

# AGREEMENT BETWEEN SETON MEDICAL CENTER AND THE COUNTY OF SAN MATEO FOR FINANCIAL SUPPORT FOR SEISMIC UPGRADES

## I. RECITALS

Seton Medical Center, a California nonprofit corporation and licensed operator of a general acute care hospital of the same name in the City of Daly City (the “Hospital”) and the County of San Mateo, a political subdivision of the State of California (the “County” and, together with the Hospital, the “Parties”), enter into this Agreement whereby the County agrees to provide financial support for the Hospital for use in seismic upgrades at the Hospital site in exchange for the Hospital’s agreement to maintain its role as a non-profit safety net provider in San Mateo County for the periods and under the conditions set forth in this Agreement.

The Parties agree that the Hospital plays an important role in the County’s healthcare delivery system and that the Hospital is key to the continued success of this system in light of changes to healthcare policy that have occurred at the federal, state, and local levels.

The County has recognized and continues to recognize the importance of the Hospital’s mission to provide medical care to underserved residents of the County, including Health Plan of San Mateo 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 the Hospital to ensure its continuing viability as a component of the County’s medical safety net.

Pursuant to statutory requirements and certain conditions imposed by the California Attorney General on continued operations of Seton Medical Center as an affiliate of the Verity Health System, Seton must undertake certain seismic upgrades to its facilities by 2020 to meet and maintain OSHPD seismic compliance requirements through 2030 under the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 as amended by the California Hospital Facilities Seismic Act (the “Seismic Project”). Seton will seek to expend at least \$5,000,000 in the County’s 2016-2017 fiscal year, and at least the same amount in the County’s 2017-2018 and 2018-2019 fiscal years for such required seismic upgrades. The total cost of the Seismic Project is expected to be up to \$60,000,000. The Hospital intends to commit up to \$45,000,000 to the completion of the Seismic Project.

The Board of Supervisors of the County of San Mateo has emphasized the need to ensure the overall quality of health care in the County, as well as to ensure that hospitals, including Seton Medical Center, are earthquake safe. The Board of Supervisors has adopted, and the voters of the County have approved, Measure A and Measure K, which provide for a one-half cent sales and use tax for general fund purposes and considered the use of general funds to provide substantial assistance to the Hospital to rebuild to meet seismic standards, which will better allow Seton Medical Center to meet the overall health needs of the County.

The County, by way of this Agreement, hereby commits to make a grant to the Hospital of \$5,000,000 during the County’s 2016-2017 fiscal year, a grant of \$5,000,000 during the County’s 2017-2018 fiscal year, and a final grant of \$5,000,000 during the County’s 2018-2019 fiscal year provided that the Hospital shall use these granted funds exclusively for purposes of

funding the required seismic work, which shall consist of those costs customarily incurred in hospital based seismic remediation projects, including, but not limited to construction costs, architectural and engineering costs, attorney fees, such fees to be directly related to the Seismic Project, for example environmental reviews, permitting, contract negotiations, and the like, as well as the incurred costs of actual construction.

The parties recognize, however, that for the period from December 15, 2018 through December 14, 2030, upon certain terms and conditions, the Hospital may undergo a change of control whereby it would no longer be operated as a nonprofit facility. The Parties recognize that this may occur as a result of the exercise of an option to acquire the Hospital held by an affiliate of the Manager of Hospital, which option may be exercised pursuant to the terms of a Purchase Option Agreement dated December 14, 2015. The “Manager” is Integrity Healthcare, LLC, which agreed to provide management, administrative and support services to the sole member of Hospital, Verity Health System of California, Inc. At the same time as the management agreement and enhanced funding capacity was created, the Purchase Option Agreement was also created.

The Parties agree that, in the event that the Hospital does cease to be operated as a nonprofit entity, the grant funds received from the County by the Hospital pursuant to this Agreement shall be returned in the form of funding by the Hospital or its successor entities, for programming identified by the County to benefit its residents, in the manner set forth herein.

## II. Term of the Agreement and Obligations of the Parties

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

1. The term of this Agreement shall begin on January 1, 2017 and shall end on December 15, 2030. If, however, Hospital ceases to be a non-profit entity at any point on or before December 15, 2030, the term of this Agreement shall end on the date on which the Hospital or any of the Hospital’s successor entities makes all of the payments called for in Section 9 of the Agreement.

2. During the term of this Agreement, the County shall make available to the Hospital \$15,000,000 that the Hospital may use only to pay for, or as reimbursement of expenses incurred for, planning, development and construction involved in seismic upgrades (“Qualified Expenses”) at the Hospital’s facility at 1900 Sullivan Avenue, in Daly City, California. The funding shall not exceed actual Qualified Expenses. The funds shall be made available and disbursed to the Hospital as follows:

a. \$5,000,000 shall be made available to the Hospital during the County’s 2016-2017 fiscal year (i.e., through June 30, 2017), not to exceed actual Qualified Expenses. Up to \$3,000,000 may be used to reimburse the Hospital for Qualified Expenses incurred by the Hospital prior to the first day of the term of this Agreement.

b. \$5,000,000 shall be made available to the Hospital during the County’s 2017-2018 fiscal year (i.e., from July 1, 2017 through June 30, 2018), not to exceed actual Qualified Expenses incurred or committed during the 2017 – 2018 fiscal year.

c. \$5,000,000 shall be made available to the Hospital during the County's 2018-2019 fiscal year (i.e., from July 1, 2018 through June 30, 2019), not to exceed actual Qualified Expenses incurred or committed during the 2017-2018 fiscal year.

d. To the extent monies which are to be made available in fiscal years 2016-2017, 2017-2018 and 2018-2019 are not fully expended (i.e. incurred or committed) by the Hospital on Qualified Expenses in each fiscal year, the shortfall in the use of the available total for each fiscal year shall continue to be made available in the following fiscal years, not to extend beyond fiscal year 2019-2020. For example, if \$4,000,000 is incurred and committed in each of the fiscal years involved in this grant, then \$3,000,000 shall be made available in the fiscal year 2019-2020.

e. The Hospital shall use the funds disbursed by the County pursuant to this Agreement to pay, in part, for the Seismic Project.

f. Funding under this Agreement will be used solely to support the work identified in this Section 2, and no funding shall be used to support the Hospital's general administrative expenses.

g. Within three business days of the initiation of each fiscal year, the funds to be made available will be disbursed into an escrow account to be arranged and agreed by the Parties in the amounts provided for in this Section 2. The escrow account will be managed by an escrow agent with explicit instructions for purposes of managing disbursements. The escrow agents will provide a regular reporting of all disbursements to the County and shall maintain all records of requests, invoices and receipts. The Parties agree to confer in good faith to develop and deliver to the escrow holder commercially reasonable escrow instructions regarding, among other things, the disbursement of funds to the Hospital for Qualified Expenses. Interest on the account shall accrue to the Hospital.

h. Funds will be disbursed by the escrow agent upon presentation by Hospital to the escrow holder, with a copy provided to the County at the address set forth in Section 12 of this Agreement, of invoices that comply with the escrow instructions and that substantiate, in the reasonable judgment of the escrow agent, Qualified Expenses. The Hospital will also be required to provide receipts for all paid invoices.

i. If the County objects to any disbursement request submitted by the Hospital to the escrow agent, the County will provide Hospital with a written statement of the specific nature of the County's questions within ten calendar days of notice of a request for a disbursement. If the County fails to provide an objection within that period, and the request is otherwise satisfactory to the escrow holder, the request will be deemed acceptable and the escrow agent will disburse the funds. Absent a later determination that false information was furnished or the funds were not spent on the Seismic Project, there shall be no retroactive disallowance of funding disbursements. The Hospital shall respond to the County's written statement within fifteen calendar days of actual receipt of the County's written statement. The parties to this Agreement shall meet and confer regarding any questions raised by the County and the escrow agent shall not be obligated to make any further disbursement until all of the County's questions regarding

the disbursement request have been resolved. If the parties cannot informally resolve any objection, the parties shall engage in mediation with a mutually agreed mediator before resorting to any other remedies available under law.

j. Jensen Partners, project manager for the Seismic Project (or any successor project manager), will provide a quarterly letter to the County providing a status update on the Seismic Project, and confirmation that both the Seismic Project is expected to meet the project's deadline and the proceeds disbursed by the escrow agent are Qualified Expenses and have been used exclusively for the Seismic Project. The County reserves the right to instruct the escrow agent to withhold disbursements if the County reasonably determines that the Seismic Project is not expected to meet the project's deadline, that the proceeds disbursed by the escrow agent are not Qualified Expenses, or that the use of disbursed funds is otherwise not in compliance with this Agreement, based on the Jensen Partners' letters or other evidence reliant on a third party expert that it is commercially reasonable to rely upon provided that the County shall provide the Hospital with notice and a reasonable period of time in which to cure. In no event shall County's total fiscal obligation under this Agreement exceed \$15,000,000.

3. Notwithstanding any other provision in this Agreement, County may terminate this Agreement, or any portion thereof, based upon evidence of unavailability of County funds by providing written notice to Hospital as soon as is reasonably possible after County learns of said unavailability of funding, but in no event shall such notice period be less than 90 days. Any funds then held in the escrow account as of the time of receiving notice shall remain in the account to be used for the Seismic Project as contemplated by this Agreement.

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

5. Hospital 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 Hospital 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 Hospital pursuant to the terms of this Agreement, including any sanctions, penalties, or claims of damages resulting from Hospital's failure to comply with any law, regulation, or ordinance, including but not limited to those listed in this Agreement. 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 in connection with the Seismic Project, or otherwise under any applicable law.

6. Except as permitted in this Agreement, Hospital shall not assign this Agreement or any portion thereof to a third party without the prior written consent of County unless such third party is a non-profit hospital which agrees to be bound the conditions imposed by the California Attorney General on Seton Medical Center by the Attorney General of California's letter dated December 3, 2015, approving the creation of the Verity Health System.

7. The County shall not be obligated to make available any of the funding provided for under this Agreement until insurance of the types and in the amounts reasonably satisfactory to the County has been obtained by the Hospital, and approved by the County's Risk Manager. Hospital shall furnish the County with certificates of insurance evidencing required coverage.

8. Hospital shall maintain all records related to this Agreement for at least 5 years after the end of the term of this Agreement.

9. If, at any time on or before December 15, 2030, the Hospital, or any successor entity of the Hospital, ceases to operate as a non-profit hospital, the Hospital, or any successor entity of the Hospital, shall be required to make grants for programming or activities benefiting the residents of San Mateo County ("Grants"), as identified and directed by the County Manager. The total amount of the Grants to be made will be based on the total amount funded by the County to the Hospital under this Agreement less an annual reduction of 10% beginning in fiscal year 2019-2020 ("Outstanding Repayment Amount"). The annual reduction of 10% will cease at the end of any fiscal year whereby the Hospital, or any successor entity of the Hospital, ceases to operate as a non-profit hospital. For avoidance of doubt, at the end of fiscal year 2019-2020, to the extent the County has funded \$15,000,000, \$13,500,000 will be deemed the Outstanding Repayment Amount. Grants will be made in the following schedule and in the following amounts.

a. Within one year after Hospital or any successor for profit entity of the Hospital ceases to operate as a non-profit hospital, the Hospital or any successor for profit entity of the Hospital shall make Grants in the total amount of one quarter of the Outstanding Repayment Amount as of the date that the Hospital ceases to operate as a non-profit hospital in the amounts and to the programs and/or entities directed in writing by the County Manager. The County Manager shall provide the Hospital with written directions regarding these Grants at least ninety days before the Grants are required to be paid by the Hospital or any successor entity of the Hospital. For clarity, if the amount of Outstanding Repayment Amount is \$15,000,000, the Hospital or its successor for profit entity shall make \$3,750,000 in Grants.

b. Within two years after the Hospital or any successor for profit entity of the Hospital ceases to operate as a non-profit hospital, the Hospital or any successor for profit entity of the Hospital shall make further Grants in the total amount of an additional one quarter of the Outstanding Repayment Amount as of the date that the Hospital ceases to operate as a non-profit hospital in the amounts and to the programs and/or entities directed in writing by the County Manager. The County Manager shall provide the Hospital with written directions regarding these Grants at least ninety days before the Grants are required to be paid by the Hospital or any successor entity of the Hospital. For clarity, if the amount of Outstanding Repayment Amount, as reduced pursuant to section 9.a. of this Agreement, is \$11,250,000, the Hospital or its successor for profit entity shall make \$3,750,000 in Grants.

c. Within three years after the Hospital or any successor for profit entity of the Hospital ceases to operate as a non-profit hospital, the Hospital or any successor for profit entity of the Hospital shall make further Grants in the total amount of an additional on quarter of the Outstanding Repayment Amount as of the date that the Hospital ceases to operate as a non-profit

hospital in the amounts and to the programs and/or entities directed in writing by the County Manager. The County Manager shall provide the Hospital with written directions regarding these Grants at least ninety days before the Grants are required to be paid by the Hospital or any successor entity of the Hospital. For clarity, if the amount of Outstanding Repayment Amount, as reduced pursuant to sections 9.a. and 9.b. of this Agreement, is \$7,500,000, the Hospital or its successor for profit entity shall make \$3,750,000 in Grants.

d. Within four years after the Hospital or any successor for profit entity of the Hospital ceases to operate as a non-profit hospital, the Hospital or any successor for profit entity of the Hospital shall make further Grants in the total amount of the remaining one quarter of the Outstanding Repayment Amount as of the date that the Hospital ceases to operate as a non-profit hospital in the amounts and to the programs and/or entities directed in writing by the County Manager. The County Manager shall provide the Hospital with written directions regarding these Grants at least ninety days before the Grants are required to be paid by the Hospital or any successor entity of the Hospital. For clarity, if the amount of Outstanding Repayment Amount, as reduced pursuant to sections 9.a., 9.b. and 9c. of this Agreement, is \$3,750,000, the Hospital or its successor for profit entity shall make \$3,750,000 in Grants.

10. 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.

11. 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.

12. 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.

<b>In the case of County, to:</b>	<b>In the case of Hospital, to:</b>
<p>Name/Title: John Maltbie, County Manager</p> <p>Address: Hall of Justice and Records 400 County Center Redwood City, CA 94063</p> <p>Telephone: (650) 363-4634</p> <p>Email: jmaltbie@smcgov.org</p>	<p>Name/Title: John Ferrelli, CEO</p> <p>Address: 1900 Sullivan Ave Daly City, CA 94015</p> <p>Telephone: (650) 992-4000</p> <p>Email: johnferrelli@verity.org</p> <p><b>COPY TO:</b></p> <p>Verity Health Systems of California, Inc.</p> <p>Attn: J. Mark Waxman General Counsel MarkWaxman@verity.org 203 Redwood Shores Parkway Redwood City, California 94065</p>

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

SETON MEDICAL CENTER

By: \_\_\_\_\_

By: \_\_\_\_\_

San Mateo County Board of Supervisors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Clerk of Said Board