

AGREEMENT FOR THE USE OF A MUNICIPAL GRANT

THIS AGREEMENT made on the 19th day of November, 2012.

BETWEEN:

WILLIAM OSLER HEALTH SYSTEM
(Hereinafter called "Osler")

-And-

THE CORPORATION OF THE CITY OF BRAMPTON
(Hereinafter called the "City")

WHEREAS, Osler has proposed the development of a new Peel Memorial Centre for Integrated Health and Wellness at their 20 Lynch Street property in Brampton (formerly Peel Memorial Hospital), thereby enhancing health care services in Brampton, Ontario;

AND WHEREAS, during the Council meeting of March 31, 2010, Council approved a motion to commit \$60 million towards the Local Share of hospital funding for the redevelopment of the Peel Memorial Hospital facility to construct the new Peel Memorial Centre for Integrated Health and Wellness (hereinafter called the "Centre");

AND WHEREAS, the Centre is planned to be constructed in two phases, with Phase One requiring a \$40 million City commitment of the \$60 million towards the Local Share contribution and the second phase requiring a \$20 million City commitment of the \$60 million towards the Local Share contribution;

AND WHEREAS, on August 8, 2012 Council directed City staff to develop a memorandum of understanding with Osler for the use of a City Grant to the proposed Centre;

AND WHEREAS, on September 12, 2012 Council authorized the Mayor and City Clerk to execute an Agreement with Osler related to the City's contribution of \$60 million towards Local Share of the Centre;

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration, the receipt and sufficiency of which are acknowledged and the mutual promises herein, the parties agree as follows:

1.0 DEFINITIONS

Any terms that are not specifically defined in this Agreement shall have the meaning attributed to them in the following order of priority: applicable legislation, regulation, municipal bylaw, policy or the common English language definition. The following definitions apply to the interpretation of this Agreement:

1. "Centre" means the two phases of the Peel Memorial Centre for Integrated Health and Wellness and its activities/operations to be constructed and operated by Osler to deliver the following services in a specialized, patient centred environment: urgent care, ambulatory care, outpatient surgical care, health administrative services and other health services on the property located at 20 Lynch Street, Brampton, Ontario.
2. "CEO" means the President and Chief Executive Officer having signing authority on behalf of the Osler body corporate, or his or her designate, authorized to act on his or her behalf.
3. "City" means the Corporation of the City of Brampton.
4. "Council" means the Council of the Corporation of the City of Brampton.
5. "Current Budget" means the annual operating budget (expenditures and revenues) of the City.
6. "Designated Contact" means the staff person(s) at the City and at Osler to whom communications related to this Agreement are directed. The Designated Contact for the City is the Treasurer, City of Brampton. The Designated Contact for Osler is the President and CEO, William Osler Health System.
7. "Government" means the Government of Ontario including its Ministries and Crown Corporations.
8. "Grant" means the City's financial contribution of \$60 million towards the Local Share of the Project Cost for the Centre and represents approximately 50% of the Local Share.
9. "Invoice" means a request for Payment sent by Osler to the Designated Contact at the City.
10. "Local Share" means approximately 30% of the total Project Cost is generated through municipal contributions, donations to foundations, business/clinical partnerships, ancillary revenue, hospital owned funds, and other community based fund-raising sources. The Local Share for the Centre has been estimated by Osler as \$120 million towards a Project Cost of \$420 million.
11. "Payment(s)" means two (2) instalments of the Grant, paid by the City to Osler. The first instalment for Phase One will be 50% of the related Local Share to a maximum of \$40 million; the second instalment for Phase Two will bring the total City contribution to 50% of the total Local Share for the Centre to a maximum of \$60 million, subject to this Agreement.
12. "Phase One" means the Government's fiscal approval for the Centre to begin construction in the 2013/2014 provincial fiscal year using a design, build, finance, maintain alternative financing and procurement approach, subject to legislative

appropriation and all applicable approvals of the Government. Phase One scope is based on the August 2010 Planning Submission by Osler to the Government which includes specialised health care services in a patient-centred environment, namely: urgent care, ambulatory care, outpatient surgical care, and administrative services at 20 Lynch Street, Brampton, Ontario.

13. "Phase Two" means the future expansion of the Centre subject to Government approval of Phase Two Functional Plan including fiscal approval of scope of programs and services included in Phase Two of the Centre, including legislative appropriation and all other applicable approvals by the Government.
14. "Project Cost" means the capital cost associated with hospital construction, acquisition of hospital furniture, fixtures and equipment, parking construction, ancillary fees, and contingency costs related to construction of the Centre.
15. "Status Report" means an annual report presented to Council by the CEO or his/her designate including the following: (1) General update of the construction progress of the Centre, (2) Status of Centre development, programming and fund raising activities associated with the balance of the local share for the Centre, (3) Progress of this Agreement, (4) Other related activity to the Centre, including awards, successes, and accolades, and (5) Response to questions and answers.
16. "Substantial Performance" means the Centre is ready for occupancy or is actually occupied for its intended uses and a certificate of substantial performance in respect of the principal construction contract has been published in accordance with the *Construction Lien Act* (Ontario).
17. "Year" means the calendar year starting on the first day of January in each year and ending on the last day of December in each year.

2.0 CITY OBLIGATIONS

1. City shall make a Payment of 50% of the Local Share for Phase One of the Centre to a maximum of \$40 million.
2. City shall make a Payment for Phase Two of the Centre that represents the difference between the actual Phase One Payment of a maximum of \$40 million and the maximum City contribution of \$60 million towards Local Share.
3. The City may direct that each Payment be applied to any unfunded portion of the Project Costs and/or may direct that the Payment not be applied to any portion of the Project Costs that would not be eligible for funding by the City under the City's governing statutes and Osler shall provide the City with all such reasonable documentation as may be necessary to satisfy the City that the Payment was applied as directed by the City.
4. The City shall make the full Payment for each Phase to Osler upon formal notification and invoice, submitted to the City by Osler, 90 days prior to expected date of Substantial

Performance for each Phase, to be held by Osler for final payment to the project consortium pending issuance of a Certificate of Substantial Performance by an independent third-party certifier.

5. Osler shall submit an invoice and formal notification of the Payment date to the City 60 days prior to the Payment due date for each Phase. .
6. City's Designated Contact shall advise Council at the time of Payment, once the criteria for that Payment have been satisfied.
7. The Treasurer of the City upon receiving the Invoice and other appropriate documentation from Osler or Government shall make the Payment to Osler, to be held by Osler for final payment by Osler to the Project consortium, contractors or suppliers following Substantial Performance. The Treasurer of the City shall not be authorized to make more than one Payment for Phase One of the Centre and not more than one Payment for Phase Two of the Centre without seeking Council approval.
8. City has no additional obligations related to the Grant.

3.0 OSLER OBLIGATIONS

1. Osler shall describe in writing to Council, general construction activities planned in Phase One and Phase Two of the overall construction program of the Centre.
2. Osler represents to the City that the business case for the Phase One and Phase Two of the Centre has been accepted by Government. Phase One of the Centre has full Government approval including the appropriation of funds. Government fiscal approval of Phase Two of the Centre was pending at the time of execution of this Agreement.
3. Osler acknowledges that Osler will obtain Government financing upon Substantial Performance for each Phase of the Centre.
4. Osler shall manage and finance all capital and current expenditures, including all services (water, wastewater, transportation, parking, utilities and other related services), construction, maintenance, staffing, programming, administration and other related operational and capital costs related to the Centre.
5. Should Substantial Performance be subsequently determined to be unachievable, the Grant Payment(s) will be refunded to the City by Osler.
6. Osler shall make application to all required government bodies, agencies, including applicable fees and charges, for all necessary approvals or permits related to the development of the Centre, as per the *Municipal Act*, *Planning Act* and other related statutes.
7. Osler acknowledges that the Grant is a one-time commitment for which spending relates exclusively to the Project Cost of the Centre.

8. Osler shall certify to the City that Substantial Performance of each Phase has occurred and shall provide to the City a letter and financial statement from Government confirming the actual Project Cost.
9. Once per Year until Substantial Performance of Phase One and Phase Two, or as requested by the Council and/or CEO, Osler shall present to Council a Status Report of the Centre development and programming. Osler will ensure Status Reports keep the City apprised of project progress and timelines including the expected date of Substantial Performance.
10. Osler agrees to provide to the City with an audited financial statement related to the Grant within 90 days of Substantial Performance of Phase One and within 90 days of Substantial Performance of Phase Two.
11. Osler agrees to establish a senior staff leadership presence at the Centre for a period of thirty (30) years starting at Substantial Performance of Phase One.
12. Osler agrees to recognize, at its expense, the City as a community funding partner of the Centre on all related communication materials prepared by Osler.
13. At a mutually satisfactory location in the Centre, Osler shall at its expense install and maintain a plaque thanking and recognizing the City as a financial contributor to the Centre.
14. As part of its Status Report, Osler shall inform and provide the City with information of awards, successes, accolades, best practice references it receives in relation to the Centre.
15. For a period of twenty (20) years following the execution of this Agreement, Osler shall grant permission to the City for use of name(s), photography, graphics, other images, slogans, key messages, key facts related to the Centre, in City marketing and media campaigns, subject to the review and approval of marketing materials by the Designated Contact at Osler and that the review shall be undertaken prior to the marketing materials being made public.

4.0 TERM AND TERMINATION

1. This Agreement is effective from the date of execution by both parties to the Payment for Phase Two of the Centre.
2. Notwithstanding 4.0 (1) herein, this Agreement shall terminate on December 31, 2030. On or before December 31, 2029, Osler has the option to request of the City in writing an extension to the December 31, 2030 termination date. The extension is subject to Council approval and cannot exceed a period of twenty-four (24) months.

5.0 GENERAL PROVISIONS

1. The laws of the Province of Ontario thereof, shall govern the validity and interpretation of this Agreement, and of each clause and part.

2. In the event that any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of the Agreement will not be affected and shall continue in full force and effect.
3. Osler shall not assign this Agreement in whole or in part, except that Osler may assign its rights and obligations under the Agreement to any successor in interest to the assets and obligations of Osler, whether by amalgamation, asset transfer or similar transaction, provided that such a transaction must be at the direction of the Government.
4. This Agreement shall not be varied, altered, amended or supplemented except in writing signed by the authorized representatives of both parties. No waiver of a breach by a party under this Agreement shall constitute a consent to or waiver of any other different or subsequent breach.
5. Any notice, invoice or other communication required or permitted to be given by this Agreement shall be in writing and shall be effectively given if (i) delivered personally; or (ii) sent by prepaid courier services; or (iii) sent by facsimile or other similar means of electronic communication to the Designated Contact in the case of notice to Osler (Email: matt.anderson@williamoslerhs.ca; Phone: 905-494-2120 Ext. 56808 or the Designated Contact in the case of notice to the City (Email at mo.lewis@brampton.ca; Phone 905-874-2250).
6. The City shall not be responsible for the cost of repair and/or replacement of the Centre as defined in relation to this Agreement and shall have no liability for ensuring that all or any part of the Payment is paid to contractors or subcontractors. Osler and the City agree that the City shall not be an "owner" for the purposes of the *Construction Lien Act* (Ontario).
7. Osler shall indemnify the City, its officers, employees agents and elected officials and any person or persons who acts or acted at the request of the City, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgement, reasonably incurred by it or him/her in respect of any civil, criminal or administrative action or proceeding to which it/he/she is made a party by reason of this Agreement, provided that:
 - (a) it/he/she acted honestly and in good faith; and
 - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, it/he/she had reasonable grounds for believing that the conduct was lawful.
8. Nothing in this Agreement shall obligate the City to issue a site plan agreement, building permit(s), complete final inspections or other municipal approvals within any particular time.

6.0 DISPUTE RESOLUTION

1. If there is any misunderstanding or difference of opinion with respect to the interpretation, application, administration, or alleged breach of this Agreement between Osler and the City, the parties shall use their best efforts to mediate and settle the same through consultation and negotiation in good faith, prior to commencing legal action.

7.0 AUTHORITY

1. Each of the City and Osler represent and warrant to the other that they have the power, authority and capacity to enter into this Agreement and carry out the transactions contemplated hereby, all of which have been duly and validly authorised by all requisite proceedings.

IN WITNESS WHEREOF the parties have shown their Agreement by affixing hereto the signatures of their duly authorized signing officers.

WILLIAM OSLER HEALTH SYSTEM

Per: _____

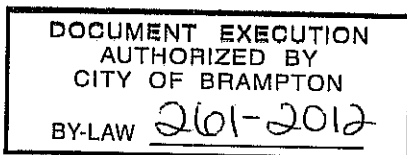
Name: Matthew Anderson

Position: President and Chief Executive Officer

Per: _____

Name: Dave McCaig

Position: Chief Financial Officer

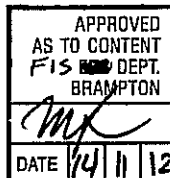
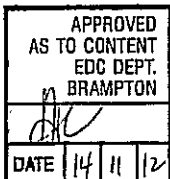


THE CORPORATION OF THE CITY OF BRAMPTON

Per: _____

Name: Susan Fennell

Position: Mayor



Per: _____

Name: Peter Fay

Position: City Clerk

