

## MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT (the "Agreement") is entered into effective as of the 23 day of August, 2002 (the "Effective Date"), by and between Mercy Hospital of Franciscan Sisters, Inc. ("Mercy"), an Iowa nonprofit corporation, and the City of Oelwein, Iowa (the "City").

### RECITALS

WHEREAS, the City operates the Oelwein Area Enrichment Center (the "Center"), which is a community center that includes a wellness program (the "Program") for the benefit of the greater Oelwein community; and

WHEREAS, the City requires the services of an experienced manager to provide certain administrative and management services for the Program; and

WHEREAS, Mercy has experience and expertise in managing community wellness programs; and

WHEREAS, the City desires to obtain Mercy's services and Mercy desires to provide such administrative and management services to the City upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises, mutual covenants and obligations of the parties set forth herein, Mercy and the City hereby agree as follows:

### AGREEMENT

#### 1. DIVISION OF AUTHORITY.

1.1 **The City's Authority.** The full authority and ultimate control of the Program shall at all times remain exclusively with the City. The City shall retain the ultimate responsibility for the Program's compliance with all applicable federal, state and local laws.

1.2 **Authority of Mercy.** Subject to the terms and conditions of this Agreement, Mercy shall have the right and commensurate authority to oversee the supervision and effective management of day-to-day business operations of the Program. Any powers not specifically delegated or granted by the City to Mercy shall remain with the City.

#### 2. TERM AND TERMINATION.

2.1 **Term.** The initial term of this Agreement shall be for two (2) years beginning on the Effective Date and ending on the date two (2) years thereafter unless sooner terminated according to the terms herein (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive one (1) year terms (each a "Renewal Term"). The Initial Term, together with any Renewal Term, shall be referred to as the "Term."

**2.2 Termination.** This Agreement may be terminated as follows:

2.2.1 By Either Party. Either party may terminate this Agreement without cause or penalty at any time upon one hundred and twenty (120) days' prior written notice to the other party.

2.2.2 For Cause. In the event of a material breach by one party, the non-breaching party may, at any time after forty-five (45) days following notice of such breach, terminate this Agreement by further notice of termination; provided that if the breaching party, prior to receipt of the further notice of termination, has cured the breach or, if a cure cannot reasonably be accomplished within the forty-five (45) day period, has taken reasonable steps toward curing the breach, this Agreement shall remain in effect and the non-breaching party shall be limited to damages as its exclusive remedy.

2.2.3 Due to Changes or Clarifications to Law. In the event there are changes or clarifications to statutes, regulations or rules that materially and adversely affect any legal right of either party to this Agreement, the affected party may, by notice to the other party, propose such modifications to this Agreement as may be necessary to comply with such change or clarification. Upon receipt of such notice, the parties shall engage in good faith negotiations regarding any appropriate modifications to this Agreement. Notwithstanding any other provision in this Agreement, if such notice is given and the parties are unable within sixty (60) days thereafter to agree to appropriate modifications to this Agreement, either party may terminate this Agreement by providing at least thirty (30) days notice to the other.

2.2.4 Mutual Agreement. This Agreement may be terminated at anytime by the mutual written agreement of the parties.

**2.3 Effect of Termination.** Upon termination of this Agreement for any reason, Mercy and the City shall cooperate to ensure that continuity of services are provided to Program participants. Except for obligations, promises or covenants contained herein that expressly extend beyond the term of this Agreement, neither party shall have any future obligations hereunder.

**3. ESTABLISHMENT AND MANAGEMENT OF THE PROGRAM.**

**3.1 Establishment and Management of the Program.** Mercy shall, on behalf of the City, manage the Program in accordance with (a) all applicable federal, state and local laws, rules and regulations; and (b) the ordinances, rules, regulations, policies, procedures and standards of the City.

**3.2 Administrative and Management Services.** Mercy shall, on behalf of the City, provide the following administrative and management services: (a) accounting and preparation of records and books related to the Program's operations; (b) preparation of Program budgets; (c) recruiting and hiring staff for the Program; (d) providing all marketing materials for the Program; (e) providing staff education and training for Program staff; (f) market enrichment center and related programs and solicit memberships and (g) such other services as may be mutually agreed to from time to time.

