

**RESOLUTION NO. 2018-51**

**A RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WAYNE AND PROVIDENCE MEDICAL CENTER.**

WHEREAS, the City of Wayne, on August 21, 2012, approved a Memorandum of Understanding with Providence Medical Center (PMC), wherein PMC committed to provide healthcare services to low income individuals who were not entitled to Medicare or Medicaid benefits at no reimbursement or considerably less than full reimbursement from those patients; and

WHEREAS, PMC is now participating in a Government program called the 340(b) program; and

WHEREAS, PMC is requesting that the City enter into an updated Memorandum of Understanding to insure compliance with the 340(b) program.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and City Council of the City of Wayne, Nebraska, that the Memorandum of Understanding between the City of Wayne and Providence Medical Center, a copy of which is attached hereto and incorporated herein by reference, is approved, and the Mayor is hereby authorized to execute the same.

PASSED AND APPROVED this 4<sup>th</sup> day of September, 2018.

THE CITY OF WAYNE, NEBRASKA,

By \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**MEMORANDUM OF UNDERSTANDING  
BETWEEN**

**Providence Medical Center,  
Wayne, NE**

**AND**

**The City of Wayne, NE**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this 31st day of July, 2018, by and between City of Wayne, NE, and Providence Medical Center, Wayne, NE.

**RECITALS:**

**WHEREAS**, Providence Medical Center is a nonprofit corporation that provides health care services to the indigent and supports many programs that benefit the indigent, uninsured or underinsured population in State of Nebraska;

**WHEREAS**, Providence Medical Center desires to participate in the drug discount program established under Section 340B of the Public Health Services Act (the “340B Program”);

**WHEREAS**, in order to participate in the 340B Program, Providence Medical Center must enter into an agreement with a unit of state or local government pursuant to which Providence Medical Center commits to provide health care services to low income individuals who are not entitled to Medicare or Medicaid benefits at no reimbursement or considerably less than full reimbursement from these patients;

**WHEREAS**, Providence Medical Center desires to make such a formal commitment to the City of Wayne; and

**WHEREAS**, the City of Wayne agrees to accept such commitments on behalf of the citizens of State of Nebraska.

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants contained therein and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, it is mutually agreed and covenanted, under seal, by and between the parties to this Agreement, as follows:

1. **Commitment of Providence Medical Center to Provide Indigent Care.** During the term of this MOU, Providence Medical Center agrees to continue its historic commitment to the provision of health care to indigent, uninsured and underinsured residents of State of Nebraska. In 2017, this commitment totaled approximately \$1,000,000. Pursuant to this commitment it is the intention of Providence Medical Center that indigent care provided during the term of this MOU will range generally between \$800,000 and \$ 1,200,000 annually. In any event, Providence Medical Center will assure that all patients will receive necessary care, as required by law, regardless of ability to pay.

2. **Acceptance and Acknowledgements of the City of Wayne.**

(a) the City of Wayne accepts the commitment of Providence Medical Center set forth above;

(b) the City of Wayne hereby acknowledges that the health care services provided by Providence Medical Center hereunder are in the public interest and are being provided to individuals who are not entitled to benefits under Title XVIII or eligible for assistance under any State plan pursuant to Title XIX of the Social Security Act; and

(c) the City of Wayne acknowledges that Providence Medical Center is providing these services at no reimbursement or considerably less than full reimbursement from the patients.

3. **Representations of Providence Medical Center.** Providence Medical Center represents that as of the date hereof:

(a) Providence Medical Center constitutes a corporation qualified to do business and validly existing in good standing under the laws of the State of Nebraska with the corporate power and authority to enter into and perform its obligations under this MOU; and

(b) Providence Medical Center is a tax-exempt corporation under Section 501 (c)(3) of the Internal Revenue Code of the United States, as amended and under applicable laws of the State of Nebraska.

4. **Access to Books and Records.** Until the expiration of four years after the furnishing of the services provided under this Agreement, each party shall make available to the Secretary, United States Department of Health and Human Services, and the United States Comptroller General, and their representatives, a copy of this Agreement and such books, documents and records of that party that are necessary to certify the nature and extent of any cost incurred by either party. If a party carries out the duties of the Agreement through a subcontract worth \$10,000 or more over a 12-month period with a related organization, the subcontract shall contain a clause placing the same obligations on subcontractor as this clause places on that party. NDHHS shall immediately notify

Providence Medical Center of its receipt of any such request for this Agreement and any other books, documents and records and shall provide Providence Medical Center with copies of any such materials. In the event this Agreement is not subject to the provision of 42 U.S.C. 1395x(v)(1)(I) and 42 C.F.R. 420.300 et seq. or relevant regulations, this paragraph shall be null and void.

5. **Effect of Government Regulation.** Providence Medical Center shall have the right to propose an amendment to this Agreement, without liability, to comply with any legal order, ruling, opinion, procedure, policy, or other guidance issued by any federal or state agency, or to comply with any provision of law, regulation, or any requirement of accreditation, tax-exemption, federally-funded health care program participation or licensure which: (i) invalidates or is inconsistent with the provisions of this Agreement; (ii) would cause a party to be in violation of the law; (iii) jeopardizes the tax-exempt status of Providence Medical Center, or any affiliate of Providence Medical Center; (iv) jeopardizes the tax-exempt status of any bonds issued for the benefit of Providence Medical Center, or any affiliate of Providence Medical Center; or (v) jeopardizes the good standing status of licensure, accreditation or participation in any federally-funded health care program, including the Medicare and Medicaid programs, of Providence Medical Center, or any affiliate of Providence Medical Center. If Providence Medical Center deems it necessary to amend this Agreement as provided in this Section and the amendment is unacceptable to the City of Wayne, Providence Medical Center may choose to immediately terminate this Agreement without cause.

6. **Term and Termination.** The term of this MOU shall commence on the date first above written and shall continue until terminated by either party upon not less than sixty (60) days prior written notice to the other.

7. **Independent Contractor Relationship.** None of the provisions of this Agreement are intended to create any relationship between the parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither of the parties, nor any of their respective officers, directors, employees or agents, shall have the authority to bind the other or shall be deemed or construed to be the agent, employee or representative of the other except as may be specifically provided herein.

8. **Notice.** All notices and other communications required or permitted to be given shall be made in writing and shall be considered given and received when (a) personally delivered to the other party, (b) delivered by courier, (c) delivered by facsimile or (d) deposited in the United States mail, postage prepaid, return receipt requested and addressed as set forth below or at such other address such party shall have specified by notice given in accordance with the provisions of this Section:

**If to Providence Medical Center to:**

**If to the City of Wayne, to:**

Chief Executive Office  
Providence Medical Center  
1200 Providence Rd  
Wayne, NE 68787

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*With a copy by regular United States mail, postage prepaid, to:*

*With a copy by regular United States mail, postage prepaid, to:*

General Counsel  
Providence Medical Center  
1200 Providence Rd  
Wayne, NE 68787

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. **Governing Law.** This MOU shall be governed by and construed in accordance with the laws of State of Nebraska (excepting any conflict of laws provisions which would serve to defeat application of substantive law).

10. **Amendment.** This Agreement may not be amended except upon written agreement signed by both parties.

11. **Severability.** In the event any term or provision of this Agreement is rendered invalid or unenforceable by any valid act of Congress or the State Legislature, or by any regulation duly promulgated by officers of the United States or the State of Nebraska citing in accordance with law, or is held by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

12. **Headings.** The headings to the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit, or expand express provisions of this Agreement.

13. **Entire Agreement.** This Agreement constitutes the entire written agreement of the parties with respect to the subject matter of this Agreement and supersedes any prior written agreements of the parties regarding the subject matter of this Agreement.

**IN WITNESS WHEREOF,** Providence Medical Center and the City of Wayne have executed this Agreement as of the day and year first written above by their duly authorized representatives.

Providence Medical Center

By: Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Wayne

By: Name: \_\_\_\_\_

Title: \_\_\_\_\_