

## BILLING AGREEMENT

**THIS BILLING AGREEMENT** (this “Agreement”) is effective as of \_\_\_\_\_, 2017 (“Effective Date”), by and between **Lawrence Memorial Hospital**, a charitable trust and an instrumentality of the City of Lawrence, Kansas pursuant to K.S.A. § 12-1615 (“Hospital”) and the **City of Lawrence, Kansas**, a municipal corporation (“City”) (each a “Party” and collectively, the “Parties”).

### RECITALS

**WHEREAS**, Hospital is a governmental general acute care hospital located in Lawrence, Kansas;

**WHEREAS**, Hospital serves the health care needs of Lawrence, Kansas and the surrounding area regardless of an individual’s ability to pay;

**WHEREAS**, the City has a department, the Lawrence Police Department (“LKPD”), that is the principal law enforcement agency in the City of Lawrence, Kansas, that exercises such authority and jurisdiction granted by the laws of the State of Kansas;

**WHEREAS**, from time to time, an “Arrestee,” as defined herein, in the custody of the LKPD is transported to the Hospital for “Health Care Services,” as defined herein;

**WHEREAS**, the City is obligated, pursuant to K.S.A. 22-4612(a), to pay health care providers for Health Care Services rendered to Arrestees the lesser of the amount billed by such health care providers or the Medicaid rate unless the Arrestee is covered under a current individual or group accident and health insurance policy, medical service plan contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization contract; and

**WHEREAS**, K.S.A. 22-4612(b) permits the Parties to enter into an agreement to set terms, conditions, and amounts which are different than the Medicaid rate.

**NOW, THEREFORE**, in consideration of the above recitals, hereby incorporated by reference, and the mutual terms, covenants, and conditions set forth below, the Parties hereto hereby agree as follows:

### ARTICLE I DEFINITIONS

1.1. **“Arrestee”** shall mean a person in the custody of LKPD for the purpose of holding or detaining the person to answer for a criminal charge. The term Arrestee shall exclude any person who voluntarily presents himself or herself to Hospital with the assistance or escort of LKPD.

1.2. **“Eligible Arrestee”** shall mean an Arrestee who does not have Health Care Coverage.

1.3. **“Health Care Coverage”** shall mean Medicaid, a current individual or group accident and health insurance policy, medical service plan contract, hospital service corporation

contract, hospital and medical service corporation contract, fraternal benefit society or health maintenance organization contract.

1.4. **“Health Care Services”** shall mean the examination and necessary treatment of an Arrestee for the purpose of diagnosing, assessing, treating, alleviating, curing, or healing existing human illness or injury, whether physical or psychiatric in nature. This term also includes conducting a medical clearance necessary for incarceration.

1.5. **“Medicaid”** shall mean the Federal-State program, administered by the Kansas Department of Health and Environment, that provides health and long term services to eligible people with low incomes and includes both the managed care program known as “KanCare” and the fee-for-service program known as the KMAP.

1.6. **“Standard Charge Master Rate”** shall mean the Hospital’s standard charges for services, procedures, room accommodations, supplies, drugs/biological and/or radiopharmaceuticals that may be billed for a patient registered at Hospital.

## **ARTICLE II RESPONSIBILITIES OF HOSPITAL**

2.1. When an Arrestee is presented to Hospital by an officer of LKPD for Health Care Services, Hospital shall follow its regular procedures and use its best efforts to obtain such Arrestee’s consent to Health Care Services.

2.2. Hospital shall follow its regular procedures, including procedures required by the Emergency Medical Treatment and Labor Act, and use its best efforts to obtain Arrestee’s Health Care Coverage information, if any.

2.3. Where an Arrestee has Health Care Coverage, Hospital shall solely bill and collect from the issuer of such Health Care Coverage for reimbursement for Health Care Services.

2.4. Hospital shall, at least annually and more often if reasonably requested by City, and upon reasonable notice from City, make its books and records regarding amounts billed for Health Care Services provided to Eligible Arrestees, available to City for audit and inspection to insure the accuracy of the billing and compliance with this Agreement.

2.5. Hospital shall, within a reasonable timeframe, respond to City’s requests for clarifications or more information by City concerning amounts billed to City pursuant to Article III of this Agreement.

## **ARTICLE III COMPENSATION**

3.1. For Health Care Services rendered to Eligible Arrestees and billed to City, City shall reimburse Hospital an amount equal to eleven percent (11%) of Hospital’s Standard Charge Master Rate. By the tenth (10<sup>th</sup>) day of each month, Hospital shall submit an invoice reflecting the foregoing charges for Health Care Services rendered to Eligible Arrestees during the preceding month.

3.2. On an annual basis, the Parties shall review the Hospital's overall reimbursement under Medicaid to assure that Hospital's discount to City is consistent with Hospital's discounts to Medicaid on an annual aggregate basis.

3.3. City shall remit payment to Hospital within sixty (60) days of receipt of Hospital's invoice unless City disputes payment on a particular item or requests clarification or additional information from Hospital. City will promptly notify Hospital of any dispute or need for clarification or additional information and the Parties shall reasonably cooperate with one another on a resolution of the matter.

#### **ARTICLE IV TERM AND TERMINATION**

4.1. Term. Subject to earlier termination as specified below, the initial term of this Agreement shall commence on \_\_\_\_\_, **20** and continue for a period of **one (1) year** ("Initial Term"). Thereafter, this Agreement shall automatically renew for additional one (1) year terms (each a "Renewal Term"), unless and until this Agreement terminates pursuant to Section 4.2.

4.2. Termination. This Agreement may be terminated for any of the following reasons:

a. Mutual Consent. This Agreement may be terminated at any time upon the mutual consent of the Parties.

b. Material Breach. Hospital may elect, in its sole and absolute discretion, to terminate this Agreement if City fails to perform any material obligation required hereunder, and City may elect, in its sole and absolute discretion, to terminate this Agreement if Hospital fails to perform any material obligation required hereunder; provided that such default continues for a period of at least thirty (30) days after the giving of written notice by the terminating Party, specifying the nature and extent of such default; provided further that if such default (other than a payment default which must be cured within such thirty (30) day period) is capable of being cured within a reasonable period, but not within thirty (30) days, this Agreement shall not terminate as provided herein if such defaulting Party commences to cure the default within the thirty (30) day period and thereafter diligently and in good faith continues to cure the default.

c. Termination Without Cause. City or Hospital may elect to terminate this Agreement by providing the other Party with at least **sixty (60) days** prior written notice of such termination.

d. Termination Pursuant to Law. This Agreement shall terminate upon any change made to state statute, federal statute, or case law relieving the City of its payment obligations hereto.

4.3. Effects of Termination. Upon termination of this Agreement, neither Party shall have any further obligations under this Agreement, except that:

a. the Parties' obligations accruing prior to the date of termination shall survive termination of this Agreement;

b. the Parties' obligations and covenants set forth herein that are expressly made to continue beyond the expiration or termination of this Agreement shall survive termination of this Agreement.

## **ARTICLE V COMPLIANCE WITH LAWS**

5.1. Compliance with Health Care Laws. Neither Hospital nor City, to the extent applicable, shall engage in any activity prohibited by 42 C.F.R. Part 1001 (§§ 1001.952(a)-1001.953), the Emergency Medical Treatment and Labor Act, the Federal False Claims Act, the Kansas False Claims Act, or any other federal, state, or local law or regulation applicable to services rendered pursuant to this Agreement.

5.2. Patient Privacy. City acknowledges that Hospital is a "covered entity" pursuant to the regulations for the privacy and security of "protected health information" codified at 45 CFR Parts 160 and 164 and will use reasonable safeguards, as Hospital deems reasonably necessary, to communicate protected health information to City for purposes of obtaining payment pursuant to this Agreement.

## **ARTICLE VI MISCELLANEOUS**

6.1. Confidential Information. Hospital and City acknowledge that all "Confidential Information" (as defined below) is confidential and is the property of the applicable Party to which such Confidential Information belongs ("Originating Party"). Both during and after the Initial Term or any Renewal Term of this Agreement, the Party other than the Originating Party (the "Other Party") shall not disclose Confidential Information to any other person or use Confidential Information for any purpose other than the furtherance of City's or Hospital's business, except: (a) as permitted by an applicable policy of the Originating Party in its sole discretion; (b) as required by law; or (c) as a matter of either Party's professional obligations with respect to an individual patient. For purposes of this Agreement, "Confidential Information" means all information about Hospital, the City or their employees, agents, representatives or patients, whether oral or written, in any form or medium, including, but not limited to, information pertaining to the following subjects: existing or prospective contractual relationships; financial information, including without limitation revenues, expenses, assets, debts, and any other type of financial information; referral relationships; business plans, business methods, and other trade secrets, including without limitation quality assurance protocols and procedures; governance; employment matters; individual patients, including but not limited to medical information and names, addresses, and third-party payer information; and any other information otherwise reasonably designated as confidential by the Originating Party. Hospital and City shall take such steps as are reasonably required to preserve the confidentiality of all Confidential Information, and shall cause their respective employees and agents to abide by the terms and conditions of this Section 5.1, as if each were a Party hereto. The confidentiality obligations of this Section 5.1 shall survive termination of this Agreement. As used herein, Confidential Information shall not include any information which: (a) becomes a part of the public domain or of public knowledge through no act or omission of the Other Party; (b) was in the possession of the Other Party, its employees or agents prior to the disclosure by the Other Party and not subject to any confidentiality obligation; or (c) must be disclosed by a Party to comply with laws or regulations of the United States or of the state of Kansas, unless such disclosure is protected by

the Government as confidential, proprietary, or classified and such is not disclosed by the Government, in which case disclosure to the Government only shall be permitted unless otherwise compelled to do so.

6.2. Federal Reporting. Upon written request, the Parties shall make available for a period of four (4) years after the furnishing of services under this Agreement to the Secretary of the United States Department of Health and Human Services, or any of its duly authorized representatives, this Agreement and any of the Parties' books, documents, and records that are necessary to certify the nature and extent of costs incurred pursuant to this Agreement and which are required to be made available under the Omnibus Reconciliation Act of 1980, Public Law 96-499, Section 952, or any regulations promulgated thereunder.

6.3. Notices. All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly delivered if delivered in person or sent by registered or certified, first class mail, postage prepaid to:

**Hospital:**                                **Lawrence Memorial Hospital**  
**325 N. Maine Street**  
**Lawrence, KS 66044**  
**ATTENTION: Chief Executive Officer**

**City:**                                        **Lawrence Police Department**  
**4820 Bob Billings Parkway**  
**Lawrence, KS 66049**  
  
**ATTENTION: Chief Tarik Khatib and Office of**  
**Professional Accountability**

Either Party may from time to time change said address by written notice to the Other Party, given as above provided.

6.4. Independent Contractors. City and Hospital acknowledge and agree that they are, at all times, acting and performing as independent contractors and entities and that nothing in this Agreement shall be construed to assume or create an employee/employer or lessee/lessor relationship between the Parties. City shall neither have nor exercise any control or direction over the methods by which Hospital performs Health Care Services to Arrestees hereunder.

6.5. Governing Law. This Agreement, the rights and obligations hereunder, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of Kansas.

6.6. Severability. If any part of any provision of this Agreement or any other agreement, document, or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining provisions of this Agreement.

6.7. Amendment. This Agreement may not be amended, altered, or modified except by an instrument in writing duly executed by the Parties hereto.

6.8. Entire Agreement. This Agreement, the exhibits attached hereto, and the agreements, instruments, and documents specifically executed or given in connection with this Agreement, constitute the entire agreement between the Parties with respect to the subject matters described herein, and supersede all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein.

6.9. Headings. Section headings and captions contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof.

6.10. Force Majeure. No Party shall be liable nor deemed to be in default for any delay, interruption, or failure in performance under this Agreement caused by or resulting, directly or indirectly, from Acts of God, civil or military authority, war, terrorism, vandalism, riots, civil disturbances, accidents, fires, explosions, earthquakes, floods, failure of transportation infrastructure, disruption of public utilities, supply chain interruptions, breakdown of machinery, strike or other work interruptions by either Party's employees, or any similar cause beyond the reasonable control of either Party. However, the Parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances.

6.11. Waiver. Any waiver of any term, covenant, or condition of this Agreement by any Party shall not be effective unless set forth in a writing signed by the Party granting such waiver, and in no event shall any such waiver be deemed to be a continuing waiver or a waiver of any other term, covenant, or condition of this Agreement.

6.12. Additional Documents. Each of the Parties may agree to execute any document or documents that may be requested from time to time by the Other Party, to the extent permitted by law, to implement or complete such Party's obligations pursuant to this Agreement and to otherwise cooperate fully with such Other Party in connection with the performance of such Party's obligations under this Agreement.

6.13. Assignment Binding on Successors. Nothing contained in this Agreement shall be construed to permit Hospital or City to assign any rights or responsibilities hereunder or any interest herein, except as specifically permitted by this Agreement, and any such assignment is expressly prohibited and shall be deemed void with no force or effect. Subject to the foregoing, this Agreement shall be binding on, and inure to the benefit of, the respective Parties' successors and assigns.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

**SIGNATURES FOLLOW:**

**HOSPITAL**

**LAWRENCE MEMORIAL HOSPITAL**

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

Russell W. Johnson

President and Chief Executive Officer

**CITY**

**CITY OF LAWRENCE KANSAS**

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

Name:

Title: