

MEMORANDUM OF AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND  
THE SAN MATEO COUNTY HEALTH COMMISSION REGARDING THE WHOLE  
PERSON CARE PILOT PROGRAM

This Memorandum of Agreement (“Agreement”) is entered into effective as of \_\_\_\_\_, 2017 and is between the County of San Mateo (“County”), and the San Mateo County Health Commission, doing business as the Health Plan of San Mateo (“HPSM”).

WHEREAS, California’s Medi-Cal 2020 Section 1115(a) Medicaid Demonstration (“Demonstration”) has been approved by the Centers for Medicare and Medicaid Services and one purpose of the Demonstration is to transform the healthcare delivery system; and

WHEREAS, the Demonstration includes Special Terms and Conditions that, among other things, allow counties to implement Whole Person Care (“WPC”) pilot programs; and

WHEREAS, the overarching goal of WPC pilots is to coordinate the health, behavioral health, and social services of clients in a patient-centered manner, with the goals of improved beneficiary health and wellbeing through more efficient and effective use of resources; and

WHEREAS, on November 1, 2016, the San Mateo County Board of Supervisors approved Resolution No. 074863, which authorized the Chief of the San Mateo County Health System to sign, on behalf of the County, an agreement with the California Department of Health Care Services (“DHCS”) for the County’s participation in the WPC Pilot Program for the term of January 1, 2016 through December 31, 2020 (“WPC Pilot Program”); and

WHEREAS, under its agreement with the DHCS, the County expects to expend an amount not to exceed thirty three million seventy three thousand five hundred and forty two dollars (\$33,073,542) each year on the WPC Pilot Program during the term of that agreement with the DHCS and, through the Intergovernmental Transfer (“IGT”) process, half of this amount is new funding from the federal government to the County; and

WHEREAS, in order for the WPC Pilot Program to successfully serve the program’s target population, the County will partner with certain other entities, including the HPSM, which will use funding from the WPC Pilot Program to enhance its Community Care Settings Program (“CCSP”); and

WHEREAS, as a result of the IGT process, the County anticipates receiving in excess of twelve million dollars (\$12,000,000) in new funding from 2017 through 2020 to be allocated to the HPSM’s CCSP and the County anticipates receiving these funds at the rate of three million dollars (\$3,000,000) per calendar year, during this four-year term; and

WHEREAS, some of the funds that the County anticipates receiving from the DHCS for the WPC Pilot Program, including funds to be allocated to the CCSP, shall be subject to the County and its partners meeting benchmarks/metrics related to reporting and outcome requirements (“pay for reporting” and “pay for outcomes”) and, in the event that these benchmarks are not met, such funds may be reduced; and

WHEREAS, in support of the CCSP, the County intends to transfer to the HPSM a minimum of \$3,000,000 in new funding each calendar year between 2017 and 2020, inclusive, unless the program is discontinued; and

WHEREAS, with respect the 2016 program year for the WPC Pilot Program, the County anticipates transferring up to an additional \$3,000,000 to the HPSM during the 2017 fiscal year; and

WHEREAS, the County anticipates that it will receive from DHCS more than \$3,000,000 in new funding for the CCSP each year from 2017 through 2020, but that, as described above, such additional new funding is contingent on achievement of benchmarks and other factors; and

WHEREAS, if the amounts of new funding for the CCSP that the County is to receive from DHCS in excess of \$3,000,000 is reduced in any year during the term of this Agreement due to a failure to meet a benchmark under the County's agreement with the DHCS, the parties intend to share the impact of such a reduction; and

WHEREAS, the County has allocated \$1,000,000 from Measure K funds for the HPSM's CCSP for the 2016-2017 fiscal year and the County intends to allocate \$2,000,000 in Measure K funds for the CCSP in each fiscal year thereafter for the term of the WPC Pilot Program; and

WHEREAS, the County and HPSM wish to set forth the terms and condition pursuant to which the County will transfer WPC Pilot Project funds to HPSM for the CCSP during the term of the WPC Pilot Program and the manner and extent to which payments to the HPSM may be adjusted in the event that the County's WPC Pilot Program funding from the DHCS is reduced owing to a failure to meet "pay for reporting" or "pay for outcomes" metrics.

NOW, THEREFORE, the County and HPSM agree as follows:

1. Term of Agreement: The term of this Agreement shall begin on January 1, 2017 and shall end on December 31, 2020, unless sooner terminated pursuant to the terms of this Agreement.

2. Each calendar year during the term of this Agreement, the County shall transfer to the HPSM a minimum of five million dollars (\$5,000,000.00), subject to adjustment pursuant to Section 2.e. of this Agreement, as follows:

a. Two million dollars (\$2,000,000) shall be transferred to the HPSM each calendar year during the term of this Agreement from Measure K funds for use in the CCSP.

b. Three million dollars (\$3,000,000) shall be transferred to the HPSM each calendar year during the term of this Agreement from funds received from the IGT pursuant to the County's agreement with DHCS regarding the WPC Pilot Program. In addition to the funding otherwise provided for above in this Section 2.b., the County will transfer three million dollars (\$3,000,000) to the HPSM during fiscal year 2017 from

funds received from the IGT pursuant to the County's agreement with DHCS for use in the CCSP.

c. If the County receives funds from the IGT under its agreement with the DHCS that are attributable to the CCSP and are in excess of three million dollars (\$3,000,000) in any calendar year during the term of this Agreement, such additional funds shall be transferred to the HPSM.

d. All funds transferred by the County to the HPSM under this Agreement shall be referred to herein as "CCSP Funds."

e. A portion of the CCSP Funds received from the DHCS under the WPC Pilot Program are contingent on the County and the HPSM meeting certain metrics/benchmarks related to "pay for reporting" and "pay for outcomes." Notwithstanding any other provision of this Agreement, in the event that the amount of CCSP Funds greater than three million dollars (\$3,000,000) that the County receives from the IGT and under its agreement with DHCS in any year during the term of this Agreement is reduced because of a failure to meet a metric/benchmark applicable to such funding, the reduction in funding shall be allocated as follows:

i. The amount of the reduction in CCSP Funds shall be allocated and borne fifty percent (50%) to/by HPSM and fifty percent (50%) to/by the County. By way of example, if the County was to receive through the IGT \$3,500,000 in funds attributable to the CCSP in a calendar year during the term of this Agreement and that amount is reduced by \$250,000 under the agreement with DHCS due to a failure to meet performance metrics, then the amount payable by the County to HPSM under this Agreement shall be reduced by one-half of this \$250,000 (i.e., \$125,000) and the amount of funds from DHCS payable to HPSM in that year would therefore be reduced to \$3,375,000. However, if the amount received by the County through the IGT in any year during the term of this Agreement is reduced to an amount less than three million dollars (\$3,000,000), , the amount payable by the County to the HPSM would remain \$3,000,000.

ii. In the event that DHCS makes payments to the County attributable to the CCSP in a calendar year during the term of this Agreement which the County transfers to the HPSM as CCSP Funds and, subsequently, DHCS seeks to recover a portion of such CCSP Funds owing to a failure by the HPSM and/or the County to achieve applicable metrics, then the County and HPSM will work in good faith to develop a process for HPSM to repay the County the portion of such reduction in CCSP Funds for which the HPSM is responsible pursuant to section 2.e.i of this Agreement.

3. HPSM shall use the CCSP Funds received from the County solely for the expansion of CCSP and related services for WPC clients. A description of the CCSP and the HPSM's proposed budget for and expenditures of CCSP Funds are included as Exhibit A to this Agreement, incorporated herein by reference. During the entire term of the Agreement, HPSM shall continue to operate the CCSP, consistent with the program description in Exhibit A. At

least once each year, and at other times reasonably requested by the County, the HPSM shall provide the County with a report regarding the CCSP, which shall include, in addition to any other matters requested by the Chief of the San Mateo County Health System, an accounting of the HPSM's use of the CCSP Funds for WPC clients. All reporting and accounting by the HPSM shall be in a form reasonably directed by the Chief of the San Mateo County Health System or her designee and HPSM will apply with all applicable policies and requirements regarding reporting on and accounting for expenditures of Measure K funding. County shall provide the HPSM with full details of policies and requirements regarding Measure K expenditures and notify the HPSM within 30 days of any changes to such policies and requirements. A failure to timely provide required reports or accountings shall be a material breach of this Agreement.

4. The parties acknowledge and agree that they anticipate that they will receive from DHCS funds for the WPC Pilot through the IGT process, within approximately ninety (90) days after the start of each year. However, the parties recognize that neither of them controls the timing of such payments from the DHCS. Therefore, the parties agree to following with respect to payment of the CCSP Funds:

a. County shall pay the portion of the CCSP Funds consisting of Measure K Funds and payable under section 2.a. of this Agreement by no later than March 31 each calendar year during the term of this Agreement.

b. The County shall pay the portion of the CCSP Funds consisting of new funding received from the DHCS pursuant to the IGT process and payable under Section 2.b. of this Agreement within thirty (30) days of the receipt by the County of such funds from the DHCS, subject to any reduction in funding as described in Section 2.e of this Agreement.

5. If the County objects to any expenditures of CCSP Funds for WPC clients, the County will provide the HPSM with a written statement of the specific nature of the County's questions or objections within twenty calendar days of receiving the report or accounting that identifies the expenditure in question. The HPSM shall respond to the County's written statement within fifteen days of receipt of the County's statement. The parties shall thereafter meet and confer in good faith regarding any remaining concerns regarding expenditures of CCSP Funds for WPC clients before pursuing any other available remedies.

6. Notwithstanding any other provision in this Agreement, County may terminate this Agreement, or any portion thereof, in the event of a material breach of the Agreement by HPSM, which shall include, but not be limited to, a failure to operate the CCSP during the term of the Agreement or a failure to provide any reports required under this Agreement. Moreover, County may terminate this Agreement based upon the unavailability of Federal, State or County funds (including, but not limited to, due to a termination, in whole or part, of the WPC Pilot Program by the DHCS or the unavailability of new funds through the IGT process) by providing written notice to HPSM as soon as is reasonably possible after County learns of said unavailability of funding.

7. In the event of a material change in the IGT program or the WPC Pilot agreement between the County and the DHCS, the parties shall meet and confer in good faith regarding appropriate amendments to this Agreement to address such material changes, including proportional reductions in funding to HPSM to reflect any reductions in funding received from DHCS. Moreover, the parties understand and agree that the WPC Pilot and the CCSP are new programs that are being undertaken in an uncertain and changing environment and that, consequently, it is appropriate for the parties to meet and confer on an at least an annual basis during the term of this Agreement to review the terms of the agreement and to discuss, in good faith, any changes that might be appropriate owing to unanticipated changed circumstances. The parties agree that such a meeting shall take place prior to March 1<sup>st</sup> each calendar year during the term of the Agreement and that each party shall designate an official with appropriate seniority and knowledge regarding this matter to negotiate any appropriate changes.

8. HPSM agrees and understands that as a result of this Agreement, neither the HPSM, nor its employees/agents acquire any of the rights, privileges, powers, or advantages of County employees. Likewise, County agrees and understands that as a result of this Agreement, neither the County, nor its employees/agents acquire any of the rights, privileges, powers, or advantages of HPSM employees.

9. HPSM agrees to indemnify and defend County and its employees and agents from any and all claims, damages, and liability in any way occasioned by or arising out of the negligence of HPSM and/or its employees/officers/agents in the performance of this Agreement, or any activities paid for, in whole or in part, from the funds made available to HPSM pursuant to the terms of this Agreement, including any sanctions, penalties, or claims of damages resulting from HPSM's failure to comply with any law, regulation, or ordinance. Such indemnity, however, shall not extend to any claims arising from the County's decision to make funds available under this agreement or to exercise any rights it may have under this Agreement or other legal responsibilities that it may have under any applicable law. The duty of HPSM to indemnify the County as set forth herein shall include the duty to defend as set forth in Section 2788 of the California Civil Code.

10. HPSM shall maintain, during the entire term of this Agreement, with respect to all activities in which such party engages pursuant to this Agreement, professional liability (errors and omissions) insurance in amounts reasonable and customary for the nature and scope of business engaged in by the HPSM, as well as comprehensive liability insurance. Upon request, the HPSM shall deliver to the County proof of such insurance. The HPSM shall promptly notify the County of receipt of any notice canceling, suspending, or reducing the coverage limits of its professional liability insurance or comprehensive liability insurance. A failure to maintain such insurance shall be a material breach of this Agreement.

11. HPSM shall comply with all applicable Federal laws, regulations and reporting requirements applicable to the CCSP, as well as all applicable CMS instructions, and with the San Mateo County Health System's contractual obligations with the DHCS, including but not limited to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans With Disabilities Act, the Federal False

Claims Act (31 U.S.C. § 3729, et seq.), anti-kickback statutes, and the Health Insurance Portability and Accountability Act (“HIPAA”) and HIPAA’s administrative simplification rules as 45 CFR Parts 160, 162, and 164. HPSM shall include the requirements of this section in its contracts with any entities providing services under the CCSP.

12. With the exception of the two subcontractors whose services under the CCSP are described in Exhibit A to this Agreement; specifically, the Institute on Aging and Brilliant Corners, HPSM shall not assign this Agreement or any portion thereof to a third party without the prior written consent of the County.

13. HPSM shall maintain all records related to this Agreement for at least 5 years or as required by DHCS and CMS after the end of the term of this Agreement. Such records shall be in a format and media reasonably required and directed by the Chief of the Health System and shall be accessible to the Health System upon reasonable prior notice. The Health System and representatives of regulatory or accreditation agencies may inspect and audit, once annually, HPSM’s business records that directly relate to expenditures or the CCSP. The HPSM and the County shall fully cooperate with representatives of each other, with independent accountants hired by either party and with representatives of any regulatory or accreditation agency, to conduct such inspection or audit. The parties shall cooperate to develop appropriate processes for any such inspections or audits.

14. This Agreement constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document’s date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties. This Agreement is not intended to and does not confer third party beneficiary rights upon any third party. This Agreement shall be in compliance with all applicable federal and state statutes and regulations. If this Agreement or any part of it is found not to be in compliance with any applicable federal or state statute or regulation, then the parties shall renegotiate the Agreement for the sole purpose of bringing the Agreement into full compliance with all applicable statutes or regulations.

15. This Agreement and any disputes arising out of this Agreement shall for all purposes be deemed subject to the laws of the State of California without regard to its choice of law rules, and any lawsuit concerning or arising out of this Agreement shall be venued in the County of San Mateo.

16. Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both:

- a) Transmitted via email to the email address listed below; and
- b) Sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an

established overnight courier that provides a tracking number showing confirmation of receipt.

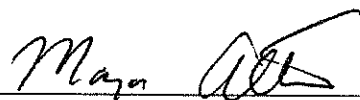
Notice to the Health System: Louise Rogers, Chief  
San Mateo County Health System  
225 37<sup>th</sup> Avenue  
San Mateo, CA 94403  
lrogers@smcgov.org

Notice to HPSM: Maya Altman, Chief Executive Officer  
Health Plan of San Mateo  
801 Gateway Blvd, Suite 100  
South San Francisco, CA 94080  
Maya.altman@hpsm.org

The provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their heirs and legal representatives and permitted successors and assigns. This Agreement constitutes the entire understanding between the parties hereto.

SAN MATEO HEALTH COMMISSION  
dba HEALTH PLAN OF SAN MATEO

COUNTY OF SAN MATEO

  
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By: MAYA ALTMAN

Date: 5/8/17

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By:

Date: