

1 BILL NO. R-15-02-33

2
3 RESOLUTION NO. R-_____

4 A RESOLUTION OF THE COMMON COUNCIL OF THE
5 CITY OF FORT WAYNE, INDIANA, APPROVING A
6 GRANT AGREEMENT BETWEEN THE CITY OF FORT
7 AND REVENUE CYCLE SERVICE CENTER, LLC

8 WHEREAS, Revenue Cycle Service Center, LLC, ("RCSC") an affiliate of Lutheran
9 Health Network, announced in August 2014 that it would expand its business operations in
10 Fort Wayne creating up to 234 full-time jobs by 2017; and

11 WHEREAS, RCSC and Lutheran Health Network are significant employers in the
12 City; and

13 WHEREAS, the City deems it beneficial to support local economic development to
14 attract business by providing certain assistance in order to encourage the expansion of job
15 opportunities in the community; and

16 WHEREAS, in support of local economic development, the Allen County
17 Redevelopment Commission, the Allen County Council and the Board of Commissioners of
18 Allen County, Indiana, have separately entered into a Ledge Agreement with RCSC provide
19 certain financial assistance in connection with RCSC's job expansion.

20 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE
21 CITY OF FORT WAYNE, INDIANA:

22 SECTION 1. The Common Council of the City of Fort Wayne, Indiana, hereby
23 ratifies and approves the grant agreement with Revenue Cycle Service Center, LLC (a copy
24 of which is attached hereto and made a part hereof as "Exhibit 1").

25 SECTION 2., This Resolution shall be in full force and effect from and after its
26 passage and any and all necessary approval by the Mayor.

27 _____
28 Member of Council

29 APPROVED AS TO FORM AND LEGALITY

30 _____
Carol Helton, City Attorney

REVENUE CYLCE SERVICE CENTER, LLC GRANT AGREEMENT

This Grant Agreement ("Agreement") is executed as of the Effective Date (as hereinafter defined) between the City of Fort Wayne, a political subdivision of the State of Indiana ("the City"), and Revenue Cycle Service Center, LLC, a Tennessee limited liability company (the "Recipient"). The parties to this Agreement, in consideration of the mutual covenants, obligations and stipulations set forth therein, agree as follows:

WHEREAS, the Recipient is significant employer in Fort Wayne, Indiana; and

WHEREAS, the parties desire to enter into an agreement to encourage the creation of job opportunities in the community; and

WHEREAS, the City is authorized by statute to provide certain financial assistance to businesses in consideration of the additional jobs to be created in the community by such businesses as a result of such assistance;

NOW, THEREFORE, for and in consideration of the good and mutual consideration set forth hereinafter, the parties hereto agree as follows:

1. **Purpose of the Agreement.** The purpose of this Agreement is to promote job creation in Fort Wayne, Indiana. In furtherance thereof, the City has awarded to the Recipient the financial assistance set forth herein as a portion of the economic development incentive package to create job opportunities at the Recipient's Fort Wayne, Indiana facility (the "Facility") and to create up to 234 full-time jobs (some of which will be created in Recipient's old facility prior to moving into the Facility) at its shared service center facilities by the end of 2017 (the "Project").

2. **Definitions.**

a. "Full-time Equivalents" ("FTE") means a job requiring a minimum of thirty-five hours of an employee's time a week for the entire normal year of company operations or a job requiring a minimum of thirty-five (35) hours of an employee's time each week for the portion of the first year in which the employee was hired for or transferred to the Project; provided, however, that jobs requiring less than the specified hours may be aggregated to full-time equivalents with each aggregate equivalent considered to be full-time.

b. "Facility" means the Recipient's shared service center facility located at 1700 Magnavox Way, Fort Wayne, Indiana.

c. "Incentive" means the amount award to Recipient under this Agreement.

d. "Taxable Year" shall be defined as any calendar year listed in Section 4 hereof in which benefits may be allowed under the provisions of this Agreement.

e. "Total annual payroll" shall be defined as Economic Revitalization Area Statement of Benefit or IAC 50-10.

3. **Term of the Agreement.** This Agreement shall commence effective the date it is accepted and executed by the second of the parties hereto (the "Effective Date") and shall continue for the duration of the benefit in accordance with Section 5. below (the "Term").

