

**MEMORANDUM OF UNDERSTANDING  
DISTRIBUTION OF FUNDS**

This Memorandum of Understanding for the distribution of funds is entered into between the **City of Lincoln, Nebraska** ("City") and the **Community Health Endowment of Lincoln** ("Endowment") to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**A. PURPOSE.**

1. Effective November 1, 1997, the City transferred ownership of Lincoln General Hospital to Bryan Healthcare Inc., currently known as BryanLGH Health System ("System"), and Bryan Memorial Hospital, currently known as BryanLGH Medical Center ("Hospital"), through a Master Affiliation Agreement dated October 1, 1997.
2. On or about August 24, 1998, the City Council of the City established the Endowment as a separate fund consisting of the cash proceeds realized by the City from the sale of Lincoln General Hospital, the purpose of which was to provide funds to support programs that have a potential to improve the community health of Lincoln, Nebraska.
3. The Endowment has the responsibility to invest and use the cash proceeds from the sale of Lincoln General Hospital in accordance with the mandate of the Endowment as set forth in Article X-A of the Charter of the City and Chapter 4.16 of the Lincoln Municipal Code as now existing and hereafter amended.
4. The purpose of this Memorandum of Understanding is to memorialize the transfer below described funds from the City to the Endowment.

**B. TRANSFER OF FUNDS/ESTABLISH CONTIGENCY FUND.**

1. The Master Affiliation Agreement required the parties to enter into an escrow agreement under which the City deposited the sum of \$4,000,000.00 for the purpose of paying any reimbursable claims for which written notice had been filed with the City. The escrow funds were to exist for a period of two years from the date of the Escrow Agreement.
2. The remaining balance of the escrow account is approximately \$488,424 ("escrow funds"). The City, System, and Hospital have entered into an agreement to transfer the remaining balance of the escrow funds to the City.
3. The City used escrow assets to created a fund for any remaining reimbursable employee claims for Workers' Compensation. The current balance is approximately \$374,615.
4. The City will transfer to the remaining balances of the escrow funds and the employee Workers' Compensation fund, approximately \$863,039, to a separate account maintained by the City for the benefit of the Endowment.

5. Prior to this agreement, a portion of the escrow funds were utilized to satisfy a personal injury claim in which the liability insurance carrier for the City declared bankruptcy. At the time of this Agreement, a claim filed by the City in the bankruptcy proceedings remains unresolved. The City and the Endowment agree that the full balance of any proceeds received from this and future claims of the same nature shall be transferred by the City for the benefit of the Endowment.
6. The Endowment shall maintain a contingency fund until at least November 10, 2020. The primary source of the Contingency Fund shall be the escrow funds, as described above, and the amount received from the bankruptcy claim, described above. The Contingency Fund shall have a minimum amount of \$865,000 to pay for any future claims for money on account of damage to or loss of property or on account of an employment related injury, or personal injury or death alleged to have been caused by the negligent or wrongful act or omission of former Lincoln General Hospital or any of its agents, officers, volunteers, or employees occurring on or before November 1, 1997.
7. The Endowment shall have the right to commingle such contingency funds with other funds for investment purposes and such funds may be invested in accordance with the Endowment's Statement of Investment Policy as the same now exists or may be revised from time to time.
8. In the event that a notice of claim is received by the City involving any claim for money on account of damage to or loss of property or on account of personal injury or death alleged to have been caused by the negligent or wrongful act or omission of former Lincoln General Hospital or any of its agents, officers, volunteers, or employees occurring on or before November 1, 1997, the City shall transmit a copy of such notice to the Endowment Board of Trustees within 30 business days after receipt thereof. The City shall continue to keep the Endowment advised of the status of such claim and at such time as the claim becomes a valid and binding obligation of the City, the City shall notify Endowment of the amount of the obligation. To the extent there are funds remaining in the Contingency Fund after payment of prior claims, Endowment will make payment to City for the then current claim. In the event such contingency fund has been exhausted by the payment of claims, the City Attorney or his or her designee shall meet and confer with the Endowment Board of Trustees as to whether any other Endowment funds should be used to pay to the City to satisfy the claim. In the event such parties cannot agree on such matters, the City Council, when a majority members of the City Council agree and vote to approve a settlement of the dispute, shall resolve the dispute.
9. If there are no pending or outstanding claims known to the City as of November 1, 2020, the Endowment shall have the right to discontinue the contingency fund. Such funds may then be used and disbursed for the purposes by the Endowment as set forth in Article X-A of the Charter of the City, and Chapter 4.16 of the Lincoln Municipal Code, as the same now exist or as they may from time to time be amended.

**C. MEDICARE RECAPTURE CREDIT**

1. The Hospital has received \$153,872 in Medicare Recapture Credit arising out of and related to the Affiliation Agreement and the closing thereof of Lincoln General Hospital. The City and Hospital have entered into an agreement whereby Hospital agrees to transfer the Medicare Recapture Credit to the City.
2. The City intends to transfer to the Endowment the total of \$153,872 reflecting the Medicare Recapture Credit.
3. The Endowment shall invest these funds in accordance with the Endowment's Statement of Investment Policy as the same now exists or may be revised from time to time, and such funds shall be used and disbursed for the purposes as set forth in Article X-A of the Charter of the City, and Chapter 4.16 of the Lincoln Municipal Code, as the same now exist or as they may from time to time be amended.

**D. NEBRASKA LAW.**

This Agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

**E. INTEGRATION, AMENDMENTS, ASSIGNMENT.**

This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party.

**F. SEVERABILITY & SAVINGS CLAUSE.**

Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate any other section or subdivision of a section thereof.

**G. CAPACITY.**

Each party warrants and represents that they have authority to enter into and be bound by the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding to be effective the day and year first written above.

**CITY OF LINCOLN, NEBRASKA**

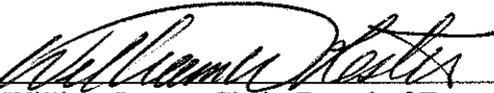
By: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

**Date of Execution:** \_\_\_\_\_

**COMMUNITY HEALTH  
ENDOWMENT OF LINCOLN**

By:  \_\_\_\_\_  
Lori Vrtiska Seibel, President/CEO

**Date of Execution:** 3/17/09

By:  \_\_\_\_\_  
William Lester, Chair, Board of Trustees  
Community Health Endowment of Lincoln

**Date of Execution:** 3/24/09