City and County are public entities subject to the New York State Freedom of Information Law (FOIL). The parties agree to work cooperatively to keep as confidential information which may be subject to exceptions under FOIL including but not limited to proprietary information belonging to MVHS, discussions or negotiations concerning the value and acquisition of real property for the new hospital project and the like. The parties each agree to give each other prompt notice of any request for information related to the subject matters contained in this MOA or subsequent definitive agreements and to give all other parties a reasonable opportunity to make any objection which they may have to disclosure of such information.

14. **Governing Law:** This MOA shall be governed and interpreted under the laws of the State of New York.

15. **Notices and Communications:** All communications, notices and disclosures under this MOA shall be mailed or hand delivered as follows:

To MVHS:

Scott H. Perra
President and CEO
Mohawk Valley Health System
1656 Champlin Avenue
New Hartford, New York 13502

With a copy (not constituting notice) to: General Counsel

To County of Oneida:

Anthony J. Picente, Jr.
County Executive
County of Oneida
800 Park Avenue
Utica, New York 13501

With a copy (not constituting notice) to: Office of the County Attorney

To City of Utica:

Robert M. Palmieri
Mayor
City of Utica
One Kennedy Plaza
Utica, New York 13502

With a copy (not constituting notice): Office of the Corporation Counsel.

SIGNATURE PAGE FOLLOWS: