

DATE: APRIL 16, 2018

CLERK: DIANE ROLLAND

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
CLAUDETTE O. ISTNICK, PRESIDENT

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 40 – 2018

BY: COMMITTEE OF THE WHOLE

TITLE: AN ORDINANCE authorizing the Mayor of the City of Massillon, Ohio, to accept the final settlement agreement from DHSC, LLC dba Affinity Medical Center, and authorizing the Mayor to execute all necessary documents of the final settlement agreement from DHSC, LLC dba Affinity Medical Center, with regard to Stark County Court of Common Pleas Case No. 2018 CV 00096, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby determines it necessary in the public health, safety and welfare to accept the final settlement agreement from DHSC, LLC dba Affinity Medical Center, with regard to Stark County Court of Common Pleas Case No. 2018 CV 00096.

Section 2:

The Mayor of the City of Massillon, Ohio, is hereby directed to accept the final settlement agreement from DHSC, LLC dba Affinity Medical Center, and authorized to execute all necessary documents of the final settlement agreement from DHSC, LLC dba Affinity Medical Center, with regard to Stark County Court of Common Pleas Case No. 2018 CV 00096. Exhibit 1, which includes the Settlement Agreement and Exhibits A, B, C and D is attached hereto.

Section 3:

This Ordinance is hereby declared to be an emergency for the public health, safety and welfare of the community, and for the additional reason to allow the City to move forward with the final settlement agreement and resolve Stark County Court of Common Pleas Case No. 2018 CV 00096. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Section 4:

The Clerk of Council is authorized to correct any typographical errors discovered herein during or after the pendency or passage of this ordinance. The Clerk of Council is further authorized, in conjunction with the Law Department and the Council President to correct any ministerial or de minimis errors that do not substantially alter the intended results or numerical total sums of this ordinance, during or after the pendency or passage of this ordinance. Corrected copies are to be sent to all official recipients.

Section 5:

This Ordinance is hereby declared to be an emergency for the public health, safety and welfare of the community, and for the additional reason to allow the City to move forward with the final settlement agreement and resolve Stark County Court of Common Pleas Case No. 2018 CV 00096. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018

ATTEST: \_\_\_\_\_  
DIANE ROLLAND, CLERK OF COUNCIL

\_\_\_\_\_  
CLAUDETTE O. ISTNICK, PRESIDENT

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
KATHY CATAZARO-PERRY, MAYOR

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of April \_\_\_\_\_, 2018 (the "Effective Date"), by and among (i) the City of Massillon, Ohio, a political subdivision of the State of Ohio (the "City"), Antonios E. Chryssos, M.D. ("Chryssos"), Dmitrios Topalidis, M.D. ("Topalidis"), Mona Shay, D.O. ("Shay"), Alan Meshekow, D.O. ("Meshekow"), David J. Utlak, M.D. ("Utlak"), Jody Musso, D.O. ("J. Musso"), and Michael Musso, D.O. ("M. Musso") (the City, Chryssos, Topalidis, Shay, Meshekow, Utlak, J. Musso and M. Musso are hereinafter sometimes collectively referred to as the "Plaintiffs"), and (ii) DHSC, LLC dba "Affinity Medical Center," a Delaware limited liability company ("DHSC"), Doctor's Hospital Physician Services, LLC, a Delaware limited liability company ("DHPS"), QHCCS, LLC, a Delaware limited liability company ("QHCCS"), John Walsh ("Walsh"), and Kolbe Sheridan ("Sheridan") (DHSC, DHPS, QHCCS, Walsh and Sheridan are hereinafter sometimes collectively referred to as the "Defendants") (the Plaintiffs and Defendants are hereinafter sometimes collectively referred to as the "Parties").

Recitals:

WHEREAS, DHSC owns and operates a general acute care hospital known as "Affinity Medical Center" which is located at 875 8<sup>th</sup> Street NE, Massillon, Ohio 44646 (the "Hospital");

WHEREAS, on January 5, 2018, DHSC announced its plans to close the Hospital effective 11:59 p.m. on February 4, 2018;

WHEREAS, on January 17, 2018, Plaintiffs filed a complaint (the "Complaint") in the Court of Common Pleas for Stark County, Ohio, captioned *City of Massillon, et al. v. DHSC, LLC dba "Affinity Medical Center," et al.*, Civil Action No. 2018 CV 00096, in which Plaintiffs sought declaratory and injunctive relief to delay the closure of the Hospital (the "Injunction Action");

WHEREAS, the Court issued a temporary restraining order on January 19, 2018 (the "TRO"), which, among other things, prevented the Defendants from taking any further action to close the Hospital, and scheduled a preliminary injunction hearing for February 1, 2018;

WHEREAS, on January 25, 2018, DHSC, DHPS, QHCCS, Walsh and Sheridan filed an answer and counterclaim in response to the Complaint, wherein such Defendants denied the claims of the Plaintiffs in the Complaint and made various counterclaims against the Plaintiffs (the "Counterclaim");

WHEREAS, on January 29, 2018, DHSC, Walsh and Sheridan filed a Complaint for Writ of Prohibition and Alternative Writ Requesting Expedited Consideration with the Supreme Court of Ohio (the "Writ"), against the Honorable Chryssa N. Hartnett, in her official capacity as a Judge of the Stark County Court Of Common Pleas ("Judge Hartnett"), pursuant to which such Defendants sought a writ of prohibition to prevent enforcement of the TRO and issuance of an injunction and an expedited alternative writ staying the TRO (the "Writ Action"); and

WHEREAS, as a result of settlement negotiations, the Plaintiffs and the Defendants wish to resolve and settle any disputes between them in connection with the Injunction Action on the terms set forth in this Agreement.

Agreement:

NOW, THEREFORE, in consideration of the premises and the mutual benefits to be derived from this Agreement, and of the respective representations, warranties, agreements and promises contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby mutually acknowledged by the Parties, the Parties, intending to be legally bound, agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are incorporated herein by this reference and made a part of this Agreement.

2. **Defined Terms.** Capitalized terms used but not otherwise defined herein shall have the same meaning as set forth in the Complaint or the Counterclaim, as applicable.

3. **Dismissal of Actions.** As a result of the preliminary settlement terms agreed upon by the Parties, counsel for DHSC, Walsh and Sheridan, filed an Application for Dismissal of the Writ Action on February 2, 2018, which has been granted by the Ohio Supreme Court. Upon the execution of this Agreement, the Plaintiffs and the Defendants agree to dismiss forthwith, with prejudice, the Complaint and the Counterclaim filed in connection with the Injunction Action, subject to the continuing jurisdiction of the Stark County Court of Common Pleas as set forth in Section 10 herein.

4. **Continuing Operations of the Hospital.** The Parties agree to the following:

4.1 **Scope of Operations; Limitations.** DHSC will continue to operate the Hospital until 11:59 p.m. on February 11, 2018, subject to the following limitations:

- (a) Until February 11, 2018, DHSC will continue to operate the emergency room and to provide inpatient services for patients who were admitted as inpatients to the Hospital prior to February 1, 2018;
- (b) The Hospital shall not be required to accept the admission of any new inpatients after February 1, 2018;
- (c) The Hospital shall not be required to provide surgical services after February 4, 2018; and
- (d) Until February 11, 2018, the obligations of DHSC to continue the operations of the Hospital will be subject to the availability of personnel to staff the Hospital, and DHSC shall not be required to operate the Hospital if it is unable to obtain the services of personnel to staff the Hospital on terms consistent with the standard terms of employment or engagement of such personnel.

The Defendants shall be free to permanently close the operations of the Hospital at any time after February 11, 2018.

4.2 Physician Clinics. The Parties agree as follows regarding the employed physician clinics operated by DHPS:

- (a) The physician clinics will remain open until March 6, 2018, the Defendants will coordinate any transition of the employed physician clinic offices to ownership by such employed physicians or other local health systems, or the closure of any such clinics with respect to employed physicians who intend to retire or relocate out of the area;
- (b) The Defendants will be free to negotiate the transfer and/or sale of the assets used in the employed physician clinics to physicians or other local health systems, and the transfer or sale of all such assets associated with the physician practices will be at the discretion of, and upon terms acceptable to, the Defendants;
- (c) For employed physicians who have negotiated with the Defendants for the transfer and/or sale of the assets used in their physician clinics and who desire to remain in their present clinic offices after March 6, 2018, the Defendants will offer such employed physicians a lease or sublease for a term of up to twelve (12) months at a rent rate that is consistent with the current rent rate for such space or such other rent rate as reasonably determined by the Defendants, subject to the review and approval of the City as regards any lease or sublease that is to be assigned to the City herein; and
- (d) DHSC, DHPS and Utlak will cooperate in good faith with one another to transition Utlak's physician practice pursuant to that certain letter dated February 6, 2018, from Utlak's counsel to DHSC's counsel, as amended by the parties.

4.3 Medical Residents. Defendants will cooperate with the residents and program directors of the Hospital's medical education programs and use good faith and commercially reasonable efforts to assist and facilitate the transition of the residents to residency programs offered by other hospitals or qualified organizations, including, but not limited to, coordinating the closure of the Hospital's medical education residency programs and sharing information with the residents, such other residency programs and applicable residency program accrediting bodies in a manner that is consistent with applicable regulatory and accreditation requirements applicable to medical education programs, all with the intent to ensure a smooth transition of the residents to other programs that does not jeopardize the uninterrupted continuation and advancement of the education or board eligibility of any of the residents and that assures that CMS funding follows the residents to their new residency programs.

5. Transfer of Ownership of Hospital Assets.

5.1 Decommissioning of the Hospital. Following the permanent closure of the Hospital, the Defendants will work in good faith to decommission the Hospital in accordance with industry protocols.

5.2 Transfer of Owned Real Property and Personal Property.

- (a) After the Hospital has been decommissioned in accordance with industry protocols and DHSC, DHPS and their affiliates have completed the process of transitioning the ownership and operation of all or, at their option, a substantial majority of their employed physician clinic locations in Massillon and surrounding areas, DHSC will transfer and convey title to the City, free and clear of all monetary liens, including mortgages, financing statements, judgment liens, tax liens of any nature, real estate taxes and assessments due and payable and prorated to the date of closing, unemployment liens, worker's

compensation liens, environmental liens, other monetary liens and monetary encumbrances, and the City will accept from DHSC, the following:

- (i) A fee simple interest (via quitclaim deed) in all of the real property owned by DHSC and Massillon Health System, LLC in connection with the operation of the Hospital, a list of which is set forth on Exhibit A attached hereto (the "Owned Real Property"); and
  - (ii) All items of furniture, fixtures and medical equipment located at the Hospital that are owned by DHSC in connection with the operation of the Hospital other than the Excluded Assets described in Section 5.3 below (collectively, the "Owned Personal Property").
- (b) As consideration for the transfer of the Owned Real Property and the Owned Personal Property, the City shall pay a purchase price of \$1 and assume the obligations of DHSC and DHPS under the Real Property Leases and the Equipment Leases as described in Sections 5.4 and 5.5 below, respectively, that arise on or after the date of transfer. The City expressly does not assume liability for any of DHSC's or DHPS's obligations under the Real Property Leases and the Equipment Leases that arise prior to the date of transfer.

5.3 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, DHSC shall retain all of the assets used in the operation of the Hospital's business other than the Owned Real Property, the Owned Personal Property, the Real Property Leases and the Equipment Leases, including, but not limited to, the following:

- (a) All of the items of equipment described on Exhibit B attached hereto;
- (b) All inventories of medical supplies, drugs, food, janitorial and office supplies, and other disposables and consumables;
- (c) Accounts receivable arising out of the operation of the Hospital and its affiliated clinics;



- (d) All records associated with the operation of the Hospital and its affiliated physician clinics, including, but not limited to, all patient, financial, medical staff, personnel and other records of any kind;
- (e) All rights and interests in any contracts, commitments, leases and agreements other than the Real Property Leases and the Equipment Leases;
- (f) All other tangible assets located anywhere other than the main building of the Hospital at 875 8<sup>th</sup> Street NE, Massillon, Ohio; and
- (g) All other intangible assets located at, or used in connection with the operation of, the Hospital.

5.4 Real Property Leases.

- (a) Set forth on Exhibit C attached hereto is a listing of all of the real property leases to which either of DHSC or DHPS is party, including any such leases where DHSC or DHPS is a tenant or subtenant ("Tenant Leases") and any such leases where DHSC or DHPS is a landlord or sublandlord ("Landlord Leases") (the Tenant Leases and the Landlord Leases are referred to herein collectively as the "Real Property Leases").
- (b) Between the Effective Date and the Closing (hereinafter defined), DHSC and DHPS may take any of the following actions in connection with the Landlord Leases:
  - (i) Agree to the mutual termination of any Landlord Lease with any tenant or subtenant, but only if such termination is initiated and requested by the tenant of said Landlord Lease;
  - (ii) Consent to the assignment of any Landlord Lease for space housing an employed or independent physician clinic, to the physician practicing in such clinic (or an entity owned or controlled by such physician) or to any other physician, physician group or health system which intends to employ such physician on a prospective basis; or

- (iii) Extend the term of any Landlord Lease, or enter into a new lease, with any tenant or subtenant who uses such space for the operation of a physician clinic, for a term of up to twelve (12) months and at a rent rate consistent with the current rent rate for such space or such other rent rate as reasonably determined by the Defendants.
- (c) Between the Effective Date and the Closing, DHSC and DHPS may take any of the following actions in connection with the Tenant Leases:
  - (i) Agree to the mutual termination of any Tenant Lease with any landlord or sublandlord;
  - (ii) Exercise any rights to terminate unilaterally any Tenant Lease; or
  - (iii) Assign any Tenant Lease to any physician or other third party.
- (d) Between the Effective Date and the Closing, the Defendants and the City shall cooperate in good faith with one another and take such commercially reasonable actions as necessary to secure (i) consents to assignment from landlords and tenants with respect to any of the Real Property Leases for which consent to assignment is required, and (ii) releases and/or terminations of any guarantees of any of the Real Property Leases by the Defendants or any of their affiliates or predecessor entities.
- (e) At the Closing, unless otherwise agreed upon by DHSC and the City, DHSC and DHPS shall assign to the City any Real Property Leases that remain in effect as of the Closing, and the City shall agree to assume all of the rights and obligations of DHSC or DHPS, respectively, arising on or after the date of the Closing under any such Real Property Lease.
- (f) It shall be a condition to the obligations of DHSC and DHPS at the Closing that
  - (i) any third party consents to assignment required under the terms of any of the Real Property Leases shall have been obtained effective as of the Closing, and
  - (ii) any guarantee obligations of the Defendants or their affiliates or

predecessor entities under any of the Real Property Leases shall have been released and/or terminated effective as of the Closing.

5.5 Equipment Leases.

- (a) Set forth on Exhibit D attached hereto is a listing of all of the equipment leases to which either of DHSC is party as either a lessee or sublessee and which DHSC intends to assign to City as of the Closing (the "Equipment Leases").
- (b) Between the Effective Date and the Closing (hereinafter defined), DHSC and DHPS may take any of the following actions in connection with the Equipment Leases:
  - (i) Agree to the mutual termination of any Equipment Lease;
  - (ii) Exercise any rights to terminate unilaterally any Equipment Lease;
  - (iii) Allow the term of any Equipment Lease to expire; or
  - (iv) Assign the rights and obligations under any Equipment Lease to any physician with respect to equipment used in the operation of such physician's clinic.
- (c) Between the Effective Date and the Closing, the Defendants and the City shall cooperate in good faith with one another and take all commercially reasonable actions as necessary to secure (i) consents to assignment from lessors with respect to any Equipment Leases for which consent to assignment is required, and (ii) releases and/or terminations of any guarantees of any of the Equipment Leases by the Defendants or any of their affiliates or predecessor entities.
- (d) At the Closing, unless otherwise agreed upon by DHSC and the City, DHSC and DHPS shall assign to the City any Equipment Leases that remain in effect as of the Closing, and the City shall agree to assume, all of the rights and obligations of DHSC or DHPS, respectively, arising on or after the date of the Closing under any such Equipment Lease.

- (e) If a purchase option is available under any such Equipment Lease or if the lessor will agree to sell the equipment, the City may elect to pay the purchase amount and DHSC or DHPS (as applicable) will cooperate in good faith with the City and the lessor to facilitate the transfer of title to the equipment covered by such Equipment Lease to the City.
- (f) It shall be a condition to the obligations of DHSC and DHPS at the Closing that
  - (i) any consents required from third party lessors to the assignment of any of the Equipment Leases shall have been obtained effective as of the Closing, and
  - (ii) any guarantee obligations of DHSC, DHPS or their affiliates or any predecessor entities under any of the Equipment Leases shall have been released and/or terminated effective as of the Closing.

5.6 No Representations or Warranties. DHSC and DHPS will transfer and convey the Owned Real Property, the Owned Personal Property and all of their respective rights and obligations under the Real Property Leases and the Equipment Leases (collectively, the "Assets and Liabilities") to the City, and the City hereby accepts such transfer and conveyance of the Assets and Liabilities, "AS IS, WHERE IS," WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION, WITH RESPECT TO THE LAND, BUILDINGS AND IMPROVEMENTS INCLUDED WITHIN THE OWNED REAL PROPERTY, AND WITH NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE OWNED PERSONAL PROPERTY, AND ANY AND ALL OF WHICH WARRANTIES DHSC AND DHPS HEREBY DISCLAIM.

5.7 Access to the Hospital. Between the date that DHSC ceases to operate the Hospital and the Closing, DHSC shall afford the City and its authorized representatives and agents reasonable access to the Hospital for purposes of planning the transition and transfer of ownership of

the Owned Real Property and the Owned Personal Property, provided that such right of access and inspection shall be exercised in such a manner as not to interfere with the decommissioning activities of DHSC or its representatives. Each of the City and DHSC shall designate a representative who shall coordinate all access to the Hospital by the City and its representatives prior to the Closing. DHSC's representative shall be Kolbe Sheridan. The City's representative shall be Joel Smith. The City agrees that no such access to the Hospital by the City or its representatives shall take place prior to the Closing without first providing reasonable notice to DHSC and coordinating such inspection with DHSC's designated representative. DHSC further agrees that it will make Kolbe Sheridan or other representatives available in order to coordinate any facility maintenance, security, or upkeep information to Joel Smith, which includes, but is not limited to, keypad access and passcode information, turnover of keys to all facilities, maintenance issues and maintenance schedules for the facilities, and contact information for facility maintenance vendors, at such time as necessary to provide the City with access to the facilities effective as of the Closing and to allow the City to continue maintaining the facility following the Closing.

5.8 Assignment of Claims. In connection with the Closing and in further consideration for the City's obligations under this Agreement, DHSC will assign to the City all of its rights to any claims arising out of or related to the Kathryn Seymour Trust and the case pending in Court of Common Pleas, Probate Division, Stark County, Ohio, Case No. 225942/Court of Appeals for Stark County, Ohio, Fifth Appellate District Case No. 2017CA00134 captioned *FirstMerit, N.A. v. Akron General Medical Center, et al.*, and any related transactions described or referred to therein (the "Seymour Litigation").

6. Closing of the Transfer of Hospital Assets.

6.1 The Closing. The consummation of the transfer and conveyance of the Assets and Liabilities to the City as contemplated by and described in this Agreement (the "Closing") shall

take place within ten (10) days after (i) DHSC has completed the process of decommissioning the Hospital, (ii) DHPS has completed the transition of the ownership or closure of all or, at the option of DHPS, a substantial majority of the employed physician clinics owned and operated by DHPS, and (iii) any required consents to assignment and any releases or terminations of any applicable guarantees with respect to the Real Property Leases and the Equipment Leases have been obtained, as contemplated by Sections 5.4(f) and 5.5(f); provided, however, that DHSC and DHPS may elect to waive the conditions to closing in Sections 5.4(f) or 5.5(f), as applicable, and require DHSC, DHPS and the City to proceed to the Closing without including the assignment of any Real Property Leases or Equipment Leases for which consents to assignment and/or releases or terminations of guarantees have not been received.

6.2 Closing Deliverables. At the Closing, DHSC, DHPS and the City, as applicable, shall take the following actions:

- (a) DHSC shall execute a deed conveying quit claim title to the Owned Real Property on a form proposed by the City and reasonably acceptable to DHSC;
- (b) DHSC and the City shall execute a bill of sale on a form proposed by DHSC that contains "AS IS, WHERE IS" legend consistent with the terms of Section 5.6 above, and that is reasonably acceptable to the City, conveying the Owned Personal Property to the City;
- (c) DHSC and the City shall execute one or more assignments of leases on a form prepared by DHSC that is reasonably acceptable to the City, assigning to the City all of DHSC's rights and obligations under any of the Real Property Leases as contemplated by this Agreement;
- (d) DHPS and the City shall execute one or more assignments of leases on a form prepared by DHPS that is reasonably acceptable to the City, assigning to the

City all of DHPS's rights and obligations under any of the Real Property Leases as contemplated by this Agreement;

- (e) DHSC and the City shall execute an assignment and assumption agreement on a form prepared by DHSC that is reasonably acceptable to the City, assigning to the City all of DHSC's rights and obligations under any of the Equipment Leases as contemplated by this Agreement;
- (f) DHPS and the City shall execute an assignment and assumption agreement on a form prepared by DHPS that is reasonably acceptable to the City, assigning to the City all of DHPS's rights and obligations under any of the Equipment Leases as contemplated by this Agreement;
- (g) DHSC and the City shall execute an assignment of claims, assigning to the City all of DHSC's rights to any claims in connection with the Seymour Litigation; and
- (h) DHSC, DHPS and the City shall execute such other documents as are reasonably necessary to effect the transfer and conveyance of the Assets and Liabilities to the City as contemplated by this Agreement.

6.3 Monetary Liens. In connection with the Closing, DHSC shall obtain a release of any monetary liens on the Owned Real Property and the Owned Personal Property, to take effect as of the Closing.

6.4 Transfer Taxes. The City shall be responsible for the payment of any transfer taxes, if any, in connection with the transfer of the Owned Real Property or the Owned Personal Property to the City, as well as any recording fees required in connection with the transfer of the Owned Real Property.

6.5 Title Insurance. The City may, at its sole option and expense, obtain a title insurance policy in connection with the transfer of the Owned Real Property. DHSC shall have no obligation to provide, or pay the premiums for, any such title policy.

6.6 Timing. Defendants and the City mutually acknowledge and agree that it is their mutual desire to complete the Closing on or prior to April 27, 2018. Each of the parties shall use their respective best efforts in furtherance of completing the Closing by such date.

7. Mutual Releases. Each of the Plaintiffs, on behalf of itself and its respective predecessors, present and former subsidiaries and divisions, and present and former partners, members, principals, officers, directors, employees, agent, representatives, subrogees, executors, administrators, heirs, successors and assigns, on the one hand, and the Defendants, on behalf of themselves and their respective predecessors, present and former subsidiaries and divisions, and present and former partners, members, principals, officers, directors, employees, agents, representatives, subrogees, executors, administrators, heirs, successors and assigns, on the other hand, hereby remise, release, acquit, and discharge the other Parties hereto, along with such released Parties' respective predecessors, present and former subsidiaries and divisions, and present and former partners, members, principals, officers, directors, employees, subrogees, executors, administrators, heirs, successors, assigns, agents, and representatives, from any and all rights, actions, demands, claims and costs of any nature whatsoever, in law or in equity, whether known or unknown, that were asserted or could have been asserted or that arise out of, under or from, or otherwise relate to any business dealings, agreements, and/or transactions concerning, or in any way relating to the Injunction Action or the Writ Action, or the subject matter giving rise thereto, from the beginning of time until the date of this Agreement. Notwithstanding the foregoing, this release does not apply to the enforcement of this Agreement or any document or contract executed and delivered pursuant to this Agreement. This release further does not apply to waive or release any rights that any of Chryssos, Topalidis, Shay,



Meshekow, Utlak, J. Musso and M. Musso may be entitled to pursuant to their respective employment contracts with DHSC, DHPS, and/or QHCCS.

8. **Non-Disparagement.** Each Party agrees that it shall not criticize, denigrate, disparage, or make any derogatory statements about any other Party or the settlement terms agreed upon herein, to any members of the media, or any other person in a manner that is intended to harm or in any way adversely affect the reputation and goodwill of the other Parties; provided, however, that nothing in this paragraph shall preclude or prevent any of the Parties from giving truthful testimony or information to city council, law enforcement entities, administrative agencies or courts or in any other legal proceedings as required by law.

9. **Compromise.** This Agreement and the releases as provided above effect the compromise and settlement of disputed and contested claims. It does not constitute, nor shall anything contained herein be construed as an admission by any Party of any liability to any other Party.

10. **Jurisdiction over Agreement.** The Parties acknowledge and agree that the Stark County Court of Common Pleas, Judge Hartnett presiding, shall retain jurisdiction over this Agreement, to enforce it as may be necessary, for a period of ninety (90) days after the Effective Date.

11. **Authority.** Each Party represents to the other Parties that this Agreement constitutes the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, and further that such Party has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform his, her or its obligations under this Agreement.

12. **Further Assurances.** The Parties agree to execute any additional documentation and take such additional further actions as reasonably required to facilitate the intent of this Agreement and to provide the parties the benefit of their bargain.

13. **Representation by Counsel; Interpretation.** Each Party acknowledges that it has retained (or had the opportunity to retain) such separate and independent legal counsel and advice as

such Party deems appropriate or necessary to advise it in connection with the execution and delivery of this Agreement, and each Party understands the terms and conditions hereof and enters into this Agreement freely and voluntarily. This Agreement shall not be construed or interpreted for or against any Party because said Party drafted or caused the Party's legal representative to draft any of its provisions. This Agreement shall be construed without reference to the identity of the Party or Parties preparing the same, and it is expressly understood and agreed that the Parties participated equally or had equal opportunity to participate in the drafting of this Agreement. The Parties, or their respective attorneys, have made such investigation of the facts pertaining to the settlement and this Agreement and all related matters, as the Parties deem necessary.

14. **Entire Agreement; Severability.** This Agreement contains the entire agreement among the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either expressed or implied, other than herein set forth shall be binding on any Party. Any term or provision of this Agreement that is determined to be invalid or unenforceable in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. However, the Parties acknowledge that each of Chryssos, Topalidis, Shay, Meshekow, Utlak, J. Musso and M. Musso is a party to an employment contract with DHSC, DHPS, and/or QHCCS.

15. **Governing Law.** This Agreement and any other documents referred to herein shall be governed by, construed and enforced in accordance with the laws of the State of Ohio.

16. **Amendments and Waivers.** This Agreement may not be modified, amended or terminated except by an instrument in writing signed by each of the Parties affected thereby. No failure to exercise, and no delay in exercising, any right, remedy or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy or power preclude

any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

17. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all counterparts, taken together, shall constitute one agreement binding on all of the Parties hereto, notwithstanding that all of the Parties are not signatory to the same counterpart. Further, receipt and exchange of such counterparts by facsimile, electronic mail or other electronic format shall be considered sufficient for the purposes of execution.

18. **Fees.** Notwithstanding any of the foregoing, the Parties shall pay their respective attorneys' fees and costs incurred in connection with the Action and the negotiation and execution of this Agreement and any other agreements negotiated or executed in furtherance thereof.

SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement on the  
date first written above.

**PLAINTIFFS:**

**CITY OF MASSILLON**

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

\_\_\_\_\_  
Antonios E. Chryssos, M.D.

\_\_\_\_\_  
Dmitrios Topalidis, M.D.

\_\_\_\_\_  
Mona Shay, D.O.

\_\_\_\_\_  
Alan Meshekow, D.O.

\_\_\_\_\_  
David J. Utlak, M.D.

