
FIRST AMENDMENT

to the

SALE, PURCHASE AND OPERATION AGREEMENT

By and Between

THE COUNTY OF ERIE, NEW YORK

and

ERIE COUNTY MEDICAL CENTER CORPORATION

Dated: As of August 1, 2004

FIRST AMENDMENT
To the
SALE, PURCHASE AND OPERATION AGREEMENT
By and Between
THE COUNTY OF ERIE, NEW YORK
and
ERIE COUNTY MEDICAL CENTER CORPORATION

THIS FIRST AMENDMENT TO THE SALE, PURCHASE AND OPERATION AGREEMENT [the "First Amendment"] is effective as of August 1, 2004, and entered into by and between the County of Erie, New York, a municipal corporation of the State of New York, having an office and place of business in the Rath County Office Building, 95 Franklin Street, Buffalo, New York 14202 [the "County"], and the Erie County Medical Center Corporation, a public benefit corporation existing under the laws of the State of New York, having an office and principal place of business at 462 Grider Street, Buffalo, New York [the "Corporation"] [the Corporation and the County shall be collectively referred to as the "Parties"].

WHEREAS, the Parties entered into a Sale, Purchase and Operation Agreement [the "Agreement"] effective January 1, 2004; and

WHEREAS, the Parties have agreed to amend the Agreement as hereinafter set forth;

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth below, the Parties agree as follows:

Section 1. Capitalized terms not otherwise defined in this First Amendment have the same meanings as specified in the Agreement.

Section 2. The parties acknowledge that certain information contained in Schedule B to the Agreement was not accurate. Certain assets transferred to the Corporation were not included in Schedule B and other assets that were not transferred to the Corporation were inadvertently included in Schedule B. Schedule B shall be amended in part as follows:

- Schedule B is hereby amended by deleting the motor vehicles listed in Table 1, below and adding the vehicles listed in Table 2, below:

TABLE 1
MOTOR VEHICLES NOT TRANSFERRED TO THE CORPORATION

YEAR	MAKE	MODEL	ECMC ASSET NUMBER	VIN NUMBER	KELLY BLUE BOOK VALUE
1984	GMC	Pickup	53030176	R3EG168958	\$405
1983	Dodge	Pickup	53029606	C2DF235727	\$200
1979	Ford	F700 Dump	PW474955	F70BVJ704	\$250
1986	Jeep	Subn. w/Plow	53031410	EOGT113212	\$275
1984	GMC	¾ Ton PU	53030177	M1E1538798	\$350
1991	Chevrolet	Lumina Sed.	53036071	2G1W654RXM	\$350
1991	Chevrolet	Lumina Sed.	53036072	2G1W154R5M	\$350
1995	Ford	LX Windstar	53043135	N/A	\$700
1992	Dodge	4-door Spirit	53043263	1B3XA4637NF232413	\$350
1996	Ford	Astrovan	53041032	99600103	\$1,435
					<u>Total:</u> <u>\$4,665</u>

TABLE 2
MOTOR VEHICLES TRANSFERRED TO THE CORPORATION

YEAR	MAKE	MODEL	ECMC ASSET NUMBER	VIN NUMBER	KELLY BLUE BOOK VALUE
1967	Ford	Tractor	N/A	5NN-40240	\$200
1995	Chevrolet	Pickup 4x4	N/A	1GCGK24K1SE263698	\$3,630
1996	Chevrolet	Pickup 4x4	N/A	1GCDT19X6TK119548	\$3,060
1996	Chevrolet	Pickup 4x4	N/A	1GCDT19X0TK220942	\$3,410
1996	Chevrolet	Van	N/A	1GNDM19W9TB196099	\$2,210
1998	Ford	Suburban 4x4	N/A	1FMRU18W5WLA45920	\$3,550
1998	Jeep	Cherokee 4x4	N/A	1J4FJ68S2WL182723	\$2,475
1998	Jeep	Cherokee 4x4	N/A	1J4FJ68S8WL182712	\$2,700
1999	Ford	Suburban 4x4	N/A	1FMPU18L9XLC08986	\$5,655
1974	Case	Loader	N/A	9115303	\$200
1997	Chevrolet	Suburban 4x4	N/A	1GNDT13W5VK184109	\$3,765
2001	Ford	4 Door Sedan	N/A	1FAFP52271G231204	\$4,435
1986	Auto-Car	Dump	N/A	1WBUCBD2GU099702	\$2,300
1993	Ford	Van	N/A	1FTDA34XXPZB08008	\$1,100
1997	Mercury	4 Door Sedan	N/A	1MELM50U4VG612751	\$3,620
					<u>Total:</u> \$42,310

Section 3. Section 2.0 of the Agreement is hereby amended by adding a Subsection

"k" which shall read as follows:

k. All of the vehicles listed in Schedule B, as amended, shall be deemed transferred as of the Effective Date. No later than ten (10) days after execution by all Parties of this First Amendment, the County shall

deliver to the Corporation the titles to all of the vehicles listed in Schedule B, as amended, to the extent that the County possesses such titles. The amount delineated under Section 2.0(i), as amended by this First Amendment, reflects an adjustment to credit \$37,645 to the County (such amount equaling the total value of the vehicles listed in Table 2, less the total value of the vehicles listed in Table 1).

Section 4. The Corporation represents and warrants that the vehicles set forth in Exhibit B to the Agreement and in Table 2 above, excepting the vehicles set forth in Table 1 above, constitute a complete list of vehicles that were transferred from the County to the Corporation, and that as of the effective date of this Amendment, no other vehicles were transferred from the County to the Corporation.

Section 5. Section 2.0(j) of the Agreement is hereby amended in its entirety to read as follows:

j. In addition to the capital funding the County agrees to provide under Section 12.4, the County agrees to provide \$3,183,585 of capital improvement work for the Corporation solely at the County's expense and at no cost to the Corporation. Before the work can commence the Corporation agrees to provide, and the County agrees to be bound by, a description of the work to be performed. The County agrees to fund this capital improvement work no later than December 31, 2004.

Section 6. Section 2.5 of the Agreement is hereby amended in its entirety to read as follows:

Section 2.5 Supplemental Payments. The Parties acknowledge that the State of New York has provided various supplemental payments directly to the Network, commonly referred to as intergovernmental transfer payments, Upper Payment Limit payments, and disproportionate share medical assistance payments (the "Supplemental Payments"). In the past, the County's General Fund has been required to pay to New York State an amount equal to ninety (90) percent of these Supplemental Payments received by the Network. In turn, the Network has been required to reimburse the County's General Fund for the ninety (90) percent share of the Supplemental Payments remitted by the County to the State of New York. After the Effective Date, the Corporation agrees to continue to reimburse the County, as an offset to or as a return of County operating contribution payments to the Corporation under Section 12.0 hereof, for

any amount related to the Supplemental Payments that the County is required to pay to the State of New York that exceeds the historical County share of Medicaid expenditures for public hospitals or public residential health care facilities excluding such Supplemental Payments.

Section 7. Section 3.1 of the Agreement is hereby amended in its entirety to read as follows:

Section 3.1 Closing Expense. The Parties agree that \$1,357,044 of costs and expenses related to the closing of the transactions contemplated by this Agreement and the other Transaction Documents was paid by the Corporation on the Closing Date and that the Corporation paid \$83,642,956 of the Purchase Price to the County on the Closing Date. In addition, the Corporation will pay to the County the amount of \$1,357,044 at the closing of the permanent financing of the transactions, and will also pay from the proceeds of such permanent financing all costs and expenses related to the closing thereof. The Parties agree that such costs and expenses will include the fees and disbursements of the County Attorney, including the reasonable value of time spent by members of the County Attorney's office on matters pertaining thereto.

Section 8. Existing Section 12.0 of the Agreement is hereby designated as Paragraph

(a), and the following paragraphs are hereby added to the end thereof:

(b) For so long as the Corporation's Erie County-Guaranteed Revenue Bonds, Series 2004 (the "Series 2004 Bonds") remain outstanding, the annual operating contribution shall be paid by the County to the Master Trustee under the Master Trust Indenture between the Corporation and HSBC Bank USA, National Association (the "Master Trustee") dated as of August 1, 2004 (the "Master Trust Indenture"), and the First Supplemental Indenture thereto dated as of August 1, 2004 (the "First Supplemental Indenture").

(c) Operating contributions, when received by the Master Trustee during any calendar year, shall be applied, transferred or deposited pursuant to Section 6.07 (2) of the First Supplemental Indenture in the following order of priority: (i) to the Series 2004 Debt Service Fund (as defined in the First Supplemental Indenture), an amount necessary to cause the balance on deposit therein to equal the Annual Funding Requirement, as herein defined, calculated as of April 1st of such year; (ii) to any reimbursement to be paid in accordance with the requirements of the First Supplemental Indenture; (iii) to the Series 2004 Debt Service Reserve Fund, the amount, if any, by which the Debt Service Reserve Fund Requirement (as defined in the Master Trust Indenture) for the Series 2004 Bonds exceeds the

amount on deposit therein; and (iv) to or upon the order of the Corporation for any legal purpose of the Corporation, the remainder, if any, of all operating contributions received by the Master Trustee during such year. "Annual Funding Requirement" for this purpose means, for each twelve-month period commencing on April 1st and ending on the following March 31st, the sum of all payments that are scheduled to be required of the Members of the Obligated Group (as defined in the Master Trust Indenture) during such annual period for deposit to the Series 2004 Debt Service Fund, as required by the First Supplemental Indenture.

(d) To the extent that operating contributions are applied or deposited by the Master Trustee pursuant to clauses (i), (ii) and (iii) of paragraph (c) above, such payments shall be deemed to satisfy, in chronological order, the requirements for payments to be made by Members of the Obligated Group under Paragraphs (1), (2) and (5) of Section 6.04 of the First Supplemental Indenture.

Section 9. The final sentence of Section 12.1 of the Agreement is hereby amended to read as follows:

Commencing in year 2005 and continuing until this Agreement is terminated, the County agrees that the annual amount of operating contribution to the Corporation shall at all times exceed the amount required to be contributed to the Series 2004 Debt Service Fund pursuant to Section 12.0 (c) (i) above, for the year in which the operating contribution is made.

Section 10. Section 12.2 is hereby amended to read as follows:

Section 12.2 Year 2004 Subsidy. For purposes of the 2004 fiscal year, the Parties agree that the County's contribution of \$29,500,000 (Twenty-nine Million, Five Hundred Thousand Dollars) is the total operating contribution that the County will pay to the Corporation. The Corporation agrees that this contribution by the County satisfies the requirements of section 3632(5) of the Act of the 2004 fiscal year. The Corporation acknowledges that \$3,751,489 of this amount is attributable to budgeted interest expense on bonded indebtedness retained by the County in accordance with the terms of this Agreement and the Act and agrees that this sum is to be offset against the County's 2004 contribution.

Section 11. The first sentence of Section 12.8 is hereby amended to read as follows:

(a) For each fiscal year after 2004, the Corporation shall achieve financial results for at least six of the following ten measures that are (i) at least as favorable as the results achieved by the Corporation for fiscal year

2004; (ii) at least 60% as favorable as the results achieved by the Corporation for the immediately preceding year and (iii) calculated for the year 2004 and for the years subsequent to 2004 without regard to the employee pension liability, if any, of the Corporation.

Section 12. A new Section 14.14 is hereby added to the Agreement, to read as follows:

Section 14.14 Indemnification. (a) In addition to and not by way of any limitation of the indemnities set forth in Section 11(a) of the Bond Purchase Contract dated as of August 1, 2004, among the Corporation, the County and Citigroup Global Markets Inc., as underwriter (the "Bond Purchase Contract"), the Corporation and the County agree to indemnify and hold harmless each other, and each of their respective officials, directors, officers, employees and agents, and each person who controls the County or the Corporation, respectively, within the meaning of either the Securities Act or the Exchange Act, for any claim or claims (including reasonable attorneys' fees and court costs) related to or arising out of the breach of any of their respective representations or warranties set forth in Section 5A (in the case of the Corporation) or Section 5B (in the case of the County) of the Bond Purchase Contract.

(b) Promptly after receipt by an indemnified party under this Section 14.14 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 14.14, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses; and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) above. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); *provided, however,* that such counsel shall be satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in,

or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party; (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding.

Section 13. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute a single agreement.

Section 14. Severability. If any one or more provisions of this First Amendment shall be declared illegal or unenforceable under any law, rule or regulation of any federal, state or local government or any agency or bureau thereof having jurisdiction over any of the Parties hereto, such provisions shall be modified to the extent necessary to make them enforceable and such illegality or unenforceability shall not effect the validity and enforceability of the other provisions hereof.

Section 15. No Prejudice. This First Amendment has been jointly prepared by the Parties hereto and the terms hereof shall not be construed in favor of or against any Party on account of its participation in such preparation.

Section 16. Amendment and Modification. This First Amendment may be amended only by written agreement executed by the Parties.

Section 17. Gender and Number. Unless the context otherwise requires, when used in this First Amendment, the singular includes the plural and vice versa, and the masculine includes the feminine and neuter and vice versa.

Section 18. Non-Liability for Breach. Notwithstanding anything contained to the contrary in this First Amendment, whether express or implied, no director, officer, partner, advisor, attorney, agent, employee, subcontractor, or representative of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this First Amendment or of any supplement, modification or amendment to this First Amendment or any other Transaction Document, because of any breach thereof, or because of his, her or their execution or attempted execution of same.

Section 19. Governing Law. This First Amendment shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable to contracts made and to be performed therein.

S I G N A T U R E P A G E F O L L O W S

IN WITNESS WHEREOF, this First Amendment has been executed and approved by the undersigned on the dates appearing beneath their respective signatures.

THE COUNTY OF ERIE

APPROVED AS TO FORM:

By: _____
Joel A. Giambra
Erie County Executive

By: _____
Frederick A. Wolf
Erie County Attorney
Document No. 04-1492-MC

ERIE COUNTY MEDICAL CENTER CORPORATION

APPROVED AS TO FORM:

By: _____
Jody L. Lomeo
Chair, Board of Directors

By: _____
Anthony J. Colucci, III
General Counsel