

AGREEMENT

I. RECITALS.

Seton Medical Center, a California nonprofit corporation and licensed operator of a general acute care hospital of the same name in Daly City (the "Hospital"); the County of San Mateo (the "County"); and the San Mateo Health Commission, dba the Health Plan of San Mateo (the "HPSM") enter into this Agreement whereby the County agrees to provide financial support for Seton Medical Center in exchange for Seton Medical Center's agreement to maintain the Hospital's role as a safety net provider in San Mateo County during the term of this Agreement and to collaborate with the County to develop a Strategic Plan to safeguard and enhance the Hospital's role as a safety net provider.

The parties agree that Seton Medical Center plays an important role in the County's health care delivery system, and that Seton Medical Center is vital to the successful implementation of the changes to health care policy that are occurring on both the state and federal levels.

The County recognizes the importance of Seton Medical Center's mission to provide medical care to underserved residents of San Mateo County, including, specifically, Health Plan San Mateo ("HPSM") members and County residents who receive healthcare under the County's Access to Care for Everyone ("ACE") Program, and has determined that it is in the public interest to work with Seton Medical Center to develop a Strategic Plan that will ensure the Hospital's continuing viability as a component of the medical safety net in San Mateo County.

In adopting an Ordinance imposing a one-half cent retail transactions (sales) and use tax for general fund purposes in the County of San Mateo, the Board of Supervisors noted the need to ensure that hospitals in the County, including the Hospital, are earthquake safe; maintain long term care beds for low income patients requiring more intensive care than nursing facilities can provide; and ensure the overall quality of health care in the County. The Board of Supervisors also considered the use of general funds to provide "substantial assistance" to Seton Medical Center to rebuild to meet seismic standards.

II. TERM OF AGREEMENT AND OBLIGATIONS OF THE PARTIES.

In recognition of the foregoing recitals, the parties agree to the following:

1. The term of this Agreement is the nine-month period from October 1, 2013 through June 30, 2014.
2. During the term of this Agreement, the County of San Mateo will make available to the HPSM, for payment to Seton Medical Center, a total of eleven million dollars (\$11,000,000). The County will make these funds available to the HPSM, which will pay these funds to Seton Medical Center, at the rate of one million two hundred and twenty thousand dollars (\$1,200,000) per month during the first eight months of the term of this Agreement and one million four hundred thousand dollars (\$1,400,000) during the last month of the term of the Agreement, unless the Agreement is terminated early as set forth herein. The County will

undertake and coordinate for legal research and analysis, including through outside counsel, to determine whether intergovernmental funds transfers may be used to leverage monies paid to Seton Medical Center in consideration of Medi-Cal services.

3. Seton Medical Center agrees to do the following:

- A. During the term of this Agreement, Seton Medical Center shall maintain all services currently available to Medi-Cal and ACE patients for Seton Medical Center's San Mateo County patients at the levels existing as of July 1, 2013. Further, Seton Medical Center agrees that it shall not refuse to serve any HPSM member or any Medi-Cal pending member in accordance with the terms of HPSM and Medi-Cal agreements then in effect.
- B. During the term of the Agreement, Seton Medical Center shall maintain all existing sub-acute beds and long term care beds (the parties acknowledging that there are presently 44 sub-acute and 116 long term care beds) and make them available to Medi-Cal patients commensurate with current levels (i.e., 100% Medi-Cal for sub-acute services and 98% Medi-Cal for long term care services).
- C. Seton Medical Center shall spend at least two million dollars (\$2,000,000) of the funds received pursuant to this Agreement towards bringing the Hospital into compliance with Senate Bill (SB) 90 seismic safety requirements.
- D. Seton Medical Center agrees to accept reimbursement for all services provided by Seton Medical Center to HPSM and ACE participants during the term of this Agreement pursuant to the HPSM contract agreement in place at the time of service.
- E. Seton Medical Center shall retain a consultant to be mutually agreed upon with the County who will develop a Strategic Plan for the Hospital (the "Strategic Plan"). The County, HPSM and Seton Medical Center will jointly develop and agree on the consultant's scope of work, which will include, among other things, an analysis of, and recommendations for, the Hospital's business lines, including physician specialties and ancillary services; strategies for improving physician recruitment, retention, and alignment; and ways of enhancing the financial viability of long term care services. The Strategic Plan's scope of work will require that it be completed no later than February 1, 2014. The County will pay fifty percent (50%) of the consultant fees to develop the Strategic Plan, in addition to the payments referenced in Section II.2. of this Agreement, up to five hundred thousand dollars (\$500,000.00) (i.e., if the consultant fees are \$1,000,000, the County will pay \$500,000, but if the fees exceed \$1,000,000, the County will pay only \$500,000). Seton Medical Center may directly invoice the County for consultant fees on a monthly basis as such fees are incurred.