**3.3 Employees.** Mercy shall recruit and hire a Facilitator to oversee Program operations. In addition, Mercy shall employ all instructors, weight room monitors, and trainers required for the operation of the Program. All expenses related to Program employees, including but not limited to salary and benefits, shall be reimbursed by the City.

#### **4. DUTIES AND RESPONSIBILITIES OF THE CITY.**

**4.1 Regulatory Permits and Approvals.** The City shall obtain any necessary permits, licenses and regulatory approvals required for the operation of the Program. Mercy shall assist the City to obtain any such permits, licenses and approvals.

**4.2 General Support.** After considering the recommendations of Mercy, the City shall provide such personnel, space, equipment and support services as are necessary or appropriate for operation of the Program and for Mercy to perform its duties under this Agreement. All such items shall be maintained by the City in good operating condition and repair.

**4.3 Supplies.** The City shall provide and replenish all supplies and inventory which the City and Mercy jointly determine are reasonable and necessary for the proper operation of the Program.

#### **5. FINANCIAL RELATIONSHIP**

**5.1 Expense Reimbursement.** The City shall reimburse Mercy for all expenses associated with operation of the Program including, but not limited to, direct expenses (salaries, benefits, and marketing materials) and indirect expenses (payroll processing, accounting and preparation of records and budget, etc.). Indirect expenses are calculated at 4.5% of direct expenses. Mercy shall submit monthly invoices to the City detailing such expenses. Payment from the City shall be due within thirty (30) days of receipt of any such invoice. Mercy shall submit an annual budget for the following fiscal year by November 1.

**5.2 Management Services Fee.** During the Initial Term of this Agreement, other than reimbursing Mercy for all expenses associated with operation of the Program as described in Section 5.1, the City shall not be required to pay Mercy an additional annual fee for management and administrative services.

**5.3 Books and Records.** Each party shall make its books, records and accounts, related to the provision of services under this Agreement available for inspection and examination by the other party or its authorized representative, at all times during normal business hours, upon twenty-four (24) business hours advance notice to such party for the purpose of verifying the amounts billed or charged under this Section 5.

#### **6. INSURANCE AND INDEMNIFICATION.**

##### **6.1 Insurance.**

**6.1.1 By Mercy.** Mercy shall obtain and maintain comprehensive general insurance and malpractice insurance in an amount of \$1,000,000 per claim, and \$3,000,000



The parties shall be responsible for notifying each other promptly in writing of any change of address.

**7.3 Entire Agreement; Amendment.** This Agreement contains the entire agreement between the parties hereto with regard to the subjects hereof and supersedes all prior agreements and understandings both written and oral. This Agreement may not be modified orally or in any other manner except by an agreement in writing signed by both parties.

**7.4 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

**7.5 Severability; Agreement Subject to Law.** If any provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the Term, that provision shall be fully severable and this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of the Agreement. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance. Furthermore, in lieu of such illegal, invalid or unenforceable provision, this Agreement shall be reformed to include as a part of this Agreement a provision as similar in terms to the illegal, invalid or unenforceable provision as may be possible and still be legal, valid or enforceable; provided, however, that this Agreement shall not be reformed if such reformation would materially change the economic terms of the parties' relationship.

**7.6 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa (without reference to conflicts of law principles).

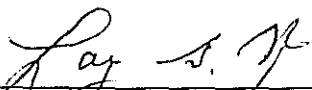
**7.7 Headings.** Headings or titles of the sections hereof are for convenience only and shall not be construed to modify or otherwise affect the terms hereof.

**7.8 Binding Agreement.** This Agreement is binding on all parties, their legal representatives, successors and assigns except as otherwise stated herein.

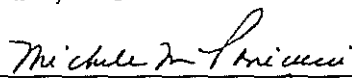
**7.9 Waiver.** Failure to insist upon full performance of the obligation or failure to exercise rights under this Agreement shall not constitute a waiver as to future defaults or exercise of rights.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the date first written above.

**CITY OF OELWEIN, IOWA**

By:   
Name: LAGAN G. MURPHY  
Title: MAYOR

**MERCY HOSPITAL OF FRANCISCAN SISTERS, INC.**

By:   
Name: MICHELE M. PRANICUCCI  
Title: Senior VP/CTO

