



RESOLUTION OF UNIVERSITY HOSPITAL PERTAINING TO THE FINANCING, CONSTRUCTION, MAINTENANCE AND ON-GOING OPERATION OF NEW ELECTRICAL AND THERMAL ENERGY POWER SYSTEMS

WHEREAS, University Hospital (the "Hospital") was duly established and validly exists as an independent public healthcare institution and an instrumentality of the State of New Jersey (the "State"), pursuant to the New Jersey Medical and Health Sciences Education Restructuring Act, L 2012, c. 45 (the "Restructuring Act"); and

WHEREAS, pursuant to the Restructuring Act, Rutgers, the State University ("Rutgers") owns and operates the New Jersey Medical School, the Rutgers School of Dental Medicine, the School of Health Professions, the School of Nursing and the Public Health Research Institute as part of the Rutgers-Newark Campus on land leased by Rutgers from the State (the "Rutgers Premises"); and

WHEREAS, as provided in the Restructuring Act, the Hospital is the principal teaching hospital of the Rutgers New Jersey Medical School, the Rutgers School of Dental Medicine and other medical education programs located in Newark, New Jersey; and

WHEREAS, in furtherance of the Restructuring Act, Rutgers and the Hospital entered into various agreements in support of and to advance their respective and collaborative missions and operations, including a Continuing Services Agreement dated as of July 1, 2013 (the "CSA"); and

WHEREAS, Rutgers owns and operates at its Biomedical and Health Science Newark campus a Central Utility Plant (the "CUP") (originally constructed in 1977, expanded in 1989 to include combustion turbine-based cogeneration to generate electricity and steam in heat recovery steam generators (the "Cogen Facility"), and further expanded to include a large electrical driven centrifugal chiller to handle peak chilled water loads) that provides steam, high-temperature hot water, chilled water and electricity to the Rutgers Newark campus and Hospital buildings; and

WHEREAS, based on a *Combined Heat and Power Technical Feasibility Study* commissioned by Rutgers for the Rutgers-Newark Health Sciences Campus authored by Concord Engineering Group, Inc, dated June 30, 2017, amended July 11, 2017 (as updated August 19, 2019) (the "Engineering Report"), the CUP combined heat and power systems are not operating efficiently and are past their useful life, the Cogen Facility does not comply with current New Jersey Department of Environmental Protection emissions requirements, and the capital investment necessary to upgrade the Cogen Facility is \$48,000,000 (the "Project Budget") attached hereto as Exhibit "A"; and

WHEREAS, based on the Engineering Report, over a twenty year period, the Hospital and Rutgers anticipate annual cost savings of approximately \$2.2 million and other operational efficiencies, all as outlined in the Engineering Report; and

WHEREAS, given the aging infrastructure of the Cogen Facility and the negative impact, including property damage, of Superstorm Sandy in 2012, the Hospital and Rutgers have been pursuing a project (the "Project") to upgrade the Cogen Facility so as to provide for resilient operations and continuous "island-mode" functionality, disconnected and isolated from the power grid at any time, including during an outage or other event that would otherwise interrupt critical operations of the Hospital, and have entered into certain agreements to further the Project,

including an Operation and Services Agreement (the "OSA") and Sublease Agreement ("Sublease") each dated as of February 15, 2018, subject to obtaining the necessary financing for the Project; and

WHEREAS, pursuant to the Sublease, Rutgers has agreed to sublet a portion (the "Subleased Premises") of the Rutgers' Premises to the Hospital, which Subleased Premises shall include the Project and the Project Assets (as defined below); and

WHEREAS, pursuant to the OSA (as amended), Rutgers shall provide, through itself or other third party professionals: (i) the Development Services (as defined in the OSA) (to be paid from the Project Financing) and (ii) the Operation Services (as defined in the OSA) (at the cost provided for in the CSA), and the Hospital shall own all of the assets (including, three natural gas (or dual-fuel) electric generating turbines and the related control consoles, switchgear, exhaust and heat recapture machinery) (the "Project Assets") making up the Project upon the Hospital's acceptance thereof, all subject to the terms and conditions of the OSA and the Sublease; and

WHEREAS, the Hospital and Rutgers intend to share all of the costs of the Project including, without limitation, debt service of the Project Financing in accordance with the terms and conditions of the CSA; and

WHEREAS, the Hospital issued a Request for Proposals for Design/Build Services for University Hospital Turbine Cogeneration Upgrade Project, Project Number 5798, dated August 1, 2018 (the "RFP"), including engineering drawings and specifications prepared by Affiliated Engineers, Inc (the "Project Scope of Work") (the RFP and the Project Scope of Work hereinafter collectively referred to as the "RFP"), which responses to the RFP was reviewed, scored and ranked by an evaluation committee made up of Hospital and Rutgers representatives, and the evaluation committee proposes that the Hospital enter into a design-build construction contract (the "Construction Contract") for the Project with Z&F Construction, Inc. (the "General Contractor"), as the lowest responsible bidder, in an amount not to exceed \$42,439,000 (the "Project Construction Cost"); and

WHEREAS, the Hospital intends, and is required by the ERB, to establish a construction contingency in an amount equal to at least ten percent (10%) of the Project Construction Cost, such amount to be paid from and in accordance with Project Financing requirements; and

WHEREAS, financing for the Project (collectively, the "Project Financing") is being funded from the following sources:

(i) Up to \$39,120,000 from the New Jersey Energy Resilience Bank (the "ERB") administered by the New Jersey Economic Development Authority (the "NJEDA"), consisting of a grant (the "ERB Grant") in an amount up to \$27,291,900 and a loan (the "ERB Loan") in an amount up to \$11,828,100, bearing interest at the rate of two percent (2.00%) per annum, having a term of approximately twenty (20) years, all of which was approved by the NJEDA November 14, 2017, as modified on or about June 11, 2019;

(ii) \$1,500,000 in the form of a loan (the "PSE&G CHP Loan") from Public Service Electric and Gas Company under its CHP Subprogram under its Hospital Efficiency Program, which PSE&G CHP Loan shall not bear interest, shall have a term of approximately 10 years and shall be payable as to principal in accordance with the PSE&G CHP Loan, which was approved by the PSEG on or about November 21, 2017;

(iii) \$7,380,000 in the form of a construction loan (the "I-Bank Construction Loan") from the New Jersey Infrastructure Bank, formerly known as the New Jersey Environmental Infrastructure Trust ("I-Bank"), initially being a non-interest bearing loan, having a term of approximately 3 to 5 years which will be approved by I-Bank simultaneously with the closing of such I-Bank Construction Loan, with the understanding that upon completion of construction of the Project, it is anticipated that the I-Bank Construction Loan will be permanently financed by long term loans from I-Bank and the State New Jersey, acting through the New Jersey Department of Environmental Protection (the "NJDEP") (collectively, the "I-Bank Anticipated Long Term Loan") under I-Bank's or NJDEP's financing program (collectively, the "I-Bank Anticipated Financing Program") pursuant to which I-Bank and/or NJDEP will issue its revenue bonds for the purpose of financing, on a long term basis, the Project and other projects of certain qualifying Institutions; and

WHEREAS, in order to enable the Hospital to qualify for the I-Bank Construction Loan and the I-Bank Anticipated Long Term Loan, Rutgers has agreed to guarantee the Hospital's portion of the payment obligations thereunder pursuant to a guaranty agreement (the "Rutgers Guaranty Agreement") to be entered into by and between the Hospital and Rutgers, for the benefit of I-Bank; and

WHEREAS, as an inducement to Rutgers to enter into the Rutgers Guaranty Agreement, the Hospital and Rutgers shall also enter into a Reimbursement Agreement (the "Rutgers Reimbursement Agreement") pursuant to which the Hospital shall agree to reimburse Rutgers for certain payments made by Rutgers pursuant to the Rutgers Guaranty Agreement, subject to the terms and provisions thereof; and

WHEREAS, the Hospital: (i) expects to advance and pay for certain Project costs ("Project Costs") from its capital and/or general operating funds prior to the issuance of certain short-term debt obligations to I-Bank, the amount of which is estimated to be \$7,380,000, (ii) reasonably anticipates that obligations, the interest on which is excluded from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), will be issued by the I-Bank to finance the Project on a long-term basis by making a loan to the Hospital with the proceeds of the I-Bank's obligations, and (iii) desires to preserve its right to treat an allocation of proceeds of the Short Term Note to the reimbursement of Project Costs paid prior to the issuance of the Short Term Note as an expenditure for such Project Costs that is eligible to be reimbursed for purposes of Sections 103 and 141 through 150, inclusive, of the Code; and

WHEREAS, Rutgers has taken, and will continue to take, all necessary action to approve, advance and complete Rutgers' role with respect to the Project as described in the OSA; and

WHEREAS, the Hospital's Finance, Investment and Administration Committee has reviewed the proposed action and recommends approval;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of University Hospital

1. The above recitals are incorporated herein by this reference.
2. Any and all prior actions taken by or at the direction of the Authorized Officers of the Hospital in connection with the matters authorized in this Resolution or otherwise in connection with the Project are hereby ratified and reaffirmed.

3. Pursuant to N.J.S.A. 18A:64G-6.1 *et seq.* and in accordance with the Hospital's Signature Authorization and Delegation of Authority Policy dated November 21, 2017, the President and Chief Executive Officer, the Chief Operating Officer and the Chief Financial Officer of the Hospital (each, an "Authorized Officer of the Hospital"), acting severally, in consultation with the Chief Legal Counsel and Corporate Secretary of the Hospital ("General Counsel"), are hereby empowered, authorized, and directed to negotiate, execute and deliver, and if required, the Secretary or any Assistant Secretary of the Hospital is hereby empowered, authorized, and directed to attest to such agreements and documents (and any amendments or supplements thereto) and take such actions necessary and desirable to complete the Project, consistent with this Resolution and the approved Project Budget.

4. Without limiting the generality of the foregoing:

A. The selection of Z&F Construction, Inc as General Contractor for the Project pursuant to and in accordance with the RFP is hereby approved, ratified and reaffirmed, and an Authorized Officer of the Hospital, acting severally, in consultation with the General Counsel, are hereby empowered, authorized, and directed to negotiate, execute and deliver, and if required, the Secretary or any Assistant Secretary of the Hospital is hereby empowered, authorized, and directed to attest to, the Construction Contract, including all exhibits attached to the foregoing, in substantially the form annexed to the RFP, with such appropriate addenda, amendments, supplements, insertions, deletions and changes as the General Counsel may advise and an Authorized Officer of the Hospital may approve, such approval to be evidenced by the execution thereof by an Authorized Officer of the Hospital.

B. The ERB Grant and the ERB Loan are hereby approved, provided that the maximum principal amount of the ERB Loan shall not exceed \$11,828,100. The Authorized Officers of the Hospital, acting severally, are hereby empowered, authorized, and directed to negotiate, execute and deliver, and if required, the Secretary or any Assistant Secretary of the Hospital is hereby empowered, authorized, and directed to attest to, a Sub-recipient ERB Funding Agreement and Sub-recipient Note, including all agreements, certificates, instruments, exhibits and other documents contemplated to be executed and delivered in connection therewith, in customary form, with such appropriate addenda, amendments, supplements, insertions, deletions and changes as General Counsel and Bond Counsel to the Hospital ("Bond Counsel") may advise and an Authorized Officer of the Hospital may approve, such approval to be evidenced by the execution thereof by an Authorized Officer of the Hospital. The Hospital shall undertake and complete in a timely manner all conditions precedent to funding identified under the ERB Grant and the ERB Loan.

C. The PSE&G CHP Loan is hereby approved, provided that the maximum principal amount of the PSE&G CHP Loan shall not exceed \$1,500,000. The execution and delivery by the Hospital of the CHP Master Customer Agreement, dated September 11, 2017, the Memorandum of Agreement, dated as of February 9, 2018 and the Customer Repayment Agreement-CHP, Exhibit B, acknowledged, accepted and agreed to by the Hospital on January 29, 2018 and by PSE&G on February 9, 2018 are hereby approved, ratified and reaffirmed. The Authorized Officers of the Hospital, acting severally, are hereby empowered, authorized, and directed to negotiate, execute and deliver, and if required, the Secretary or any Assistant Secretary of the Hospital is hereby empowered, authorized, and directed to attest to, the First Amendment to Customer Repayment Agreement-CHP, Exhibit B, in customary form, with such appropriate addenda,

amendments, supplements, insertions, deletions and changes as General Counsel and Bond Counsel may advise and an Authorized Officer of the Hospital may approve, such approval to be evidenced by the execution thereof by an Authorized Officer of the Hospital. The Hospital shall undertake and complete in a timely manner all conditions precedent to funding identified under the PSE&G CHP Loan.

D. The I-Bank Construction Loan is hereby approved, provided that the maximum principal amount of the I-Bank Construction Loan shall not exceed \$7,380,000. Initially, the I-Bank Construction Loan shall be non-interest bearing, provided that the I-Bank Construction Loan may subsequently bear interest at such rate and as otherwise provided in the terms of the I-Bank Note or as required by any third-party lending terms and conditions, consistent with related I-Bank program documentation. The Authorized Officers of the Hospital, acting severally, are hereby empowered, authorized, and directed to negotiate, execute and deliver, and if required, the Secretary or any Assistant Secretary of the Hospital is hereby empowered, authorized, and directed to attest to, a Note Relating to the Construction Financing Trust Loan Program of the New Jersey Infrastructure Bank, including all exhibits attached thereto, in customary form, with such appropriate addenda, amendments, supplements, insertions, deletions and changes as General Counsel and Bond Counsel may advise and an Authorized Officer of the Hospital may approve, such approval to be evidenced by the execution thereof by an Authorized Officer of the Hospital.

E. The Hospital shall undertake and complete in a timely manner all conditions precedent identified by I-Bank relating to (i) the participation by the Hospital in the I-Bank Anticipated Financing Program and (ii) the qualification by the Hospital for receipt of the I-Bank Anticipated Long Term Loan. The Authorized Officers of the Hospital, acting severally, are hereby empowered, authorized, and directed to negotiate, execute and deliver, and if required, the Secretary or any Assistant Secretary of the Hospital is hereby empowered, authorized, and directed to attest to, such documents and instruments as may be required by I-Bank in connection with the I-Bank Anticipated Long Term Loan, including all exhibits attached to such documents and instruments, in customary forms, with such appropriate supplements, insertions, deletions and changes as General Counsel and Bond Counsel may advise and an Authorized Officer of the Hospital may approve, such approval to be evidenced by the execution thereof by an Authorized Officer of the Hospital. For the avoidance of doubt, and without limiting the generality of the preceding provisions of this subpart, the Authorized Officers of the Hospital, acting severally, are hereby authorized to determine, with the advice of General Counsel and Bond Counsel, whether the I-Bank Anticipated Long Term Loan shall be entered into on a tax-exempt or federally taxable basis.

F. The Authorized Officers of the Hospital, acting severally, are hereby empowered, authorized, and directed to negotiate, execute and deliver, and if required, the Secretary or any Assistant Secretary of the Hospital is hereby empowered, authorized, and directed to attest to, the Rutgers Guaranty Agreement and the Rutgers Reimbursement Agreement, including all exhibits attached thereto, in customary forms, with such appropriate addenda, amendments, supplements, insertions, deletions and changes as General Counsel and Bond Counsel may advise and an Authorized Officer of the Hospital may approve, such approval to be evidenced by the execution thereof by an Authorized Officer of the Hospital.

5. Notwithstanding any other provisions of this Resolution or any other document or instrument executed and delivered by the Hospital in connection with the Project, all payment

obligations of the Hospital arising under or in connection with the ERB Loan, the PSE&G CHP Loan, the I-Bank Construction Loan, the I-Bank Anticipated Long Term Loan, the Rutgers Guaranty Agreement and the Rutgers Reimbursement Agreement shall be and are hereby specifically subordinated to payments to be made by the Hospital under and pursuant to the Loan Agreement (the "2015 Loan Agreement"), dated as of December 1, 2015, between the Hospital and the New Jersey Health Care Facilities Financing Authority ("NJHCFFA"), the Promissory Note, Series 2015A, in the original principal amount of \$254,975,000, dated December 22, 2015, executed by the Hospital in favor of NJHCFFA and any Parity Bonds (as such term is defined in the 2015 Loan Agreement). All agreements and instruments to be executed by the Hospital in connection with the ERB Loan, the PSE&G CHP Loan, the I-Bank Construction Loan, the I-Bank Anticipated Long Term Loan, the Rutgers Guaranty Agreement and the Rutgers Reimbursement Agreement shall contain an express statement to this effect.

6. All proceeds of the Project Financing shall be applied to the payment or reimbursement of the Hospital for costs of the Project in accordance with the documents entered into in connection with the Project Financing, and notwithstanding anything to the contrary, the maximum principal amount of the obligations and grants approved for the Project shall not exceed \$48,000,000.

7. The Hospital reasonably expects to reimburse its expenditure of Project Costs paid prior to the issuance of the I-Bank Construction Note with proceeds of the I-Bank Construction Note. The estimated maximum principal amount of the I-Bank Construction Note expected to be issued to finance the Project is \$7,380,000. This resolution is intended to be and hereby is a declaration of the Hospital's official intent to reimburse the expenditure of Project Costs paid prior to the issuance of the I-Bank Construction Note with the proceeds of a borrowing to be incurred by the Institution in accordance with Treasury Regulations §1.150-2.

8. The President and Chief Executive Officer shall periodically report to the Board of Directors the status of the Project, including realized cost savings and other operational efficiencies.

9. This Resolution shall take effect immediately upon the adoption hereof.

I hereby certify that this Resolution No. 2019-0820-81 is a true copy of actions duly adopted by University Hospital as of the date hereof.

Resolution Adopted: August 20, 2019


Mary K. E. Maples, Esq., Corporate Secretary