4. **Description of the Project.** Recipient will expand the Facility by making capital investments in the Facility in excess of \$1,675,000. The cumulative number of net FTE new jobs and payroll of employees employed at the Facility as a result of the Project shall be in excess of the amounts set forth below.

<u>Taxable Year</u>	<u>New Jobs</u>	<u>Annual Payroll</u>
2014	30	\$1,121,328
2015	159	\$6,032,333
2016-23	234	\$9,009,187

5. **Duration of the Benefit.** Subject to the terms and conditions hereof, Recipient may claim a benefit under this Agreement for any one or more Taxable Years listed in Section 4 hereof, but the maximum number of years in which Recipient may claim a benefit under this Agreement shall not exceed a cumulative total of ten (10) consecutive Taxable Years. However, the Recipient may not claim a benefit under this Agreement after 2024.

6. **First Taxable Year for Which the Benefit is Claimed.** The first Taxable Year in which a benefit may be claimed under this Agreement is the Taxable Year ending on or before December 31, 2014.

7. **The Benefit Amount Allowed for Each Taxable Year.** Subject to appropriation the Incentive shall not, in any event, exceed a total of \$1,500,000 in total and will be paid in installments over ten (10) consecutive Taxable Years. Subject to the terms and conditions of the Agreement, the maximum Incentive amount that will be allowed for any Taxable Year is \$150,000. Provided further, that the Incentive paid in any Taxable Year shall be calculated in accordance with Section 8 for any Taxable Year in which Recipient's net FTE at the Facility falls below eighty percent (80%) of projected new jobs for more than a total of three (3) months in such Taxable Year.

The foregoing notwithstanding, the Incentive paid in any Taxable Year shall be reduced by the amount of any unpaid real or personal property taxes applicable to the Facility. If subsequently paid, said Incentive Amount shall be restored.

Neither party hereto shall be responsible or liable in any way for its failure to perform its obligations hereunder, if such failure to perform is beyond the control of said party whether caused by acts of God, unavailability or shortages of raw materials from usual sources of supply, or unavailability or shortages of energy necessary to produce and/or deliver the products by usual modes of transportation, fire, flood, war, terrorism, unforeseen market forces, embargo, explosions, riots, or loss, rules, regulations, restrictions and orders of any governmental authority to which such entity is subject, or any other cause (excepting labor disputes and strikes), other than financial, beyond the reasonable control of the affected party. Such failure shall not terminate this Agreement but the obligations of the affected party shall be suspended during the period when performance is so suspended, unless such period exists beyond a period of one

hundred and eighty (180) days, in which event either party shall have the right at any time thereafter during such force majeure to terminate this Agreement upon written notice to the other party. The party so prevented from complying with its obligations hereunder shall immediately notify and keep the other party from time to time apprized thereof, and such party so prevented shall endeavor to remove or overcome the cause of such inability to comply with its obligations under this Agreement. Nothing herein shall be construed to require the settlement of strikes, lockouts or other labor difficulties by the party involved contrary to its wishes.

8. **Duties and Responsibilities of Recipient.** Recipient has made certain representations regarding the Project including the amount of private sector investment, the number of jobs to be created in Fort Wayne, Indiana and the annual payroll to be generated by the Project. Recipient also represents that it will use commercially reasonable efforts to maintain operations at the Project location for at least ten (10) consecutive calendar years during the Term. In the event Recipient fails in any material respect to fulfill the obligations set forth in Section 4, as reasonably determined by the City in its sole discretion, the benefit shall be repaid according to the following schedule:

In the event that the FTE employment at the Facility falls below eighty percent (80%) of the projected jobs based on the annual average FTE in any year of the ten (10) year commitment made in Section 4., then for each year of non-compliance ("Non-Compliance"), the Incentive benefit reduction will be calculated as follows:

Incentive for Taxable Year / Projected New Jobs in accordance with Section 4. = Benefit per FTE.

The Incentive will then be reduced (or repaid if applicable) in the an amount equal to: Incentive Per FTE x (Projected Jobs – Average FTE for applicable Taxable Year) = reduction (or repayment) of the Incentive.

The parties agree that Non-Compliance shall be remedied in accordance with this Section 8, and Non-Compliance shall not be a default hereunder. The parties hereto acknowledge that the Recipient's investment in the Project and the City's investment in granting the benefit described in Section 7 above is to encourage economic growth within Fort Wayne, Indiana. The City acknowledges that in some instances, economic conditions or other factors not within the Recipient's control may prevent the Recipient from complying fully with this Agreement. The City will give the Recipient notice and an opportunity to explain the reasons for any variations from the representations contained in this Agreement, and the City will exercise good faith in evaluating the factors affecting the Recipient's situation prior to taking any action authorized under this Agreement.

In addition to the originally required Statement of Benefits required pursuant to the Recipient's Tax Abatement Application, the Recipient shall submit to the City no later than July 1st of each Taxable Year for which this Agreement is in force and the calendar year following the final Taxable Year in which this Agreement is in force, the information listed below:

- a. The number of FTE at the Project for each month during the previous year.

- b. The average annual FTE during the previous Taxable Year.
- c. The Recipient's federal identification number and taxpayer account number as assigned by the Indiana Department of Workforce Development for the purpose of unemployment insurance, to assist in the verification of the provided information.
- d. The total annual payroll paid to all employees employed at the Facility during the previous Taxable Year. W-2 tapes provided to the State of Indiana shall be the basis for this information. Recipient will not be required to provide individual payroll information for employees at the Facility.
- e. Any other information reasonably required by the City to perform its duties, so long as Recipient is given notice of such information requirements sufficient to allow Recipient reasonable time to prepare such information and so long as such information is available from the records maintained by Recipient in the ordinary course of its business.

However, as an alternative to the requirements set forth above, the City will accept annual the Compliance with Statements of Benefits Form (CF-1) filed for any year Recipient is required to file same.

Recipient shall certify under oath the accuracy, to the best of its knowledge, of the above information submitted to the City is true. The information submitted to the City shall be kept confidential by the City unless law or judicial order requires disclosure of the information. The City may, upon request, share the above provided information with the parties to this Agreement, who shall also keep said information confidential unless law or judicial order requires disclosure of the information. The City, shall treat the above information as confidential financial information pursuant to IC 5-14-3-4(a)(5).

Any repayment of prior benefits awarded under this Agreement, as required by the City under Section 8 shall be paid by the Recipient to the City within one-hundred eighty (180) days of a written request from the City.

9. **Duties and Responsibilities of the City.** Upon the timely annual receipt of the information described under Section 8 of this Agreement from the Recipient, the City shall review the claim for annual benefit and supporting information and shall, within forty-five (45) days provide the Recipient with written notice if the benefit amount has been reduced from the amount in this agreement along with justification of the modification from the amount claimed as calculated in accordance with Section 8. The City shall concurrently provide to lessor payment as required under this agreement. The City shall have no obligation to make any payment to or for the benefit of Recipient in any Taxable Year in which Recipient is in default under this Agreement.

If the City determines that the Recipient is not materially complying with the requirements of this Agreement, it may, after giving the Recipient an opportunity to explain the Non-Compliance and reasonable notice and time to cure, take any action reasonably appropriate,

including the termination of this Agreement. Recipient hereby releases the City from any and all claims or causes of action Recipient may have against any such party as a result of the termination of this Agreement unless Recipient can establish that the Agreement was terminated in bad faith.

10. **Notice to Parties.** Any notice, statement or other communications sent to the City or the Recipient, shall be sent to the following addresses, unless otherwise specifically advised.

To the City:
Fort Wayne Community Development
Division
ATTN: Greg Leatherman, Director
200 E. Berry Street, Suite 320
Fort Wayne, IN 46802

To the Recipient:
Revenue Cycle Service Center, LLC.
c/o Community Health Systems Professional
Services Corporation
4000 Meridian Blvd.
Franklin, TN 37067

11. **Authority to Bind.** Notwithstanding anything in this Agreement to the contrary, the signatory for the Recipient represents that he/she has been duly authorized to execute this Agreement on its behalf.

12. **Amendment of this Agreement.** The annual maximum benefit amount specified in Section 7 of this Agreement may only be amended with the prior written approval of the parties hereto.

