

RESOLUTION NO. \_\_\_\_\_ - 15

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS ON BEHALF OF ITS MEMORIAL HEALTH SYSTEM ENTERPRISE AND THE COLORADO SPRINGS HEALTH FOUNDATION TO GOVERN THE TRANSFER OF LEASE AND OTHER FUND PAYMENTS TO THE COLORADO SPRINGS HEALTH FOUNDATION IN ACCORD WITH THE HEALTH SYSTEM OPERATING LEASE, INTEGRATION AND AFFILIATION AGREEMENT AND THE FINANCIAL GUARANTY**

WHEREAS, in Resolution No. 92-12, City Council authorized the formation of the Colorado Springs Health Foundation (the "City Health Foundation"), with the express purpose "to receive, hold and manage in perpetuity all funds and monies received" pursuant to the agreements and transactions approved by City Council and by vote of the citizens of the City of Colorado Springs concerning the lease of the City's Memorial Health System ("MHS") and as set forth in Resolution No. 89-12; and

WHEREAS, pursuant to Resolution No. 92-12, City Council directed that all funds and monies received pursuant to the Health System Operating Lease and the Affiliation and Integration Agreement ( the "Lease") "shall be placed directly into the City Health Foundation"; and

WHEREAS, in connection with the Lease, the City Health Foundation issued its Guaranty and Indemnification Agreement (the "Guaranty"), under which it agreed that obligations of City and MHS under the Lease would be the "direct and primary obligations" of the City Health Foundation; and

WHEREAS, pursuant to Section 14.9 of the Lease, certain obligations of City and MHS under the Lease are to be satisfied first from the funds and monies received under the Lease and paid to the City Health Foundation; and

WHEREAS, pursuant to Resolution No. 121-12, City Council provided that the obligations of the City Health Foundation under Guaranty "shall be in no way limited or restricted by ... any past or future resolutions of the City (including, without limitation, Resolution No. 92-12...)"; and

WHEREAS, a lawsuit filed by the City of Colorado Springs against the Public Employees' Retirement Association and a lawsuit filed by former employees of the Memorial Health System against the City of Colorado Springs (the "Romstad" lawsuit) prevented the immediate placement of funds received from the transaction and agreements with the City Health Foundation; and

WHEREAS, the governing documents for the Lease transaction do not specifically address the timing for transfer of payments from the MHS Enterprise ("Enterprise") to the City Health Foundation or establish specific requirements concerning investment actions on behalf of the City Health Foundation to protect the City's and Enterprise's obligations for outstanding liabilities and potential claims associated with the Memorial Health System; and

WHEREAS, the Parties agree that there is a need for a funds management agreement to govern the above described circumstances.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council hereby approves the Funds Management Agreement attached as Exhibit A and incorporated herein by reference and authorizes the President of Council to execute the same.

Dated at Colorado Springs, CO, this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Merv Bennett, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk