

**TOWNSHIP OF HOPEWELL
MERCER COUNTY, NEW JERSEY**

R E S O L U T I O N #20-138

**RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY SERVICE
AGREEMENT BETWEEN THE TOWNSHIP OF HOPEWELL
AND CAPITAL HEALTH SYSTEM, INC.**

WHEREAS, the Township of Hopewell (hereinafter the “Township”) has filed tax appeals in the Tax Court of New Jersey under Docket Numbers 010019-2016; 009755-2017; 008356-2018; and 012333-2019 challenging the property tax exemption of Capital Health System, Inc., (“CHS”), and with the Mercer County Board of Taxation for tax year 2020, and as further described in the Complaints filed in the tax appeals; and

WHEREAS, CHS claims that the properties which are the subject of the tax appeals (hereinafter “the Properties”) are exempt from taxation for the tax years in question as “hospital purpose properties”, pursuant to the provisions of N.J.S.A. 54:4-3.6; and

WHEREAS, the Township and CHS have agreed to resolve their differences and settle the outstanding tax appeals; and

WHEREAS, notwithstanding CHS’s claim that the Properties are exempt from taxation and the Township’s claim that the Properties are taxable, in recognition of the public services provided by the Township that benefit the Properties and their occupants, and more particularly, to offset some of the costs incurred by the Township to provide such public services for the tax years in question, and in settlement of the aforementioned Tax Appeals, the Township and CHS have agreed to resolve their differences pursuant to a Community Service Agreement, a copy of which is attached hereto.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE COMMITTEE OF THE TOWNSHIP OF HOPEWELL:

That all terms and conditions of a certain Community Service Agreement by and between the Township of Hopewell and CHS are hereby approved, ratified and confirmed by the Township of Hopewell; and

BE IT FURTHER RESOLVED, that the Mayor, Business Administrator and Clerk are hereby authorized to execute said Agreement and, together with other appropriate officers and employees of the Township, are hereby authorized and directed to take all steps necessary to effectuate the purposes of this Resolution; and

BE IT FURTHER RESOLVED, that the Township's Special Tax Counsel, Harry Haushalter, Esquire, is hereby authorized to withdraw the appeals filed against CHS by Hopewell Township for the relevant tax years in accordance with the aforementioned Community Service Agreement; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately.

Date Adopted: April 6, 2020

CERTIFICATION

I, Laurie E. Gompf, Municipal Clerk, of the Township of Hopewell, County of Mercer, State of New Jersey, do hereby certify that the foregoing resolution was duly adopted by the Township Committee at the regular meeting held on the 6th day of April, 2020, in the Municipal Building, Hopewell Township, New Jersey.



Laurie E. Gompf, RMC, CMC
Municipal Clerk

**COMMUNITY SERVICE CONTRIBUTION AGREEMENT
BETWEEN**

CAPITAL HEALTH SYSTEM INC.

AND

THE TOWNSHIP OF HOPEWELL

This COMMUNITY SERVICE CONTRIBUTION AGREEMENT (this "Agreement"), dated _____, 2020, by and between **CAPITAL HEALTH SYSTEM, INC.**, a nonprofit corporation under Title 15 of the New Jersey Statutes, having a business address at 750 Brunswick Avenue, Trenton, NJ 08638 ("CHS") and **THE TOWNSHIP OF HOPEWELL** ("Township"), a municipal corporation of the State of New Jersey, having an office at 201 Washington Crossing Pennington Road, Titusville, NJ 08560,(together "the Parties").

RECITALS

WHEREAS, CHS owns certain properties ("Property") in the Township identified as follows:

Block 91, Lot 3.961 X;	One Capital Way
Block 91, Lot 3.961, C100;	One Capital Way
Block 91, Lot 3.961, C101X;	One Capital Way
Block 91, Lot 3.961, C102;	One Capital Way
Block 91, Lot 3.961, C103;	One Capital Way
Block 91, Lot 3.961, C104;	One Capital Way
Block 91, Lot 3.961, C105;	One Capital Way
Block 91, Lot 3.961, C106;	One Capital Way
Block 91, Lot 3.961, C202;	Two Capital Way
Block 91, Lot 3.961, C202X;	Two Capital Way
Block 91, Lot 3.961, C203X;	Two Capital Way
Block 91, Lot 3.961, C204;	Two Capital Way
Block 91, Lot 3.961, C205;	Two Capital Way
Block 91, Lot 3.961, C202B;	Two Capital Way

WHEREAS, the Township has filed 2016, 2017, 2018 and 2019 tax appeals under Docket No. 010019-16, Docket No. 009755-17, Docket No. 008356-2018 and Docket No. 012333-2019, challenging entitlement to tax exemption (the "Tax Appeals") for the Property

owned by CHS in the Township and as further described in the complaints filed in the Tax Appeals; and

WHEREAS, CHS has filed counterclaims in regards to the Tax Appeals, claiming that the Property is exempt from taxation for the appeal years as hospital purpose property pursuant to N.J.S.A. 54:4-3.6, and as further described in the counterclaims filed in the Tax Appeals; and

WHEREAS, CHS and the Township have agreed to resolve their differences and settle the Tax Appeals; and

WHEREAS, notwithstanding CHS's claims that the Property is exempt from taxation, in recognition of the public safety services provided by the Township that benefit the Property and its occupants, and more particularly, to offset some of the costs incurred by the Township to provide such public safety services during tax years in question, and, in part, settlement of the Tax Appeals, CHS desires to pay a community service contribution to the Township and work collaboratively with the Township to improve the health of the community subject to the terms and conditions set forth under this Agreement;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions, the parties hereto hereby agree as follows:

1. The recitals set forth above are made part of this Agreement.
2. It is agreed that the parties will file mutual withdrawals of the Complaints and Counterclaims filed in the Tax Appeals, pursuant to New Jersey Court Rule 8:3-9 within fourteen (14) days of execution of this Agreement. Further, the Township will not initiate or in any way support a challenge to the tax exempt status of the Property for tax years 2019 through and including 2025 while this Agreement remains in effect. In the event of an uncured breach and/or default in payment pursuant to the terms of this Agreement, the Township may enforce the amounts due as a lien on the Property pursuant to paragraph 6. herein. In the event the

Township initiates or in any way supports a challenge to the tax exempt status of all or part of the Property for tax years 2020 through and including 2025, or if a third party successfully challenges the exempt status of the Property, with appeal rights having been exhausted, then this Agreement may be deemed null and void by CHS, and CHS will be entitled to refund of payments made pursuant to this Agreement for any tax year for which taxes are due as a result of such third-party challenge and no future payments by CHS will be due pursuant to this Agreement.

3. For tax years 2019 through 2025, CHS will pay to the Township an annual community service contribution in settlement of the Tax Appeals and as a contribution towards public safety and other municipal services provided to the Property by the Township that benefit the Property and its occupants (the "Community Service Contribution") in the following amounts:

- a) \$91,250 for 2019.
- b) \$146,000.00 for 2020,
- c) \$148,900.00 for 2021,
- d) \$151,900.00 for 2022,
- e) \$155,000.00 for 2023,
- f) \$158,000 for 2024, and
- g) \$161,300 for 2025.

This Community Service Contribution has been calculated based on a Per Bed Contribution as defined in paragraph 4 below plus an additional amount to the Township equal to 2% over and above the 2020 base amount of \$146,000.00 per year commencing in 2021 and continuing to 2025.

4. The Community Service Contribution is equivalent to a per bed community service contribution methodology presented to the New Jersey Legislature during the 2014-2015 Legislative Session in the form of Senate Bill No. 3299 and Assembly Bill No. 4903, and is

determined in accordance with the formula proposed in the bills, and the 2020 payment is equivalent to \$2.00 a day per care bed at the Property (\$2.00 x 200 beds x 365 days). Said proposed Legislation also required an annual 2% increase to the contributions stemming from the aforementioned formula, which has become a part of the total Community Service Contribution owed to the Township. As provided in those legislative bills, the Community Service Contribution will be used to (1) fund the police or fire protection; (2) fund first aid, emergency, rescue or ambulance services; or (3) fund any other public safety purpose.

5. In the event that the applicable real property tax exemption provision for not-for-profit hospitals pursuant to N.J.S.A. 54:4-3.6 is amended or supplemented by Legislation enacted subsequent to the date of this Agreement, the payment standards established by the Legislation would be applicable for the tax years affected by the Legislation and the future payments required under this Agreement would no longer be due. All payments made under the Agreement for all the relevant tax years prior to the effective date of the Legislation would not be affected and would not be refundable. To the extent, during any year, any Legislation becomes effective and requires payments in excess of the payments already provided under this Agreement, CHS will receive a credit against any such additional payments for any payments made pursuant to the Agreement.

6. For the years 2020 through 2025, the Community Service Contribution will be paid to the Township Tax Collector in four equal installments on February 1, May 1, August 1 and November 1 of each tax year. The full 2019 payment and the February 1, 2020 and the May 1, 2020 payments will be made the later of either within 60 days of the execution of this Agreement or of entry of final Orders or Judgments of withdrawal by the Tax Court. Should the Community Service Contribution be increased by new Legislation in accordance with paragraph 5 above, then the remaining installments due under this paragraph would no longer be due. Any unpaid Community Service Contributions shall be considered a municipal lien on the Property,

pursuant to N.J.S.A. 54:5-6 and N.J.S.A. 54:5-9, and if any installment is unpaid, that installment shall be subject to penalties and interest at the municipal rate set by law for delinquent real estate taxation. The nonpayment of any installment of the Community Service Contribution shall constitute a material breach and default of this Agreement, and providing adequate notice and reasonable time to cure any such deficiency is given, which at a minimum shall be sixty (60) days, the Township shall be entitled to pursue all available legal remedies to address the breach and/or default of this Agreement.

7. If a challenge to the legal enforceability of any paragraph of this Agreement or its terms is raised by any third party, the parties agree to reasonably cooperate in defense of this Agreement.

8. Nothing contained in this Agreement shall be interpreted to interfere with the Constitutional obligations of the Tax Assessor of the Township to assess the Property and/or other properties in the Township, including, but not limited to, properties owned by CHS, and/or any entity related to CHS in the Township, as taxable and/or as exempt, at the fair assessable value of the properties consistent with assessing practices generally applicable in the taxing district as required by law, including, but not limited to, the obligation to impose added, omitted and revised assessments as required by law, as well as to deny and/or grant exemptions as required by law.

9. If judgments of withdrawal are not entered by the Tax Court pursuant to this Agreement, the parties have the option to either (a) void this Agreement in its entirety and vacate any judgments that may be entered and proceed with the litigation which is the subject of the Tax Appeals and judgments; or (b) choose to proceed with the settlement for any of the tax years not effected pursuant to this Agreement, and litigate any other tax year(s) Tax Appeal(s).

10. During the first quarter of the 2025 tax year, the parties agree to meet to discuss the terms of any future contributions , by CHS to the Township for the municipal services

provided by and expenses incurred by the Township as a result of CHS and any successor medical center, or any CHS related entity, being located in the Township.

11. Except as otherwise provided in this Agreement, this Agreement constitutes the entire agreement of CHS and the Township with respect to the subject matter hereof and supersedes any and all prior written or oral understandings, negotiations and agreements.

12. This Agreement was jointly drafted by CHS and the Township and the language of this Agreement shall in all cases be construed as a whole according to its meaning and not strictly for or against any of the parties.

13. CHS and the Township agree that, in the event any one or more of the non-material provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unconstitutional or unenforceable in any respect, such invalidity, illegality, unconstitutionality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal, unconstitutional or unenforceable provision had never been contained herein or therein.

14. In the event this Agreement is deemed null and void for any reason, the Parties will endeavor in good faith to reach an acceptable substitute agreement.

15. CHS and the Township agree to execute or cause its counsel to execute any additional documents and take any further action, which may reasonably be required to consummate this Agreement.

16. The parties and/or either one of the parties, may, **only in the event of default of this Agreement**, file this Agreement with the Tax Court and/or any other Court of competent jurisdiction, in all and/or any one of the above captioned Tax Appeals, in order to enforce the terms of, and or vacate the withdrawals of the Tax Appeals.

17. This Agreement shall be interpreted pursuant to the laws of the State of New Jersey and the Tax Court shall continue to have jurisdiction of the Tax Appeals until the terms,

conditions and payments hereunder are completed.

18. Any notices, statements, demands, consents, approvals or other communications required or permitted to be given or to be served upon either party hereto in connection with this Agreement, must be in writing and must be delivered personally, sent by a nationally recognized overnight delivery service or sent by United States certified or registered mail, return receipt requested, and will be deemed to have been given and received on the day delivered personally, or on the first business day after the day it is dispatched to a nationally recognized overnight delivery service, or on third business day after so mailed. Such notice must be given to the parties at their following respective addresses or at such other address as either party may hereafter designate to the other party in writing in the manner herein above provided:

If to CHS:

Capital Health System, Inc.
Office of the General Counsel
750 Brunswick Ave
Trenton, NJ 08638

With copy to: Archer & Greiner, P.C.
c/o Jeffrey D. Gordon, Esq.
101 Carnegie Center
Suite 300 – Third Floor
Princeton, NJ 08540

If to the Township:

The Township of Hopewell
201 Washington Crossing Pennington Road
Titusville, NJ 08560
Attention: Business Administrator

With copy to: Harry Haushalter, Esq.
Lexington Square Commons
2119 Hwy 33, Suite A
Hamilton Sq., NJ 08690

19. This Agreement is binding upon the successors and assigns of any and all of the parties hereto.

20. If a press release is required in response to press inquiries concerning this Agreement, the parties shall make a good faith effort to consult with each other regarding a press release.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

ATTEST:

CAPITAL HEALTH SYSTEM, INC.

BY: _____

ATTEST:

THE TOWNSHIP OF HOPEWELL

BY: _____