13. **Assignability.** The Recipient shall not assign this Agreement or any portion thereof without the prior written consent of the City, which shall not be unreasonably withheld. Provided however, Recipient may assign this Agreement to another entity wholly controlled by or under common control with Community Health Systems, Inc. No such assignment shall amend or modify the covenants made and obligations assumed by Recipient hereunder and the City shall have all rights granted to the City hereunder following such assignment as if such assignment had not occurred.

14. **Remedies not Impaired.** No delay or omission of either party in exercising any right or remedy available under this Agreement shall impair any such right or remedy, or constitute a waiver of any default or acquiescence thereto.

15. **Compliance with Laws.** The Recipient agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances and all provisions required thereby are included and incorporated by reference herein. The enactment of any local, state or federal statute or ordinance or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the City and the Recipient to determine whether the provisions of this Agreement require formal amendment.

Pursuant to I.C. '22-9-1-10 and the Civil Rights Act of 1964, Recipient shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to the hire, tenure, terms, conditions or privileges of

employment, or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin, handicap or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

16. **Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, notwithstanding its choice of law rules to the contrary or any other state's choice of law rules. Suit, if any, must be brought in a court of applicable jurisdiction located in Allen County, Indiana.

17. **Entire Agreement.** This Agreement, together with any attachments hereto contains the entire understanding of the parties and this agreement supersedes all prior Agreements and understandings, oral and/or written, with respect to this subject matter.

18. **Indemnification.** The Recipient shall indemnify, defend and hold harmless the City, its agents, officers, employees and divisions (collectively, the "Indemnities") from all claims, demands, charges, lawsuits, costs and expenses (including legal costs and attorneys fees) caused by any act or omission of the Recipient and/or any of its employees, business licensees, representatives, agents, vendors, invitees or subcontractors, if any, related to its management, operation and control of the Facility. The City shall not provide any indemnification hereunder to the Recipient and, other than for a claim brought by the Recipient to enforce the City's payment obligations, if any, hereunder, Recipient hereby forever releases Indemnities and each of them from any and all claims, demands and charges, whether now existing or hereafter arising, that Recipient has or may have against Indemnities, or any of them, under this Agreement.

19. **Penalties and Interest.** The City, and their respective officers and agents will in good faith perform their required obligations hereunder and shall not be required to pay any penalties, liquidated damages, interest, incidental or consequential damages in the event of breach of this Agreement.

20. **Mutual Attorneys Fees Provision.** If any party hereto brings an action or proceeding to enforce the terms of this Agreement, the Prevailing Party (as hereinafter defined) in any such proceeding, action or appeal thereon, shall be entitled to reasonable attorneys fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment or the abandonment by the party of its claims or defense. The attorney fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all reasonable attorneys fees incurred.

21. **Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses, or provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereby, by their duly authorized representatives,
have executed this Agreement on the dates entered below.

City of Fort Wayne, Indiana

By: _____
Thomas C. Henry, Mayor

Date: _____

By: _____
Greg Leatherman, Director
Division of Community Development

Date: _____

Revenue Cycle Service Center, LLC.

By: _____

Date: _____

Its: _____

Admn. Appr. _____

DIGEST SHEET

TITLE OF ORDINANCE: Resolution Approving a Grant Agreement between the City of Fort Wayne and Revenue Cycle Service Center, LLC

DEPARTMENT REQUESTING ORDINANCE: Community Development Division

SYNOPSIS OF ORDINANCE: This Resolution authorizes Fort Wayne Common Council to approve a Grant Agreement between the City of Fort Wayne and Revenue Cycle Service Center, LLC. The Agreement provides for the City's participation in local economic development incentives offered to Revenue Cycle Service Center, LLC.

EFFECT OF PASSAGE: Will allow the City to offer Revenue Cycle Service Center, LLC local economic development incentives for renovation of facilities for the company's medical insurance claims, bills, and appeals processing operations and will aid in the creation of up to 234 full-time jobs

EFFECT OF NON-PASSAGE: Potential loss of new development and 234 full-time jobs

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS): No expenditures of public funds required.

ASSIGNED TO COMMITTEE (PRESIDENT): Tom Didier and Russ Jehl