

**INTERGOVERNMENTAL COOPERATION AGREEMENT
UNDER WIS. STATS. SEC. 66.0301
FOR OPERATION OF AN EMPLOYEE HEALTH CLINIC**

This Intergovernmental Cooperation Agreement (“**Agreement**”) is entered into as of the ___ day of _____, 2014 (“**Effective Date**”), by and between WINNEBAGO COUNTY, Wisconsin (“**County**”), the CITY OF OSHKOSH, Winnebago County, Wisconsin (“**City**”) and the OSHKOSH AREA SCHOOL DISTRICT (“**District**”), all of which are political subdivisions of the State of Wisconsin and are organized and existing pursuant to the Wisconsin Constitution, and enter into this Agreement under the authority granted in Wis. Stats. § 66.0301 for the purpose of establishing a clinic to provide health and wellness services to its employees. The County, the City and the District, and any additional members pursuant to Article 4 hereunder, are each sometimes referred to herein as a “**Party**” and collectively as the “**Parties.**”

RECITALS

WHEREAS, the Parties wish to cooperate in the provision of health and wellness services for members of the Parties’ health plans through the operation of an employee health and wellness clinic (“**Clinic**”), with the aims of better controlling health care expense and achieving more healthful and productive employees, to the mutual benefit of the Parties and their employees and taxpayers; and

WHEREAS, the Provider of the Clinic intends to lease agreed-upon premises located at 292 Ohio Street, Oshkosh, Winnebago County, Wisconsin (“**Property**”); and

WHEREAS, the Parties wish to have the Provider assist the Parties by establishing and operating a wellness clinic at the Property and provide other value-added services, which will be designed to assist the Parties in supplementing the current health benefit plans offered to the Parties’ respective employees, as well as reduce occupational medicine costs associated with workers’ compensation and decreasing lost productivity due to illness-related absences; and

WHEREAS, such Agreement may bind the Parties for the length of time herein specified;

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the Parties agree as follows:

**ARTICLE I
AGREEMENT TERM AND ADMINISTRATION**

1.1 Agreement Term. The term of this Agreement (the “**Initial Term**”) shall begin on the Effective Date and end on January 1, 2018. Unless Terminated by any Party pursuant to Section 4.1(a) of this Agreement, or modified in writing approved by all Parties hereto, this Agreement will automatically renew for successive one-year Subsequent Terms on January 1, 2018, and each January 1 thereafter.

1.2 Agreement Administrators. The following individuals are hereby designated as the official Agreement Administrator for the Party identified. These individuals shall be authorized to make decisions regarding operation of the Clinic and administration of this Agreement, not inconsistent with this Agreement, with the Provider Contracts, and with the authority granted to them by their respective governing body, and may accept service of any official notice required under this Agreement or any amendment, addendum, or exhibit thereto.

Director of Human Resources, Winnebago County, Wisconsin
Executive Director of Business Services, Oshkosh Area School District
Director of Administrative Services, City of Oshkosh, Wisconsin.

Any Party may replace an Agreement Administrator upon written notice to all other Parties.

ARTICLE II OPERATION OF CLINIC

2.1 Contract with the Provider. Each of the Parties shall enter into a services contract (“**Provider Contracts**”) with a health services provider (“**Provider**”) to staff and operate the Clinic. The Provider Contracts shall be for a term at least equal to the Initial Term of this Agreement. At the time this Agreement was drafted it was anticipated that the Provider during the initial term of this Agreement will be Interra Health, Inc., but the selection of the Provider and the terms and negotiation of the Provider Contracts are the responsibility of the Parties. The Provider Contracts shall establish the scope of services, staffing, hours of operation, pricing, insurance requirements, indemnification and other provisions necessary for the operation of the Clinic by the Provider.

2.2 Advisory Group. The Parties hereby authorize and direct the creation of an Advisory Group (“**Advisory Group**”) consisting of one or more representatives of each Party, as designated by that Party’s chief executive officer. The Advisory Group will meet at least once each quarter to discuss operation of the Clinic, including, without limitation, the scope of services, staffing, hours of operating, pricing, Provider Contracts, and all other provisions necessary or beneficial for the operation of the Clinic. Other interested persons, such as but not limited to consultants, may be invited to attend Advisory Group meetings by agreement of the Parties.

The Advisory Group shall not have any authority to exercise any governmental authority, may not make financial commitments on behalf of any Party, and may not act on behalf of or bind any Party or any Party’s officers, agents, managers, or elected officials in any regard whatsoever. The Advisory Group may discuss the Clinic operation as well as each Party’s management of their Provider Contracts in an effort to coordinate the overall Clinic operation in the most beneficial manner possible. The Advisory Group may not require any Party to take any action.

**ARTICLE III
PAYMENT OF CLINIC-RELATED EXPENSES**

3.1 - Payment of Engagement Fees and Improvement Costs by Parties.

(a) Each Party shall be responsible for paying directly to the Provider a portion of the Engagement Fee, as established by the Provider Contracts, according to the following percentages:

County:	30%
City:	20%
District:	50%

(b) If the Parties agree that improvements should be made to the Clinic facility at the Parties' expense, then the cost of such improvements will be paid according to the same percentages as the Engagement Fees, unless the Parties all expressly agree in writing to a different proportion.

3.2 Payment of Office Lease Expenses.

(a) Each Party shall be responsible for paying a portion of office lease expenses for the Clinic directly to the Provider according to the following percentages, which will remain fixed during the term of this Agreement unless modified by express agreement of all Parties:

County:	30%
City:	20%
District:	50%

3.3 Payment of Health Provider Expenses.

(a) Fees charged under the Provider Contracts for the services of nurse practitioners, physician's assistants, chiropractors, medical assistants, and receptionists will be paid by the Parties according to the following percentages, which will remain in effect at least from the Effective Date through June 30, 2015:

County:	30%
City:	20%
District:	50%

(b) The Parties will initially purchase physician's assistant/nurse practitioner service hours, and an equivalent number of medical assistant service hours, in the following amounts:

County:	24 hours per week, 46 weeks/year
City:	16 hours per week, 46 weeks/year
District:	40 hours per week, 46 weeks/year

If during the term of this Agreement the total number of physician's assistant/nurse practitioner service hours being purchased under the Provider Contracts falls below eighty (80) hours per week, and causes any additional expense to any Party, the additional expense will be borne by the Party or Parties whose service hours are below the initial service hours as stated above.

(c) In June 2015, and each September, December, March, and June thereafter during the term of this Agreement, the Parties through the Advisory Group will examine the usage of Clinic services by employees and dependants of each Party over the past quarter and over the past four quarters (if applicable), and will consider in good faith whether the number of service hours of any category of service should be increased or decreased and whether the percentage of fees for health care services paid by each Party should be adjusted. Any adjustment will be effective only upon mutual agreement of the Parties.

3.4 Payment of Expenses for Special Services. If any of the Parties requires a specific program or service to be developed and delivered by the Provider, then the costs allocable to that specific program or service will be the sole responsibility of the Party or Parties requiring the program or service and will not be included in the costs allocated under Section 3.3.

3.5 Time of Payment. Each Party must make each payment required under this Article to the Provider, or as directed by the Provider, within the time specified or provided for each payment under that Party's Provider Contract.

ARTICLE IV TERMINATION OF AGREEMENT; WITHDRAWAL OR EXPULSION OF PARTIES; NEW PARTIES

4.1 Withdrawal of Parties.

(a) Any Party may terminate this Agreement and withdraw as a Party at the expiration of the Initial Term, or at the expiration of any Subsequent Term, by delivering written notice of termination to the other Parties in accordance with the following provisions:

- (i) The termination date ("**Termination Date**") shall be the last day of the then-current Initial Term or Subsequent Term, as the case may be.
- (ii) The Party electing to terminate this Agreement shall deliver to the other Parties written notice of termination not later than 90 days prior to the Termination Date.

(b) Upon withdrawal, the withdrawing Party shall remain responsible for its share of costs incurred prior to the Termination Date, and will not be entitled to recoupment of the Engagement Fees or any improvement costs paid. The terminating Party shall continue to be responsible for all costs which survive the termination of the Provider Contract, as provided for in the Provider Contract.

4.2 Expulsion of Parties.

(a) A Party may be expelled from this Agreement for cause by majority vote of the other Parties. Cause for termination consists of a substantial breach of the terms of this Agreement or a failure to cure any Default under Article VI.

(b) Upon expulsion, the expelled Party continues to be responsible for its share of the costs of any improvements, Engagement Fees, office lease expenses, health care provider fees, and expenses for special services incurred prior to such expulsion pursuant to this Agreement until the end of the Initial Term or current Subsequent Term. Unless relieved of this obligation by mutual agreement of the remaining Parties, the expelled Party shall also continue, until the end of the Term, to be responsible for payment of fees for the initial number of hours per week of nurse practitioner services or physician assistant services as provided for in Section 3.3(b) above.

4.3 Addition of New Parties.

(a) After the Effective Date of this Agreement, additional municipalities (as that term is defined in Wis. Stat. § 66.0301) may join in this Agreement upon unanimous approval by the existing Parties. Approval shall be conditioned upon the adoption by the governing body of the new municipality of the terms and provision of this Agreement by resolution, with a certified copy of the resolution provided to each Party.

(b) Before a new Party joins under this Agreement pursuant to this Section 4.3, all Parties must agree on the percentage of Engagement Fees and improvement costs as well as the initial percentage of health care provider fees to be borne by the new Party.

ARTICLE V STATEMENT OF COMMITMENT; DISPUTE RESOLUTION

5.1 The Parties enter into this Agreement with a full understanding that the success of the Clinic depends upon the commitment of the Parties to work diligently and cooperatively to accomplish their mutual objectives with respect to the Clinic.

5.2 The Parties acknowledge and agree that they shall endeavor to resolve any and all issues that may arise under this Agreement in good faith and in a spirit of cooperation consistent with the intent of this Agreement.

5.3 In case any dispute regarding the validity, operation, enforcement, breach, or interpretation of this Agreement may arise which cannot be resolved by mutual consent of the Parties, then the Parties shall, in good faith, attempt to mediate any dispute arising out of or in connection with this Agreement with a mediator selected by and agreed upon by the Parties. In the event the Parties are unable to reach a satisfactory resolution through mediation, all disputes shall be settled by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association and shall be conducted before a single arbitrator, selected by and agreed upon by the Parties. The arbitrator shall determine the procedure for the arbitration,

including number of documents and witnesses, length of testimony, admission of evidence, rules of procedure, party statements, and, to the extent authorized by the arbitrator, briefing. Arbitration shall be held in Oshkosh, Wisconsin. The decision and award of the arbitrator shall be final and binding upon the parties, and judgment may be entered on the award in any court of competent jurisdiction. The arbitrator's decision shall be in writing, contain findings of fact and conclusions of law, and shall be issued within fifteen (15) business days of the closing of the record. The parties intend this provision shall survive termination or expiration of this Agreement.

ARTICLE VI DEFAULT

If any Party shall fail to perform, or shall violate, any covenant, term, condition, or obligation of this Agreement, and if such failure to perform or such violation shall remain uncured for a period of thirty (30) days or more after notice of such failure or violation from any other Party, then such failure or violation shall constitute a "Default" under this Agreement; provided, however, that if such failure or violation cannot reasonably be cured within the pertinent thirty (30) day period, and if the Party notified of its failure or violation thereafter immediately commences and diligently and without interruption pursues a cure of such failure or violation, then such Party shall have a reasonable period, not exceeding one hundred twenty (120) days, to cure such failure or violation before the same shall be considered a Default. In the event of any Default, each non-Defaulting Party shall, without any notice (except only the notice of failure or violation required under this Article VI), be entitled to exercise at its option—whether concurrently, successively, or in any combination—any and all remedies available at law or in equity, including without limitation any one or more of the following: (i) expulsion of the defaulting Party under Section 4.2; and (ii) recovery from the defaulting Party of all cost, damage, loss, and expense (including attorneys' fees) reasonably paid or incurred by each non-Defaulting Party as a result of any such Default.

ARTICLE VII AUTHORIZING RESOLUTIONS

This Agreement is entered into by the Parties pursuant to the authority granted under Wis. Stats. § 66.0301 and other provisions of the Wisconsin Statutes. By resolution or ordinance adopted by its governing body, each Party has authorized and directed the representatives of the governing body to enter this Agreement on behalf of the Party.

ARTICLE VIII HIPAA COMPLIANCE

Each Party agrees to comply with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations ("HIPAA") to the extent those regulations apply to the services provided to the Party under the Provider Contract and this Agreement. The Parties recognize the importance of protecting the privacy and security of protected health information. The Parties agree to only use and disclose protected health information in accordance with state and federal law.

ARTICLE IX RECORDS

The Parties shall maintain such records and financial statements as required by state and federal laws, rules, and regulations. The Parties shall have a duty of cooperation to each other as to access to and maintenance of such records and financial statements and all Parties agree to cooperate with one another to provide access to records and financial statements that promote the efficient provision of services by, and operation of, the Clinic.

ARTICLE X MISCELLANEOUS

10.1 No Assignment. No Party to this Agreement may assign its interest in this Agreement to any other entity or individual.

10.2 Entire Agreement; Rules of Construction. The Parties acknowledge and agree that this Agreement, including the recitals which are incorporated into and made a part of this Agreement, expresses the entire agreement between the Parties as to the subject matter of this Agreement, and that this Agreement replaces and supersedes any prior negotiations and agreements, written or oral. The Parties further acknowledge and agree that each Party has been adequately and fully represented in connection with the negotiation and execution of this Agreement, and that, accordingly, rules of interpretation that signify that an agreement shall be construed against the drafter shall not apply.

10.3 Captions. The captions or headings in this Agreement are for convenience and in no way define, limit, or describe the scope or intent of the provisions of this Agreement

10.4 Governing Law. The laws of the State of Wisconsin shall govern the interpretation and enforcement of this Agreement. Venue over any action brought under this Agreement, including any action to enforce an arbitration decision or award, will lie in the Circuit Court for Winnebago County.

10.5 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures were on the same instrument.

10.6 No Third-party Beneficiaries. This Agreement is entered into for the sole and exclusive benefit of the Parties. No third party (including, without limitation, any employees of the Parties) shall have, obtain, or derive from this Agreement any rights or other benefits or interests, under law, in equity, or otherwise.

10.7 No Joint Venture. Nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the Parties.

10.8 Exculpatory Provision. The Parties expressly acknowledge and agree that, anything herein to the contrary notwithstanding, that no officer, director, employee, agent, or

official (elected or appointed) of any Party shall have any personal liability or obligation arising out of this Agreement, and no Party shall make any claim to the contrary.

10.9 No Waiver. No failure to exercise, and no delay in exercising, any right, power, or remedy under this Agreement on the part of any Party shall operate as a waiver of such right, power, or remedy, nor shall any single or partial exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided therein. A waiver of any covenant, term, or condition contained in this Agreement shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

10.10 Severability. The terms of this Agreement are severable and any determination by any court or agency having jurisdiction over the subject matter of this Agreement that results in the invalidity of any part shall not affect the remainder of the Agreement.

10.11 Indemnification. Each Party retains for itself all legal responsibility for any injuries, claims, or losses arising from or caused by the acts or omissions of its agents or employees acting within the scope of their employment. Nothing in this Agreement shall be construed as an assumption or indemnification by one Party of any legal liability of the other Party. The obligations of the Parties under this provision shall be subject to the limitations set forth in Wis. Stat. § 893.80 and Wis. Stat. § 895.46, and shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

WINNEBAGO COUNTY, WISCONSIN

By:

[_____]

By:

[_____]

CITY OF OSHKOSH, WISCONSIN

By:

[_____]

By:

[_____]

OSHKOSH AREA SCHOOL DISTRICT

By:

[_____]

By:

[_____]