\_\_\_\_\_  
Jody Musso, D.O.

\_\_\_\_\_  
Michael Musso, D.O.

**DEFENDANTS:**

**DHSC, LLC dba "Affinity Medical Center"**

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

**DOCTORS HOSPITAL PHYSICIAN SERVICES,  
LLC**

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

**QHCCS, LLC**

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

\_\_\_\_\_  
John Walsh

\_\_\_\_\_  
Kolbe Sheridan

**EXHIBIT A**

**OWNED REAL PROPERTY**

<b>Parcel Number</b>	<b>Physical Address</b>	<b>Description</b>
10-003720	845 8th Street NE, Massillon, OH	Hospital Main Campus -- includes 875 8th Street NE and 830 Amherst Road
10-000149	845 8th Street NE, Massillon, OH	Hospital Main Campus - Parking Lot
43-18240	2860 Lincoln Way E, Massillon, OH	Medical Office Building -- Vacant
43-09621	Bailey Street NE, Massillon, OH	Parking Lot
43-18329	Marion Ave NW, Massillon, OH	Vacant -- same building as 323 Marion
43-18330	323 Marion Ave NW, Massillon, OH	Medical Office Building -- partially occupied by third party physician tenants
43-18333	124 Austin Ave NW, Massillon, OH	Vacant -- same building as 3140 Lincoln
43-18881	3140 Lincoln Street E, Massillon, OH	Vacant -- same building as 124 Austin
43-18882	Marion Ave NW, Massillon, OH	Parking Lot
43-04261	131 Newport Ave NW, Massillon, OH	Undeveloped land

**EXHIBIT B**

**EXCLUDED ASSETS**

Description/Model	Location	Category
POET II IQ GAS MONITOR	Anesthesia	Anesthesia Monitor
8 Channel Telerehab VersaCare telemetry monitoring system	Cardiac Rehab	Cardiac Rehab Telemetry
TELE REHAB	Cardiac Rehab	Telemetry Monitoring
16-02-85	Cardiology	Warmer/Cooler
Various	Cardiology	Vital Signs
ACT	Cardiology	Coagulation Timers
RENAMIC	Cardiology	Pacemaker Test Equipment
Various	Cardiology	Ultrasound Scanning Systems
3120	Cardiology	Pacemaker Programmers
ILLUMENA 60	Cardiology	Angiographic Injectors
IMPELLA 2.5	Cardiology	Balloon Pumps
ULTRA	Cardiology	Thermometers
Case 8000	Cardiology	Stress Test Units
860322 DIGITRAK XT	Cardiology	Holter Recorders
ENSITE	Cardiology	Amplifier
1500T9-CP	Cardiology	Ablation Units
CAL370	Cardiovascular OR	Warming/Cooling Unit, Patient
MD2 DOPPLEX	Cardiovascular OR	Detector, Fetal Heart, Ultrasonic
550	Cardiovascular OR	Perfusion Pumps
FORCE FX	Cardiovascular OR	Electrosurgical Units
CV-180	Cardiovascular OR	Video Image Processors
16-02-85	Cardiovascular OR	Heart-Lung Bypass Units
VISTA	Cardiovascular OR	Electroencephalographs
System 7 Sternum Saw	Cardiovascular OR	Surgical Saws
M1032A	Cardiovascular OR	Data Interface Units
BRAT 2	Cardiovascular OR	Centrifugal Blood Processors
UHI-3	Cardiovascular OR	Insufflators
10033 NX	Central Supply	Plasma Sterilizers
2314	Central Supply	Portable Suction Pumps
TP700	Central Supply	Patient warmers
15032-00-002	Central Supply	Epidural Infusion Pumps
Various	Central Supply	Feeding Pumps
INJECTOR	CT Scan	CT Injector
PULSE OXIMETER	CT Scan	CT Pulse Oximeter
CT SCAN TOSHIBA HIGH RES 64 W/INJECTOR SYS	CT Scan	CT-Injector
40L HIGH FLOW	Education	Insufflators
988	Education	Video Cameras
6500	Endoscopy	Washer/Decontaminator
STERIUVS	Endoscopy	Water Purification Systems
6500	Endoscopy	Washer/Decontaminators
15B-120A	Endoscopy	Isolation Transformers
C.O. MODULE	CVICU	CVICU Patient Monitors
BEDS, ICU (4)	ICU	ICU Beds
Phillips MX40	CVICU	Telemetry Monitoring
2008K	ICU/CVICU	Hemodialysis Units
M4841A	Intensive Care Unit	Insufflator
Sorvall ST 16 centrifuge	Lab	Centrifuge
AUTOSTAINER XL	Lab	Slide Stainer
CRYOTOME E	Lab	Cryostats
CC08 2100 & 2200 Telemetry	Med Surg	Telemetry Monitoring
ACP2000	Nursing	Telemetry Monitoring
MD2 DOPPLEX	Nursing	Ultrasonic Fetal Heart Monitor
775, Blair Hugger	Nursing	Patient Warming/Cooling Units
HP 5700	Nursing	Telemetry Monitoring
DASH 3000	Nursing	Physiologic Monitors
E350I	Nursing	Electrocardiographs
C-6	Nursing	Cold Compress/Chilling Packs
CAVITATOR	Nursing	Ultrasonic Cleaners
2529	Nursing	Endoscope Test Equipment
M9	Nursing	Tabletop Sterilizers
LITE	Nursing	External Defibrillators
WM-60	Nursing	Endoscopic Carts
5388	Nursing	External Pacemakers
VIG2	Nursing	Cardiac Output Monitor
MTA 6900	Nursing	Hypo/Hyperthermia
PORTABLE VENTILATOR	Nursing	Portable Ventilators
ECG Machine	Nursing	ECG Machines
473030 MINIOXI I	Nursing	Oxygen Monitors
Various	Nursing	Heart-Lung Bypass Units
Various	Nursing	Exerciser Bicycles
MP70-M8007A	Nursing	Physiologic Monitors
Various	Nursing	Warming/Cooling Units
Instrumentation 1513-08-204	Open Heart	Instruments
Monitoring System 1513-08-204	Open Heart	Open Heart Monitoring

Pulse Generator 1513-08-204	Open Heart	Pulse Generator
Glidescope Rider 1513-08-204	Open Heart	Glidescopes
Autocat 2 Wave	Open Heart	Instrumentation
BIS VISTA Bilateral System Open Heart 1513-08-204	Open Heart	Bilateral System
GEM Premier 4000 1513-08-204	Open Heart	Instrumentation
Surgical Instrumentation Open Heart 1513-08-204	Open Heart	Open Heart Instruments
Black-Box-Phone System 1513-08-204-OH	Open Heart	OR-Black-Box-Phone
Surgical Table 1513-08-204	Open Heart	Surgical Tables
Medi-therm Hyper/Hypo Unit 1513-08-204	Open Heart	Open Heart Thermo Unit
GE Medical equipment Network and Antenna 1513-08-204	Open Heart	Network
Furniture for Open Heart 1513-08-204	Open Heart	Furniture
Exam Stools (4) Open Heart 1513-08-204	Open Heart	Exam Stools
Foot Stool Stackable (6) Open Heart 1513-08-204	Open Heart	Stackable Stools
Viewbox Maxant techline 200 Open Heart 1513-08-204	Open Heart	Viewbox
Kick Buckets (4) Open Heart 1513-08-204	Open Heart	Kick Buckets
Operating Table Open Heart 1513-08-204	Open Heart	Open Heart OR Table
Utility Tables (2) Open Heart 1513-08-204	Open Heart	Utility Tables
Pulse Oximeter Open Heart 1513-08-204	Open Heart	Pulse Oximeter
Mobile Aneroid (2) 1513-08-204	Open Heart	Mobile Aneroid
ACT Plus Instrument 1513-08-204	Open Heart	Open Heart Instruments
Vaporizer Open Heart 1513-08-204	Open Heart	Vaporizers
Jacobsen Micro Needle Holder Open Heart 1513-08-204	Open Heart	Needle Holders
Intermittent/Continuous Regulators (30) 1513-08-204	Open Heart	Regulators
Hush Slush Machine 1513-08-204	Open Heart	Slush Machine
UPS Battery 20 hour	Open Heart	20 HR UPS Battery
Paddle Handles, Internal for Defibrillator Open Heart 1513-08-204	Open Heart	Defibrillators
Cow Horn Dilators (3) for CVOR	Open Heart	Dilators
Instrument Set for minimally invasive procedure 1513-08-204	Open Heart	Surgical Instruments
Spline Circulator Open Heart 1513-08-204	Open Heart	Spline Circulators
Scanlan international cardiac instruments - forceps & needles 1513-10-017	Open Heart	Scanlan Cardiac Instruments
Scanlan Micro Needle Holder Diamond Dust 12-006	Open Heart	Needle Holders
Dual Light 1513-08-204	Open Heart	Dual Surgical Lights
Harmony Integrated OR System	Open Heart	OR System
Container Sharps Large Volume with Wheels Open Heart 1513-08-204	Open Heart	Wheeled Sharps Containers
Aortic Cross Clamp Open Heart 1513-08-204	Open Heart	Aortic Clamp
AR-8305	Operating Room	Arthroscopic Shavers
FS-L3201D	Operating Room	System Monitors
NOTE: From the City's items Affinity will retain OR Monitors, Anesthesia Equipment, Lights and Tables for 3 ORs the City retains 4 Rooms.		
OR Lights (3 Rooms)	Operating Room	
OR Tables and Fixtures (3 Rooms)	Operating Room	
Sprint Select Beds	Psych	Psych Beds
EPT 1000	Physical Therapy	Ultrasound Therapy Systems
2102	Physical Therapy	Heat Therapy Packs
8000	Physical Therapy	Bicycle Exercises
212	Physical Therapy	Exercisers
Venue 50	Radiology	Diagnostic Ultrasounds
Various	Radiology	Scanning System, Ultrasound
SE-PRO-600	Radiology	Echocardiographs
PRODIGY DENSITOMETER SCAN TAB	Radiology	Densitometer
SIEMENS MOBILETTE / X-RAY UNIT	Radiology	Mobile Radiographic Sys
Digital Mobile Radiographic System Optima	Radiology	Mobile Radiographic Sys
9800	Radiology	C-Arms
APLIOMX	Radiology	Ultrasound Scanning Systems
Captus 3000	Radiology	Thyroid Uptake System
55550000-5	Radiology	Portable Radiographic Units
3007300 STELLANT	Radiology	Contrast Media Injectors
SCM12	Radiology	Diagnostic Rad Controllers
TD-100	Radiology	Ultrasound Probe
SBS	Radiology	Battery Chargers
BLADDERSCAN BVI 3000	Rehab	Bladderscan
V60 850008	Respiratory Therapy	Ventilators
MR850JHU	Respiratory Therapy	Humidifier
V60 850008	Respiratory Therapy	Ventilators
510000	Respiratory Therapy	Lung Test Equipment
MR850	Respiratory Therapy	Humidifiers
HDPFT 4000, NSPIRE	Respiratory Therapy	Pulmonary Function Analyzers
2011 Chevrolet HHR Panel LS 1513-10-041	Plant Ops	Vehicle
2015 Chevrolet City Express 1 LS	Plant Ops	Vehicle
GUL	Skilled Nursing Care	Operating Microscopes
TM262	Skilled Nursing Care	Audiometer
Cordless Driver Sets	Operating Room	Surgical Drills
LAPAROSCOPE/ARTHROSCOPE	Operating Room	Surgical Scopes
2014748-001	Telemetry	Telemetry Monitoring
506 Series	Various	Physiologic Monitors
Various	Various	Treadmills
3207254-008	Various	Defibrillator
MONOPLACE	Wound Care	Mobile Hyperbaric Chamber

**\*NOTE:** DHSC also will retain ownership of fluid carts and related equipment currently leased from Leasing Associates of Barrington under Lease Agreement No. 10413000, title to which will pass to DHSC upon payment of the final lease payment.



## EXHIBIT C

### REAL PROPERTY LEASES

#### Tenant Leases (Leases where DHSC or DHPS is Tenant)

Location	Landlord	Tenant	Expiration Date	Consent Required to Assign?
3545 Lincoln Way East Massillon, OH	F & V Realty Co. Ltd.	Doctors Hospital Physicians Services, LLC	9/30/2018	Yes – §7
4455 Dressler Road NW Canton, OH	ML-CHCT Ohio, LLC	Doctors Hospital Physician Services, LLC	11/30/2026	Yes – §7  Guarantee must be released also.

#### Landlord Leases (Leases where DHSC or DHPS is Landlord)

Location	Landlord	Tenant	Expiration Date	Consent Required to Assign?
323 Marion Ave NW Massillon, OH	DHSC, LLC	John C. Roseman, Jr., DPM	3/31/2020	No
323 Marion Ave NW Massillon, OH	DHSC, LLC	Stark Medical Specialties, Inc.	11/30/2018	No
830 Amherst Rd. Massillon, OH	DHSC, LLC	Premier Pulmonary Critical Care and Sleep Associates, LLC	10/12/2020	No
830 Amherst Rd. Massillon, OH	DHSC, LLC	EURO OBGYN, Inc.	11/30/2018	No
830 Amherst Rd. Massillon, OH	DHSC, LLC	Hohamed Rabis Lababidi, MD	7/31/2018	No
830 Amherst Rd. Massillon, OH	DHSC, LLC	Aultman Medical Group, Inc.	3/6/19	No

**EXHIBIT D****EQUIPMENT LEASES**

<b>Lessor</b>	<b>Equipment</b>	<b>Manufacturer</b>	<b>Lessee</b>	<b>Lease Number(s)</b>	<b>Expiration Date</b>	<b>Consent Required to Assign?</b>
CareFusion Solutions, LLC	Pyxis Refresh	Carefusion	Affinity Medical Center	N/A	1/1/2019; 3/1/2019	Yes
CareFusion Solutions, LLC	Pyxis Medstations	Carefusion	Affinity Medical Center	N/A	5/1/2019	Yes
Leasing Associates of Barrington, Inc.	Chemistry/Immunoassay System	Siemens	DHSC, LLC	1008300	7/21/2018	Yes
Philips	Cath Lab and Injector	Philips Healthcare	DHSC, LLC	101-10001034	8/31/2018	Yes
Philips	EEG Machine	Philips Medical Capital, LLC	DHSC, LLC	101-10114268	9/4/2021	Yes
GE	ENT Navigation System	Medtronic	DHSC, LLC	9894420-001	10/15/2020	Yes
CIT Finance	Copiers	KonicaMinolta	DHSC, LLC	061-0122749-000	11/30/19	Yes

DATE: APRIL 16, 2018

CLERK: DIANE ROLLAND

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
CLAUDETTE O. ISTNICK, PRESIDENT

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 41 – 2018

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE making certain appropriations from the unappropriated balance of the 1201 Street M & R Fund, for the year ending December 31, 2018, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

There be and hereby is appropriated from the unappropriated balance of the 1201 Street M & R Fund, for the year ending December 31, 2018, the following:

\$ 27,000.00 to an account entitled "Refunds Income Tax" - 1201.210.2720

Section 2:

The Clerk of Council is authorized to correct any typographical errors discovered herein during or after the pendency or passage of this ordinance. The Clerk of Council is further authorized, in conjunction with the Law Department and the Council President to correct any ministerial or de minimis errors that do not substantially alter the intended results or numerical total sums of this ordinance, during or after the pendency or passage of this ordinance. Corrected copies are to be sent to all official recipients.

Section 3:

This Ordinance is declared to be an emergency measure necessary for the efficient operation of the various departments of the City of Massillon and for the further reason to add additional funds for 2017 tax returns. Provided this Ordinance receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

DATE: APRIL 16, 2018

CLERK: DIANE ROLLAND

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
CLAUDETTE O. ISTNICK, PRESIDENT

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 42 – 2018

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE making certain appropriations from the unappropriated balance of the 1222 Waste Management Grant Fund, for the year ending December 31, 2018, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

There be and hereby is appropriated from the unappropriated balance of the 1222 Waste Management Grant Fund, for the year ending December 31, 2018, the following:

\$ 1,200.00 to an account entitled "Supplies/Materials/Postage" - 1222.605.5.2410

Section 2:

The Clerk of Council is authorized to correct any typographical errors discovered herein during or after the pendency or passage of this ordinance. The Clerk of Council is further authorized, in conjunction with the Law Department and the Council President to correct any ministerial or de minimis errors that do not substantially alter the intended results or numerical total sums of this ordinance, during or after the pendency or passage of this ordinance. Corrected copies are to be sent to all official recipients.

Section 3:

This Ordinance is declared to be an emergency measure necessary for the efficient operation of the various departments of the City of Massillon and for the further reason that bills need payment. Provided this Ordinance receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.