

**Grant and Funding Agreement Between
Mills-Peninsula Health Services
and
San Mateo County Health System**

THIS GRANT AND FUNDING AGREEMENT (this "Agreement") is dated and effective as of January 1, 2014 (the "Effective Date"), by and between Mills-Peninsula Health Services, a California nonprofit public benefit corporation ("Grantor") and San Mateo County, San Mateo Health System, a California governmental entity ("Grantee").

WHEREAS, Grantee is a federally qualified health center under Section 330 of the Public Health Service Act (42 USCS § 254b, *et. seq.*) ("FQHC") that provides quality primary health care services for underserved residents and advocates the goals of social, political and economic equality;

WHEREAS, Grantor is a 501(c)(3) tax-exempt charitable organization and a nonprofit health care organization whose charitable mission includes promotion of the general health of the community, including services to ensure access to the poor and medically underserved;

WHEREAS, Grantor also has a commitment to the San Mateo County community, under which Grantor, among other things, agrees to provide certain charity care and/or contributions towards medical services benefiting indigent and/or low-income San Mateo County residents;

WHEREAS, pursuant to its mission and in response to community need, Grantee plans to expand access to urgent care in the Daly City Clinic by establishing an urgent care team. Using a mid-level practitioner (Nurse Practitioner or Physician's Assistant) as the primary provider, this team will work with the clinic's established primary care teams to provide urgent care access when the primary care team is unable to do so either because of full schedules or absences ("Service Expansion")

WHEREAS, Grantee requires funds to finance the Service Expansion;

WHEREAS, Grantor desires to provide funds to Grantee, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **Term.** The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until the last day of third Grant Year (as defined below), unless sooner terminated in accordance with this Agreement. The payment of the Annual Deposit (as defined below) pursuant to this Agreement shall commence no later than January 1, 2014 (the "Initial Date") and, subject to continued compliance with

the terms and conditions of this Agreement, shall continue in effect each anniversary thereafter of the Initial Date (each, an "Anniversary Date") through the third Anniversary Date. The calendar year commencing on the Initial Date and each calendar year thereafter commencing on the first Anniversary Date through the third Anniversary Date shall each be referred to as a "Grant Year."

2. Grant.

a. Subject to the terms and conditions of this Agreement, Grantor commits to provide Grantee an amount (the "Annual Deposit") of Two Hundred Thousand Dollars (\$200,000.00) each Grant Year, up to a combined maximum for all combined Grant Years of Six Hundred Thousand Dollars (\$600,000).

b. On the Initial Date, and each Anniversary Date thereafter, subject to the terms and conditions of this Agreement, Grantor shall provide or cause to be provided to Grantee the Annual Deposit by check or wire transfer made payable to Grantee, to be deposited into Grantee's bank account.

3. Performance Standards, Duties and Responsibilities. As a condition to receiving each Annual Deposit, Grantee agrees to the following:

a. **Exhibit A** sets forth minimum expected service thresholds ("Minimum Service Thresholds"). No later than December 31st of each Grant Year, Grantee shall submit a report to Grantor, detailing, among other relevant information, achievement of the annual Minimum Service Thresholds. The report also shall indicate the status of Service Expansion, uses of the Grant proceeds, the actual and projected costs for Service Expansion, and such other information relevant to Service Expansion and requested by Grantor.

b. Grantee shall use the Annual Deposit solely for the Service Expansion in Daly City.

c. Within six (6) months from the end of each of Grantee's regular fiscal years occurring during the Term, Grantee shall provide Grantor with a copy of its audited annual financial statement for the most recent fiscal year. Each such audit should be accompanied by an unqualified opinion from an independent auditor.

d. Grantee shall provide Grantor with timely notice of any event or circumstance that materially impairs Grantee's financial position or substantially interferes with Grantee's ability to offer the services it has agreed to provide as set forth in this Agreement.

g. During the Term, Grantee shall obtain and maintain all proper and necessary insurance to guard against all applicable risk at its sole cost and expense, including, but not limited to, the following:

- (i) General Liability Insurance in an amount not less than \$1,000,000 per occurrence, \$3,000,000 General Aggregate, \$3,000,000 Products and Completed Operations Aggregate;
- (ii) Workers' Compensation or Employers Liability Insurance as required by California law;
- (iii) Employers' Liability Insurance with limits of \$1,000,000 Per Accident/\$1,000,000 Per Disease/\$1,000,000 Disease Policy Limit;
- (iv) Professional Liability Insurance (Errors and Omissions) covering negligent acts, errors or omissions arising out of the rendering of or failure to render professional services, whether committed or alleged to have been committed by Grantee or by its employees, contractors or others for whom Grantee is legally responsible with minimum limits of \$1,000,000 each claim, \$3,000,000 aggregate; and
- (v) All-Risk Property insurance to cover risks of loss of Grantee's property at full replacement cost.

h. During the Term, Grantee shall maintain its status as a governmental entity and as an FQHC. Grantee shall immediately notify Grantor of any action or notice from any person or entity which could result in loss of Grantee's status as a governmental entity or an FQHC.

4. **Notices.** All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand or by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other parties at the following addresses:

Grantor: Mills Peninsula Health Services
1501 Trousdale Drive
Burlingame, CA 94010

with a copy to: Sutter Health
633 Folsom Street., 7th Floor
San Francisco, California 94107
Attn: Vice President and Regional
Counsel

Grantee:

San Mateo County Health System
222 W. 39th Avenue
San Mateo, CA 94403
Attn: Susan Ehrlich, MD, MPP,
CEO

5. **Publicity.** Grantor and Grantee will work collaboratively on the content and distribution of all public statements in which Grantor's contribution to the Service Expansion is disclosed. The parties agree to coordinate any press release and/or publication relating to Grantor's support for Service Expansion. Notwithstanding the foregoing, Grantee may not use the name(s), trademark(s), or trade name(s) of Grantor, its subsidiaries or affiliates, except with the prior written consent of Grantor.

6. **Prohibited Uses.** Funds received by Grantee under this Agreement shall be used solely for charitable, tax-exempt purposes. No funds received by Grantee under this Agreement shall be used in the performance of any partisan political activity, or to further the election or defeat of any candidate for public office. There shall be no religious worship, instruction or proselytization as part of in connection with Grantee's performance of this Agreement.

7. **Inspection and Audits.**

a. Books and Records. Grantee agrees to keep and maintain full, true and complete records, contracts, books, and documents as are necessary to fully disclose to Grantor, or its authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection and Audit. Grantee agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices, financial statements and supporting documentation shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Grantee where such records may be found by Grantor's designated representative.

c. Annual Audit. Grantee agrees that Grantor shall have the right, at its discretion and its sole expense, to annually audit, through an independent third party auditor, Grantee's books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices, financial statements and supporting documentation.

d. Period of Retention. All books, records, reports, and statements relevant to this Agreement must be retained a minimum of five years. The retention period runs from the date of Grantor's last Annual Deposit payment, or from the date of termination of this Agreement, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to

complete an audit and/or to complete any dispute resolution or litigation which may ensue.

8. **Compliance with Applicable Laws.** During the Term, Grantee shall comply with all applicable laws, ordinances and codes of the Federal, State and County governments.

9. **Termination.** In the exercise of its reasonable discretion, Grantor may cancel this Agreement if this Agreement is not performed or completed in accordance with the terms and conditions of this Agreement, unless Grantor determines that a variance is justified. Grantor shall provide Grantee sixty days notice of termination upon its reasonable determination of Grantee's material noncompliance. Upon any such termination, Grantor shall not make any unpaid or future Annual Deposits.

10. **Remedies.** Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs.

11. **Force Majeure.** No party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.

12. **Indemnification.** To the fullest extent permitted by law, Grantee shall indemnify, hold harmless and defend, Grantor from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any willful misconduct or grossly negligent acts or omissions of Grantee, its officers and employees in connection with this Agreement.

13. **Waiver of Breach.** Failure to declare a breach or the actual waiver of any particular breach of this Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

14. **Severability.** If any provision contained in this Agreement is held to be unenforceable by an arbitrator or a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

15. **Assignment.** Grantee shall not assign, transfer nor delegate any rights, obligations or duties under this Agreement without the prior written consent of Grantor.

16. **Proper Authority.** The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. Grantee acknowledges that as required by statute or regulation, this Agreement is effective only after approval by both parties and only for the Term specified in this Agreement. Any services performed by Grantee before this Agreement is effective or after it ceases to be effective are performed at the sole risk of Grantee.

17. **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of California.

18. **Dispute Resolution.** Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, interpretation, validity or termination, will be referred to and definitively resolved by binding arbitration pursuant to the California Code of Civil Procedure Section 1280, *et seq.*, and the arbitration shall be administered in accordance with the American Arbitration Association (AAA) rules applicable to commercial arbitrations. The place of arbitration will be Burlingame, California. The judgment of the arbitration tribunal will be accompanied by a written statement of the basis for such judgment and may be enforced by any court having proper jurisdiction. The provisions of this Section will survive the termination of this Agreement.

19. **Entire Agreement and Modification.** This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

20. **Survival.** Termination or expiration of this Agreement for any reason shall not relieve either party of any obligation or liability incurred prior to the expiration or termination of this Agreement. The following provisions shall survive termination or expiration of this Agreement, in addition to those that by their nature are intended to survive termination: Sections 4, 5, 6, 7, 9, 11, 16, 17, 21, and 22.

21. **Counterparts.** This Agreement may be executed in counterparts, each of which will be an original and which together will constitute one and the same instrument. A photocopy of the executed Agreement may be used as if it were the original Agreement.

EXHIBIT A

The following performance expectations will be reported at the end of each Grant Year starting at the end of 2014.

1. Reduction of time for the third next available appointment (TTHAA) at the Daly City Clinic from the current 14 days average to less than 7 days.
2. Reduction in the number of established medical home patients from the Daly City Clinic presenting to the SMMC Emergency Department for Ambulatory Sensitive Conditions.
3. Optimization of patient flow and improvement of Medi-Cal reimbursement at the Daly City Clinic.

22. **No Third Party Beneficiary.** Nothing contained in this Agreement is intended nor shall it be construed to create rights running to the benefit of third parties.

23. **No Referrals.** Nothing in this Agreement, or any other written or oral agreement, is intended to induce or influence the admission or referral of any patient to or the generation of any business between Grantor and Grantee. This Agreement is intended by the parties as a community benefit to address low-income and medically underserved patients' inability to access appropriate primary care.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date set forth above.

MILLS-PENINSULA HEALTH SERVICES, a California nonprofit public benefit corporation

By: 

Name: Robert Merwin

Title: Chief Executive Officer

San Mateo County, San Mateo Health System, a governmental entity

By: 

Name: Susan Ehrlich, MD, MPP

Title: Chief Executive Officer