After completion of the Strategic Plan, prior to the end of the Agreement's term, the parties will meet, review the Strategic Plan and its recommendations, and engage in good faith negotiation of a longer-term agreement.

III. RELATIONSHIP OF PARTIES.

Seton Medical Center agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of the County and/or of HPSM and that Seton Medical Center and its employees, officers, directors, agents, and representatives acquire none of the rights, privileges, powers, or advantages of County and/or HPSM employees.

IV. INDEMNIFICATION

The parties shall indemnify and save harmless each other and their respective officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) any sanctions, penalties, or claims of damages resulting from the parties' failure to comply with the privacy requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of the parties, or their respective officers, agents, employees, or servants, resulting from the performance of any work required or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which a party has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the parties to indemnify and save harmless each other as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

V. COMPLIANCE WITH LAWS AND OTHER REQUIREMENTS

All services to be performed by Seton Medical Center pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Further, Seton Medical Center certifies that

Seton Medical Center and all of its subcontractors utilized in the performance of this Agreement will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Seton Medical Center will timely and accurately complete, sign, and submit all necessary documentation of compliance.

VI. NON-DISCRIMINATION AND OTHER REQUIREMENTS

1. *Section 504 applies only to Contractors who are providing services to members of the public.* Seton Medical Center shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
2. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
3. *Equal employment opportunity.* Seton Medical Center shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Seton Medical Center's equal employment policies shall be made available to County of San Mateo upon request.
4. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Seton Medical Center to penalties, to be determined by the County Manager, including but not limited to:
 - I.* termination of this Agreement;
 - II.* disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - III.* liquidated damages of \$2,500 per violation; and/or
 - IV.* imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Seton Medical Center's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Seton Medical Center under the Agreement or any other Contract between Seton Medical Center and County.

Seton Medical Center shall report to the County Manager the filing by any person in any court of any complaint of discrimination against Seton Medical Center or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Seton Medical Center that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Seton Medical Center shall provide County with a copy of its response to the Complaint when filed.

VII. COMPLIANCE WITH CONTRACTOR EMPLOYEE JURY SERVICE ORDINANCE

Seton Medical Center shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from Seton Medical Center, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the employer or that the employer deduct from the employees' regular pay the fees received for jury service.

VIII. INSURANCE

Seton Medical Center shall procure and maintain, at its sole cost and expense, policies or programs of self-insurance for comprehensive general liability and professional liability with limits of \$2,000,000 per each occurrence/claim and \$10,000,000 annual aggregate, and other insurance as shall be necessary to insure Seton Medical Center and its agents and employees acting within the scope of their duties against any claims for personal injury or death occasioned directly or indirectly by Seton Medical Center or its agents or employees in connection with the performance of their responsibilities under this Agreement.

Seton Medical Center shall require its subcontractors providing patient care services in conjunction with this Agreement to procure and maintain policies or programs of self-insurance for professional liability coverage with limits, at a minimum, of \$1,000,000 per each occurrence/claim and \$3,000,000 annual aggregate.

IX. ASSIGNABILITY AND SUBCONTRACTING

Neither Seton Medical Center; the County; nor HPSM shall assign this Agreement without the written consent of all other parties, which shall not be withheld, conditioned or delayed if the proposed assignee provides all other parties with reasonable assurance of financial ability and, in the case of an assignment by Seton Medical Center, the commitment to perform the assignor's obligations under Section II hereof consistent with Seton Medical Center's mission of serving the Medi-Cal and

underinsured population of the County of San Mateo. Seton Medical Center shall maintain and make available to the County and all applicable state and federal agencies and self-regulatory agencies, upon written request, copies of all subcontracts for the performance of Seton Medical Center obligations under Section II.3.E of this Agreement. Seton Medical Center shall further assure that all such subcontracts entered into from the effective date of this Agreement shall require that the subcontractor: (a) make all applicable books and records relative to the subcontract available at all reasonable times for inspection, examination, or copying by the County, all applicable state and federal agencies, and self regulatory agencies; and (b) retain such books and records for a term of five (5) years from the close of the state's fiscal year in which the subcontract became effective.

X. RETENTION OF RECORDS, RIGHT TO MONITOR AND AUDIT

1. Seton Medical Center shall maintain all records required under this Agreement for three (3) years after the final payment is made under this Agreement and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, HPSM, a Federal grantor agency, and the State of California.
2. Reporting and Record Keeping: Seton Medical Center shall maintain books, records, documents required under federal, state, and local law and regulation. Further, Seton Medical Center shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.
3. Seton Medical Center agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations under this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed under this Agreement.

XI. MERGER CLAUSE

This Agreement constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

XII. TERMINATION.

The Agreement may be terminated by either party in the event of a material breach of any other party's obligations under this Agreement.

1. The following actions by Seton Medical Center and/or Seton Medical Center are material breaches of this Agreement:
 - A. Use of funds paid to Seton Medical Center under this Agreement for a purpose unrelated to the operation of Seton Medical Center or the retention of the consultant, as described in this Agreement.
 - B. Bankruptcy, liquidation or voluntary dissolution of Seton Medical Center.
 - C. Closure of the Hospital or discontinuation of medical services at the Hospital without the prior written approval of the County, or transfer of ownership of the Hospital if Seton Medical Center fails to provide the County with reasonable assurance of the transferee's financial ability, commitment to perform Seton Medical Center's obligations under Section II hereof, acceptance of the conditions contained in any required approval of the transfer by the California Attorney General and commitment to provide services consistent with Seton Medical Center's mission of serving the Medi-Cal and underinsured population of the County of San Mateo.
 - D. Failure by Seton Medical Center to complete the Strategic Plan required under Section II.3.E. of this Agreement on or before February 1, 2014.
 - E. Termination of Seton Medical Center's contract with the HPSM to provide hospital services.
2. The following actions by the County or HPSM shall constitute a material breach of this Agreement:
 - A. Failure to make the required payments to Seton. Delays in payment in excess of 30 days shall be considered a failure to pay, unless the parties otherwise agree to an extension of time.
3. The procedure for termination of this Agreement is as follows:
 - A. In the event one of the parties to this agreement believes a material breach has occurred, it shall send a notice to the party requesting corrective action and requesting a meet and confer. The parties shall meet and confer within 30 days of the notice.
 - B. If after the meet and confer occurs, the party alleging breach still believes such a breach exists, it shall issue a Formal Notice of Termination.
 - C. After issuance of the Formal Notice of Termination, the parties shall submit to an independent arbitrator the question of whether a breach has occurred. If the arbitrator concludes a breach has occurred, the arbitrator shall issue a recommendation for resolution of the breach. The parties shall have 15 days to respond to the arbitrator's recommendation. If either party rejects the arbitrator's recommendation, and otherwise does not agree to a means of remedying the breach, the Agreement shall be deemed terminated.

- D. Termination shall not entitle the County to a return of funds paid to Seton Medical Center prior to the date of termination.

XIII.CONTROLLING LAW AND VENUE

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

XIV. NOTICE PROVISIONS

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

COUNTY OF SAN MATEO

By: _____

Don Horsley

President, San Mateo County

Board of Supervisors

Date: _____

Attest:

By: _____

Clerk of Said Board

SETON MEDICAL CENTER

By: _____

Title: Joanne Allen, President and Chief Executive Officer

Date: _____

HEALTH PLAN OF SAN MATEO

By: _____

Title: _____

Date: _____

Summary Report: Litéra® Change-Pro TDC 7.0.0.330 Document Comparison done on 7/16/2013 12:08:23 PM	
Style Name: RG_Default_Style	
Original DMS: iw://RGDMS/Active/36921614/3	
Modified DMS: iw://RGDMS/Active/36921614/4	
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<u>Add</u>	7
Delete	3
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	10