

PUBLIC HEARING – JULY 6, 2021 – 7:00 PM – FALLON COUNTY COURT ROOM

FMC MANAGEMENT AGREEMENT

Please note – tape recorder not working. Discussion is not exact word for word verbatim.

PRESENT: Roy Rost, Steve Baldwin, Kevin Braun, Kelsey DuCharme, Cindy and Gary Irgens, Dean Wang, Katie DuCharme, Marjorie Losing, Theresa Myers, Brenda Stoddard, Karol and Steve Zachmann, Amber Hurley, Shane Bettenhausen, Brenda Wood, Rich Menger, David Espeland, Betty Mueller, Kenny Griffith, Darcy Wassmann, Brock Collins, Judy McWilliams, Doug Varner, Caleb Bettenhausen, Mikenna O’Donnell, Sue and James Lunde, Jim and Judy Hufford, Elaine Stanhope, Alice Kay Schweigert, Lisa Espeland, Selena Nelson, Cheryl Niemerg, Pam Nelson, CB Heiser, Crystal Stanhope, Michelle Smith, Falecia Roder, Sandy Higgins, Teresa Christensen, Donette James, Bryant Steen, Wayne and Theresa Thompson

7:01 PM – Commissioner Rost called the Public Hearing to Order. This meeting is to discuss the lease for the Healthcare Facility. Copies of the proposed agreement were passed around to the group. All questions are to be directed to the Commission.

Elaine Stanhope – What is different in this proposed contract compared to the previous one?

- **Commissioner Rost** – The Parkview 1 and Parkview 2 Apartments were formed into their own agreement. There will now be two agreements instead of one. One will be for the apartments and the other will be the management of FMC. It has been advertised for 5 weeks and followed along with State Statute. One of the changes will be a typo on paragraph 7A – which states that the agreement may be terminated by the County for any reason. It will be changed to say that it can be terminated by either entity with a 180-day notice.

Brenda Stoddard – On page 5, paragraph 8B, it states that FMC shall be responsible for the payment of all expenses necessary for the operation of the facilities. The County currently has a maintenance and operations budget for FMC for around \$400,000. It is to be used for maintenance. There are claims that the County is paying for items that are not maintenance, including the meals, cable, garbage bags, etc. She would like this to be reviewed. If the County Commissioners would like this to continue as it has been done in the past, another plan of action will need to be came up with. I would like it to be voted on by the taxpayers to be able to designate where tax money is going to. What does the Commission have in mind if the County would still like to give FMC a subsidy?

- **Commissioner Rost** – The County budget has not yet been approved for this next fiscal year. The members of the community are welcome to come to Commissioner meetings during public comment, as well as budget hearings and the budget process. There will be a public hearing held to finalize the budget. It will be a decision from the Commission what will be covered in the County budget.

David Espeland – Submitted and read along a written statement. See attached.

David Espeland, CEO
Fallon Medical Complex, Inc.

Management Agreement Comments
July 6, 2021

I don't quite understand why Fallon County feels compelled to completely rewrite the healthcare facility management agreement. The existing contract has faithfully worked for nearly 30 years, allowing FMC to not only sustain healthcare operations, but also to expand and enhance services. The collaborative approach under the current contract has placed FMC in the best position in its history, with a well-trained, high-employment workforce, a modern-looking and well-maintained building complex, and a keen understanding of how to keep a small rural independent hospital sustainable well into the future. We would not be given a Top-100 CAH designation for two year's running if we weren't doing something right!

It is readily apparent that the proposed agreement may be trying to bring the contract into perceived closer alignment with MT Law, with the changes increasing the arms' length relationship between the county and FMC. This realization is brought into stark reality in Paragraph 8b, wherein it states, "FMC may not use County funds for operation of the Health Care Facility." It is obvious that FMC's traditional operating subsidy will go away. Following the recent demise of the special mill levy for capital improvements, FMC will not be receiving any funding from Fallon County at all.

Oddly enough, the current management agreement doesn't preclude Fallon County from providing subsidies to FMC, so I'm not sure why the county wants to change direction. During my 26-year tenure, the subsidy money has not been used for employee expenses, such as wages and benefits. It has also not been used to purchase medical supplies or equipment. It has generally been used to financially support the county's facility and equipment in some manner, keeping it in good repair and protecting the county's investment.

Without a subsidy to support costs to maintain the county's facility, it is setting FMC up to fail. From 1994 to 2020, FMC lost an average of \$704,915 per year on operations, but it has been as high as \$1.4 million. We have been able to buffer those losses due to two factors: 1) the annual operating subsidy, and 2) depreciation. The proposed management agreement will erase the operating subsidy and the recent demise of the special mill levy will keep FMC from replenishing its depreciation account. In order to make up this revenue, FMC will need to raise rates and make other unpopular changes, such as tightening up on the collection policy for past due accounts or trimming services. I would argue that there is nothing in Montana law that precludes a county from providing subsidies to nonprofit corporations who provide beneficial services on behalf of the county. If that was the case, why does Fallon County provide financial assistance to SMART?

Beyond that, getting back to the nuts and bolts of the proposed agreement, Paragraph 8b, which eliminates subsidies, creates several issues:

- 1) Under Paragraph 8c, why would FMC need to meet with Fallon County "annually to establish and review budgets for the operations of the facilities"? There would not be a line item in the county budget for the hospital, so what is there to discuss?
- 2) I would argue that Paragraph 8b places the two parties strictly into a landlord/tenant relationship, since there are no subsidies involved. Generally, tenants are not required to

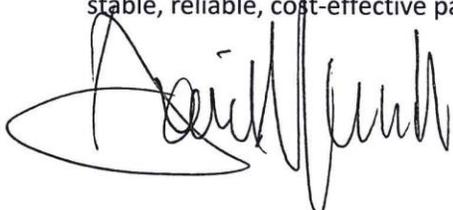
provide financial statements to the landlord that contain information such as that listed under Paragraphs 8a (revenues) and 8f (financial statements). Nor is there a requirement to let the landlord inspect the business' books at any time, like that contained in Paragraph 8e.

- 3) Without county financial support, FMC should no longer be treated like a county department. For instance, what other business in Fallon County needs to submit its board agendas and minutes to be posted on the Fallon County website? It is obvious that the proposed management agreement creates a higher standard of reporting by FMC to the county, much more than any other private business... whether it be the bank, the grocery store, or community churches.
- 4) Since FMC will no longer be receiving any county assistance, why should they use their own operational funds to purchase new equipment that immediately becomes the property of Fallon County, under Paragraph 4a. It doesn't seem fair that FMC must spend \$400,000 of its own funds on a new CT that immediately becomes an asset of the county, but its loan continues to be a liability on FMC's books. That's \$400,000 that FMC could be putting into improving the quality of patient care.

Equally disconcerting in the proposed agreement is the unreasonably short notice period of only 180 days if the County decides to terminate the agreement, under Paragraph 7a. This Paragraph raises its own set of concerns:

- 1) If FMC were to purchase equipment with a loan, and the county exercised the 180-day notice period, FMC would be left holding the bag on an asset that belongs to the county, yet is still a debt on FMC's books.
- 2) FMC will not be incentivized to upgrade its equipment if it knows that it could be left holding the bag on a moment's notice. That reduces the quality of medical care for the community, since the equipment will be used well beyond its useful life.
- 3) It is possible that FMC would close its doors much sooner than 180 days, as its staff tries to find other employment opportunities to avoid going down with the ship. This would effectively bring the clinic, hospital and LTC in Fallon County to a halt. We faced that stark reality as a result of the recent "Community Meetings," during which the facility and its leadership were under fire.

All in all, I can't see where any of the proposed revisions are required under MT law. MCA Title 7 deals with local government and Chapter 34 defines medical services. This chapter does not require the county to impose such tight restrictions on its healthcare facility lessee. Based on this, I would recommend not making such radical changes to the agreement that cause harm to FMC's operations. If the agreement must be updated to conform more closely to Montana law, I would recommend that Fallon County contact other county officials to see how their management agreements are written. There are 55 hospitals in the state. None are for-profit and only two have hospital districts, which is an antiquated way of running a hospital. That means that 96% of Montana's hospitals operate as a charitable non-profit corporation, like FMC. There must be ideas that can be gleaned from other counties to create a much more equitable agreement that ensures stable, reliable, cost-effective patient care for the community.

A handwritten signature in black ink, appearing to be "David J. Smith", written over a large, loopy flourish.

Steve Zachmann - In item 4A regarding property management, it is understood that to mean the physical building, but it also sounds like it might apply to any medical equipment that is purchased. What is the intent of this?

- **Commissioner Rost** – I do not believe there are any changes made to that paragraph from the previous contract. It was in the agreement that way for quite some time.

Steve Zachmann – Any future equipment purchase may be included. What does this mean?

David Espeland – Commissioner Rost is correct, it is the way that the current contract is written. In the current contract, FMC was given about a \$400,000 subsidy. There are a lot of expenses overtime that was never asked for reimbursement. Once it is purchased it becomes part of the County assets, with the intent that the rug would not be pulled out after 180 days. There are concerns about upgrading the equipment if there is no lease.

Rich Menger – Some of the equipment is purchased through grants and other government funding, which relays a sticky point with the County as well.

Ken Griffith – If the County is going to spend taxpayer dollars, the taxpayers need a say on how the system operates. They cannot presently go to FMC Board meetings unless it is for the first few minutes of each meeting. That does not seem right, and I do not believe the hospital is running correctly.

COMMISSION ASKED TO STAY ON TRACK AND KEEP THE DISCUSSION TO THE CONTRACT

Ken Griffith - If the County is going to extend to the contract, the taxpayers should have a say.

Rich Menger – We have a representative government.

Commissioner Rost – If the County decides to not subsidize in any form, some of the language will need to be taken out of the agreement because FMC is their own business and ran by their own board. If the community would like to be involved in the FMC Board, there is a process for that. That process is not handled through the Commission.

Ken Griffith – If we are spending money and keeping it operational, we should have some say in how it is running.

Commissioner Rost – The Commission will be taking action on this subject tomorrow during the Commissioner’s meeting at 9:30 AM. There is time for public comment before the action takes place. It will be voted on and submitted to the FMC Board. Darcy is still waiting on legal counsel as well. The current agreement has expired, but we need to get an agreement signed as soon as possible

Sue Lunde – I would like clarification on the purpose of the change in the contract when you can see improvement in the facility and the financial statements.

- **Commissioner Rost** – State Law. If the law states that the County cannot give money to non-profit organizations, other items within the County budget will need to be revised as well. Just because it was done this way in the past does not mean it is always correct. They are still waiting on a legal opinion from the Attorney General.

David Espeland – What is the legal statute on that? I cannot find it anywhere.

Darcy Wassmann – It is unknown how long it will be waiting on an opinion from the Attorney General and other County Attorney's.

Mikenna O'Donnell – What other non-profit organizations in the community are given subsidies from the County?

- **Commissioner Rost** – I do not know, that doesn't pertain to this agreement.

Judy McWilliams – What is the goal to these proposed changes? Is there an end result?

- **Commissioner Rost** – The goal is to have a lease agreement that is legal and the best one for the community.
- **Commissioner Baldwin** – The current one was written a long time ago. It needs to be brought up to current.
- **Commissioner Braun** – When the agreement was first formed, the subsidies were there. Personally, I do not believe that FMC will survive without some form of subsidy. We want to do it legal and right and do not know if we are currently doing that. We are looking for the right answers. We are going to have to talk with the FMC Board as well. Is it a subsidy once equipment is purchased to become Fallon County property? Whatever it may be, FMC needs to stay in the community and needs to stay profitable. We are here to discuss the lease; we are looking for answers.

Judy McWilliams – What is the timeframe?

- **Commissioner Braun** – FMC is not going anywhere and there is no intent to not have a contract with them.

Teresa Christensen – We are talking about a contract that needs to be updated. If you are an employee, do you not want your contract ever updated? I do not understand why the contract cannot be updated and people are upset. The Commission is not trying to destroy the hospital, they are just wanting to update the agreement.

Doug Varner – I got on this board for the reason to make a difference to this town and keep FMC in the community. Why does it seem like the County is done supporting that? Is there money still going to the fire departments as well?

- **Commissioner Baldwin** – The Commission wants the Health Facility to succeed, as well as FMC. The Commission does not want FMC to fail.
- **Commissioner Braun** – I cannot answer if the \$400,000 is going away, but we need to make sure we are doing it legally.

Doug Varner – If FMC raises money and purchases equipment with these funds, the equipment then transfers over to Fallon County property. I have never understood that. I feel that if the equipment is purchased by FMC and the money is raised by them, why does it then become County property?

David Espeland – I would like to clarify, with this being an old contract that was written in 1992 when FMC became a 501(C)(3). It ran for 10 years under this contract. I have come to the Commission and it has been revised twice. It has been revised within the last 5 years. The contract is not that old. FMC and Fallon County were joined at the hips and the County did everything to keep them afloat. The \$400,000

helps maintain and sustain the hospital. It goes a long way to keep them afloat. When the contract came to be, the subsidy helped with all expenses. It was not as nitpicky as it is now. Overtime, it has changed to be used to maintain the counties asset. I would argue that since I have been there, FMC has paid for and received grants on items that should be County property. With the current agreement, I do not feel that we are getting slighted. I do have a problem with this current agreement. It feels that I am the bad guy and that we are under the microscope. I do not understand why things changed but the current language in the agreement needs to be tweaked.

Brenda Stoddard – The building is leased to FMC Inc. for \$1.00. Would it make a difference in the agreement if the building were leased at cost? If FMC Inc. kept their personal property but did not have a building to lease, what would they do with the equipment? Yes, the equipment is the counties, but they are also being charged \$1.00 to lease a large building. I feel it is a huge gift to FMC from the County. I do not feel that charging it at cost would be cost effective.

Rich Menger – That is not economically feasible and is not an option.

Steve Zachmann – I sat in on the financial reports during the mill levy election and did not see many people from the public. Over the years the County and FMC have worked together with a plan to provide the best healthcare. Both entities do a good job working together to find grants and support to keep a good healthcare facility. I have faith to be able to work out this lease agreement. I would like to see it for the sake of the employees and the number of employees that rely on jobs within FMC.

David Espeland –What if the lease was paid at cost for the purpose of the agreement? I do not know what the rates are going for, but we cannot generate enough revenue or collect enough money to support that sort of thing. The consideration now is \$1. The intent of that was to make sure the lease was complete. Should the County send this out to any other entity, they will be charging the County for leasing that property. There is only a certain number of sustainability here in a rural community. Surgery centers are not sustainable in a small town. We try to keep the services affordable and if they were to pay a rental rate, it would prohibit this.

Mikenna O'Donnell – I am just wanting to say that it is important to not nitpick the purchases. Within the walls, housekeeping, laundry, etc. are important to be able to keep up on jobs. There are certain supplies that are used consistently. People rave about the rates of FMC and we receive great comments. It is Friends Healing Friends. We do not want to charge an outrageous amount. If we don't get help with these things; it will change a lot of aspects.

Pam Nelson – If they come up with another contract, will there be another public hearing?

- **Commissioner Rost** – If we are talking about major changes, yes, we would definitely want the community to be involved. The more meetings and community involvement, the better.
- **Commissioner Braun** – This draft is not final. The Commission, nor the FMC Board, has approved it.
- **Commissioner Rost** – Generally the FMC Board meetings are the first Wednesday of every month. We are hoping to get the contract sent to them by noon tomorrow. If the Commission has more questions and want to discuss further, that will be done at the meeting tomorrow.

Mikenna O'Donnell – In paragraph 2A, what is considered the property? The equipment is very expensive and keeps getting more and more expensive.

Darcy Wassmann - This includes all the property, including the buildings, equipment, etc. It would need to clarify the definition of property, meaning real property and equipment. I will print of the statutes for Mr. Espeland after the meeting. *See attached* Darcy read aloud the statutes. I do not believe that it is legal to give a subsidy to a non-profit organization. I am planning to ask other attorneys and the Attorney General.

Marjorie Losing – I am curious if the County Auditor has ever brought up concerns regarding the operating subsidy?

- **Commissioner Rost** – I do not believe they have.
- **Brenda Wood** – I have asked the County Auditor, and he has deferred it to the County Attorney.

Bryant Steen – Surely other hospitals in the state are getting subsidized, how are they doing this?

- **Commissioner Rost** – Two of the hospitals are set up like a district. I do not know how or if the other ones are getting subsidized and if what they are doing is legal. A good part about a district is that is how the voting people get a say. It is not the Commission goal to set up a hospital district. That must be petitioned by the members of the community and is a community vote. It is not a Commission decision to make. There is a state statute that spells that whole process out.

Bryant Steen – Wouldn't that take a large amount of time? How are other hospitals getting subsidized? Are they breaking the law? There is no way to make a profit off these things.

- **Darcy Wassmann** – I am working on following up.

Mikenna O'Donnell – When did these statutes become effective?

- **Darcy Wassmann** – The Constitution has not been changed much since it was written except for the grammar.

Commissioner Braun – The questions need to be asked to surrounding hospitals in the state. We need to ask how they are doing it before going forward.

Mikenna O'Donnell – Does anyone stay up to date on the statutes?

- **Darcy Wassmann** – Yes, I do. The statute has not changed since 1947.

Mikenna O'Donnell – I am just curious because they do get revised sometimes.

Brenda Stoddard – Each non-profit in the state of Montana does not file taxes but they do file 990's. 990's list all information, including members, income, expenses, etc. Anyone in the community can google the non-profit hospitals and find out where this money is coming from.

Rich Menger – All forms of government at all levels give incentives. I know that the City and County does, and I question whether these legal interpretations are even valid.

Michelle Smith – What if the subsidy is changed to be called maintenance on the County building, would that change anything?

Rich Menger – Change County equipment and property to be maintenance costs.

Brenda Stoddard – According to claims, peas, green beans, etc. are not maintenance. I am not against a maintenance budget, but I believe it should be changed to be done correctly. Whatever it needs to be called legally, that is what needs to be done.

Selena Nelson – I was part of the claims process from 1994-2017 and was instructed on what claims would be filed for. We need some form of paperwork. I do not think anyone is falsely claiming anything. We are just turning it in to justify for the subsidy that was received. The claims have never come under review. FMC would be happy to follow the instruction of whatever is needed.

Rich Menger – FMC is audited every year. The auditors go through everything very thoroughly.

Marjorie Losing – I am following the same process that Selena did. I work close with Brenda Wood and the Commission and follow putting supplies into certain line items. I would be more than happy to follow whatever the law states.

Commissioner Rost – One of my main goals is to fix that when stuff is done years ago and not put into writing, the boards change, staff changes, etc. Some of the details and the handshake deals are not put into writing and are forgotten about, as well as the history of why it was done that way. I am not saying every nickel that gets put down needs to be spent to a tee, but maintenance could include MDU, lights, equipment, etc. It needs to be in the contract who purchases the contract and who it belongs to. When a new Commissioner comes in and claims come through, certain things are paid for and questioned and cannot be found in any contracts. I just want a tighter contract that explains what is paid for and how transitions can be made smoother. That is what the budget should be for, and it should be explained why and what is paid for. I am not saying we should not pay; I just want it in writing.

Darcy Wassmann – David, would it be helpful to include any equipment that could not be detached from the building? Like a fixture.

- **David Espeland** – Yes, there are machines that act more as fixtures and would not be able to be removed.

Darcy Wassmann – If the equipment that FMC buys is kept under their ownership, and the landlord tenant relationship were to end, would any part of the building structure be damaged by removal? Could that be tweaked in the agreement?

David Espeland – Inventory every year is a provision. There are fixtures that are permanently attached to the building. My main goal is to make this an ongoing concern. I want to see FMC survive. I am perfectly happy turning equipment over to the County. There are problems when they work hard for revenues to purchase the supplies.

Darcy Wassmann – Would it be beneficial to keep the ownership of some of your equipment?

David Espeland – It would be beneficial because then we get the depreciation. As a Critical Access Hospital, part of the contract is to reduce costs and increase efficiency. The Critical Access Hospitals are not incentivized to be self-sufficient. We could spend more money, but we do not. Frustration comes in

because it is beneficial for FMC to claim the depreciation, which helps subsidize the operations. As a Critical Access Hospital, part of the contract is to reduce costs and increase efficiency. Critical Access Hospitals are not incentivized to be self-sufficient.

Brenda Wood – Part of the reason that the equipment becomes part of the County assets is because of the auditor interpretations. Our auditors work with FMC’s auditors; we claim the equipment and they claim the depreciation. You would have to talk more with the auditors to find out more.

Doug Varner – The auditors have always been good about that. If they are good with it and they know the law, it should be fine.

David Espeland – It may be a good asset to ask the auditors. We could ask them how other places do this.

Steve Zachmann – This discussion highlights the benefit of FMC and the County working together. If the two organizations continue working together, it really improves the benefit to the community. It is important for the community to realize that both parties benefit greatly by providing healthcare.

Mikenna O’Donnell – It is important and great to see community members help with fundraisers and events and the more people that can help for the fundraising, the better healthcare we have, and that would be beneficial.

8:23 PM The meeting was brought to a close.

8:25 PM Commissioner Braun made the motion to recess the meeting. Commissioner Baldwin seconded the motion. Commissioner Rost asked for any other discussion; being none. **3 Ayes. 0 Nays.** The motion carried unanimously.

EVENING RECESS

S/Kelsey DuCharme, Secretary

S/Roy Rost, Chairman

S/ATTEST: Brenda J. Wood, Clerk & Recorder