

**Professional Services Agreement  
Between the County of San Mateo and**

**Sutter Bay Medical Foundation, a California nonprofit public benefit corporation dba Palo Alto  
Medical Foundation for Health Care, Research and Education For General Surgery Services**

**THIS PROFESSIONAL SERVICES AGREEMENT** is entered into by and between the County of San Mateo, San Mateo Health System (“County”) and Sutter Bay Medical Foundation, a California nonprofit public benefit corporation doing business as Palo Alto Medical Foundation for Health Care, Research and Education (“Contractor”).

W I T N E S S E T H:

WHEREAS, County operates health care facilities collectively known as “San Mateo Medical Center” (SMMC); and

WHEREAS, Contractor has entered into a Professional Services Agreement with Palo Alto Foundation Medical Group, Inc., a California professional corporation (“PAFMG”), whereby Contractor retains the services of physicians employed by PAFMG; and

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of performing professional services described in this Agreement for SMMC; and

WHEREAS, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of such services to or for the County; and

WHEREAS, Contractor desires to provide such services all upon the terms and conditions stated below, and this Agreement is entered into for the purpose of defining the parties’ respective rights and responsibilities.

**NOW, THEREFORE**, in consideration of the mutual agreements set out below, the parties agree as follows:

**Section 1: Contractor’s Obligations**

**1.1 Organizational Status**

Contractor represents and warrants that:

The physician(s) providing services for the patients of the County pursuant to this Agreement shall be duly licensed, certified, accredited or otherwise duly authorized to practice medicine in general surgery in the State of California. For purposes of this Agreement, references to “Contractor” shall include within their scope any physician who is providing professional services pursuant to this Agreement, including pursuant to any assignment or sub-contract under Section 5.4 of this Agreement.

**1.2 Contractor Provider**

1.2.1 The term “Contractor Provider” shall include all of the physician(s) who provide services under this Agreement who are qualified in the specialty of general surgery, whether the individual is (i) a Contractor representative, employee, subcontractor, or agent or (ii) a surgeon employed by or contracted through PAFMG. The term “Contractor Provider” does not include any other employee of Contractor or PAFMG who is not providing services under this Agreement. Notwithstanding the foregoing, Contractor still retains all obligations pursuant to this Agreement.

### 1.3 **Qualifications**

The following indicate qualifications that must be satisfied by each Contractor Provider as a condition of providing services under this Agreement:

- 1.3.1 Must be accepted by the Chief Executive Officer of SMMC or his/her designee; said acceptance may be withdrawn immediately at any time with written notice to Contractor at the reasonable discretion of the Chief Executive Officer of SMMC, his/her designee, the County’s Chief, Health System, or his/her designee.
- 1.3.2 Must always keep and maintain a valid license to engage in the practice of medicine in the State of California; Drug Enforcement Administration (DEA) License; board certification; and credentialing eligibility with government and commercial payers. Contractor Provider is responsible for all license dues.
- 1.3.3 Must have active Medical Staff membership and/or privileges as may be required under the Bylaws of County for Contractor Provider to provide the services contemplated by this Agreement. Contractor Provider is responsible for membership dues.
- 1.3.4 Is not currently excluded, debarred, or otherwise ineligible to participate in local state, or federal healthcare programs or in federal procurement or non-procurement programs.
- 1.3.5 Has not been convicted of a criminal offense.
- 1.3.6 Contractor Provider shall be certified by the appropriate state-recognized board in California (or eligible for certification by such board by virtue of having successfully completed all educational and residency requirements required to sit for the board examinations).

1.3.7 Contractor Provider agrees to participate in the County's Organized Health Care Arrangement (OHCA), as described by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Contractor Provider who choose to opt out of OHCA agree to advise the SMMC Medical Staff Office in writing and will provide their own Notice of Privacy Practice (NPP).

#### 1.4 **Services to be Performed by Contractor**

In consideration of the payments hereinafter set forth, Contractor shall provide Contractor Provider(s) who shall, under the general direction of the Chief Executive Officer of SMMC or his/her designee, with respect to the product or results of such services, provide medical services as described in Exhibit A, attached hereto and incorporated by reference herein. Such services shall be provided in a professional and diligent manner.

#### 1.5 **Payments**

##### 1.5.1 Maximum Amount

In full consideration of Contractor's performance of the services described in Exhibit A, the amount that County shall pay for services rendered under this Agreement shall not to exceed the amount specified in Exhibit B.

##### 1.5.2 Rate of Payment

The rate and terms of payment shall be as specified in Exhibit B, attached hereto and incorporated herein. Any rate increase is subject to the approval of the Chief, Health System or his/her designee and shall not be binding on County unless so approved in writing and signed by both parties via an amendment to this Agreement. Each payment shall be conditioned on the Contractor's and Contractor Provider(s)'s performance of the provisions of this Agreement, to the full satisfaction of the Chief, Health System, Chief Executive Officer of SMMC, or either of their designees.

##### 1.5.3 Time Limit for Submitting Invoices

Contractor shall submit an invoice for services to County for payment in accordance with the provisions of Exhibit B. Such Invoice shall separately identify by service type the number of time-period blocks, consults or shifts for each type of service listed in Exhibit A. County shall not be obligated to pay Contractor for the services covered by any invoice if Contractor presents the invoice to County more than one hundred eighty (180) days after the date

Contractor renders the services, or more than ninety (90) days after this Agreement terminates, whichever is earlier. Invoices will be processed between thirty (30) to forty-five (45) days.

1.6 **Time Commitment and Substitute Responsibility**

Contractor will perform duties fifty-two (52) weeks out of the year. Contractor shall provide, at Contractor's sole cost and expense, a substitute for any absence. As a condition of providing services under this Agreement, any such substitute shall first be approved by the Chief Executive Officer of SMMC or their designee and shall otherwise satisfy all qualification requirements applicable to the Contractor, including but not limited to being covered under Contractor's insurance or submitting separate insurance issued by a company under such terms and limitations as County shall reasonably approve.

1.7 **General Duties of Contractor**

1.7.1 Administrative and Miscellaneous Duties and Responsibilities

Contractor shall ensure that Contractor Provider(s) cooperate with the administration of the Medical Center. Such cooperation shall include but not be limited to the following:

- A. Adhere to the County policy requiring all contracted providers to use their SMMC provided e-mail address;
- B. Creating and maintaining medical records in a timely fashion (including the appropriate use of dictation, electronic medical records, or other technology, as required by County);
- C. Creating and maintaining billing records in a timely fashion (including closing notes within thirty (30) days of the visit);
- D. Participate in peer review;
- E. Timely complete all required training and education;
- F. Complete time studies as required by California and Federal reimbursement regulations, and County's compliance programs;
- G. Meet quarterly with the Medical Director of Specialty or their designee to address whether the contract services and performance metrics are being met;
- H. To the extent applicable, Contractor shall provide appropriate supervision and review of services rendered by physician assistants and other non-physicians involved in the direct medical care of County's patients; and
- I. Contractor Providers meaningfully engage in process improvement activities and lead projects as required.

1.7.2 Billing and Coding Compliance

Contractor shall ensure that Contractor Provider(s) prepare such administrative and business records and reports related to the service in such format and upon such intervals as County shall reasonably require. Contractor agrees to keep accurate and complete records. To the extent that billing is discussed in more detail in Exhibits to this Agreement, Contractor shall comply with those billing-related requirements.

Contractor will code accurately at least 85% of the time with adequate support and education from SMMC revenue cycle staff. Audits will be performed quarterly.

#### 1.7.3 Compliance with Rules and Regulations

Contractor agrees to abide by rules, regulations, and guidelines of County. County may from time to time amend, add, or delete rules, regulations, or guidelines at County's sole discretion, and such amendment will not affect the enforceability or terms of this Agreement.

#### 1.7.4 Compliance with General Standards

Contractor shall maintain its operations in compliance with all applicable laws and rules relating to licensure and certification, including but not limited to: Title XXII of the California Administrative Code; those necessary to participate in the Medicare and Medi-Cal programs under Title VIII and Title XIX, respectively, of the Social Security Act; and those required by the Joint Commission. Upon reasonable request by County, Contractor shall provide satisfactory evidence of such licenses and certificates.

#### 1.7.5 Compliance with Patient Information

Contractor and Contractor Provider(s) shall keep in strictest confidence and in compliance with all applicable state and federal laws any patient information. Contractor and Contractor Provider(s) shall not disclose such information except as permitted by law.

All services to be performed by Contractor pursuant to this Agreement shall be performed (1) in accordance with all applicable federal, state, county, and municipal laws, ordinances, and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended, 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 and, if applicable, (2) in compliance with the Business Associate requirements set forth in Attachment H, if attached hereto. 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. 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.

#### 1.7.6 Compliance with Jury Service Ordinance

Contractor shall comply, and ensure that PAFMG complies, as applicable, with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor or PAFMG, as applicable, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor, or PAFMG, as applicable, or that the Contractor, or PAFMG, as applicable, may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it, and PAFMG, as applicable, have and adhere to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor or PAFMG have no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it and PAFMG have no full-time employees who live in San Mateo County. To the extent that it or PAFMG hires any such employees during the term of its Agreement with San Mateo County, Contractor, or PAFMG, as applicable, shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in Exhibit B, is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

#### 1.7.7 Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies that Contractor, PAFMG and Contractor Provider(s) shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

#### 1.7.8 Non-Discrimination

Contractor and Contractor Provider(s) shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability 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 any services this Agreement. This Section applies only to Contractor Provider(s) who are providing services to members of the public under this Agreement.

Contractor shall assure compliance with Section 504 of the Rehabilitation Act of 1973 by submitting as part of this Agreement a signed letter of assurance of compliance (Attachment I to this Agreement). Contractor employs fifteen (15) or more persons, and pursuant to 42 C.F.R. section 84.7(a), has designated the person authorized to execute this Agreement on behalf of Contractor as the person to coordinate Contractor's efforts to comply with the federal regulation. All communications regarding compliance with Section 504 of the Rehabilitation Act of 1973 shall be sent to the addresses listed in Section 5.1 (Notices).

General Non-Discrimination. Contractor agrees that no person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

Contractor shall ensure that Contractor Provider(s) comply with the County admission and treatment policies, which provide that patients are accepted for care without discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, age, handicap, or political affiliation.

Equal Employment Opportunity. Contractor 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. Contractor's equal employment policies shall be made available to County upon request.

Violation of Non-Discrimination Provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Contractor to penalties to be determined by the County Manager, including but not limited to:

- A. Termination of this Agreement;
- B. Disqualification of Contractor from bidding or being awarded a County contract for a period of up to three (3) years;
- C. Liquidated damages of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per violation; and/or
- D. Imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of these paragraphs, the County Manager shall have the authority to:

- A. Under supervision, examine Contractor's employment records with respect to compliance with this paragraph; and
- B. Offset all or any portion of the amount described in this paragraph against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

Within thirty (30) days, Contractor shall report to the County Manager the filing by any person arising out of services provided at SMMC in any court of any complaint of discrimination 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, provided that within such thirty (30) days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notifications shall include the name of the complainant, a copy of such complaint, and description of the circumstance. Contractor shall provide County with a copy of its response to the complaint when filed/submitted.

Compliance with Equal Benefits Ordinance. Contractor and PAFMG, as applicable, shall comply with all applicable laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

Compliance with Federal Regulations. Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

History of Discrimination. Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

#### 1.7.9 Managed Care Contracts

Contractor is obligated to ensure that Contractor Provider(s) participate in and observe the provisions of all managed care contracts which County may enter into on behalf of Contractor for health care services with managed care organizations, including but not limited to Health Maintenance Organizations (HMOs), Independent Practice Associations (IPAs), Preferred Provider Organizations (PPOs), Medical Service Organizations (MSOs), Integrated Delivery Systems (IDSs), and Physician-Hospital Organizations (PHOs). Any services billed under such managed care contracts shall be billed by County under the County's tax identification number.

#### 1.7.10 Requirement to Notify County of any Detrimental Professional Information or Violation of Contract Rules or Policies

During the term of this Agreement, Contractor shall ensure that each Contractor Provider notifies County immediately, or as soon as is possible thereafter, but within thirty (30) days of receipt of such information, in the event that:

- I. Contractor Provider's license to practice in any jurisdiction is suspended, revoked, or otherwise restricted;
- II. A compliance or report concerning Contractor Provider's competence or conduct is made to any state medical or professional licensing agency;

- III. Contractor Provider's privileges at any hospital or health care facility or under any health care plan are denied, suspended, restricted, terminated, or under investigation for medical disciplinary cause or reason;
- IV. Contractor Provider's controlled substance registration certificate (issued by the Drug Enforcement Administration), if any, is being or has been suspended, revoked, or not renewed;
- V. Contractor Provider's participation as a Medicare or Medi-Cal provider is under investigation or has been terminated;
- VI. There is a material change in any of the information the Contractor Provider has provided to County concerning Contractor's professional qualification or credentials;
- VII. When a sexual misconduct or sexual abuse allegation has been made against the Contractor Provider;
- VIII. Contractor Provider is convicted of a crime; or
- IX. Contractor or Contractor Provider breaches any of the terms of this Agreement; violates any of the County's rules or regulations, or if the Contractor is subject to or a participant in any form of activity which could be characterized as discrimination or harassment.

#### 1.8 **Provision of Records for County**

Contractor shall furnish any and all information, records, and other documents related to Contractor's and Contractor Provider(s)'s services hereunder which County may reasonably request in furtherance of its quality assurance, utilization review, risk management, and any other plans and/or programs adopted by County to assess and improve the quality and efficiency of County's services. As reasonably requested, Contractor shall participate in one or more of such plans and/or programs.

#### 1.9 **Cooperation with County in Maintaining Licenses**

Contractor Provider(s) shall assist County in obtaining, achieving, and/or maintaining any and all licenses, permits, other authorization, and/or accreditation standards which are dependent upon, or applicable to, in whole or in part, Contractor's services under this Agreement.

1.10 **Contractor's Conflict of Interest**

To the best of Contractor's knowledge, and to the extent it would materially impact the obligations or performance of services under this Agreement, Contractor shall inform County of any other arrangements which may present a professional, financial, Stark Law, or any other state or federal conflict of interest or materially interfere in Contractor's performance of its duties under this Agreement. In the event Contractor or Contractor Provider(s) pursue conduct which does, in fact, constitute a conflict of interest or which materially interferes with (or is reasonably anticipated to interfere with) Contractor's performance under this Agreement, County may exercise its rights and privileges under Section 3 below.

1.11 **Non-Permitted Uses of County Premises**

Contractor agrees not to use, or permit any Contractor Provider to use, any County facility or service for any purpose other than the performance of services under this Agreement. Without limiting the generality of the foregoing, Contractor agrees that no part of the premises of County shall be used at any time as an office for private practice or delivery of care for non-County patients.

1.12 **No Power to Contract in the Name of the Other Party**

Contractor shall not have the right or authority to enter into any contract in the name of County or otherwise bind County in any way without the express written consent of County. Likewise, neither the County nor anyone acting on behalf of the County under this Agreement shall have the right or authority to enter into any contract in the name of Contractor, or any Contractor Provider, or to otherwise bind Contractor or PAFMG in any way without the express consent of Contractor or PAFMG, respectively.

1.13 **Regulatory Standards**

Contractor shall perform all services under this Agreement in accordance with any and all regulatory and accreditation standards applicable to County and the relevant medical service, including, without limitation, those requirements imposed by the Joint Commission, the Medicare/Medi-Cal conditions of participation, and any amendments thereto.

1.14 **Availability of Records for Inspection**

As and to the extent required by law, upon written request of the Secretary of Health and Human Services, the Comptroller General, or any of their duly authorized representatives, Contractor shall make available those contracts, books, documents,

and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. If Contractor carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization, Contractor agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the requirements of 42 U.S.C. Section 1395x(v)(1) and the regulations thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by County, Contractor, or any Contractor Provider(s) by virtue of this Agreement.

#### 1.15 **Professional Standards and Medical Decision Making**

Contractor shall ensure that Contractor Provider(s) perform their duties under this Agreement without direct supervision and in accordance with the rules of ethics of the medical profession. Contractor shall ensure that Contractor Provider(s) also perform their duties under this Agreement in accordance with the appropriate standard of care for his/her medical profession and specialty. The Contractor Providers have a right to exercise independent professional judgment in the care of patients.

### **Section 2: Change of Circumstances**

In the event either (i) Medicare, Medi-Cal, or any third party payor or any federal, state, or local legislative or regulative authority adopts any law, rule, regulation, policy, procedure, or interpretation thereof which establishes a material change in the method or amount of reimbursement or payment for services under this Agreement; or (ii) any or all such payors/authorities impose requirements which require a material change in the manner of either party's operations under this Agreement and/or the costs related thereto; then, upon the request of either party materially affected by any such change in circumstances, the parties shall enter into good faith negotiations for the purpose of establishing such amendments or modifications as may be appropriate in order to accommodate the new requirements and change of circumstance while preserving the original intent of this Agreement to the greatest extent possible. If, after thirty (30) days of such negotiations, the parties are unable to reach an agreement as to how or whether this Agreement shall continue, then either party may terminate this Agreement upon thirty (30) days prior written notice.

### **Section 3: Term and Termination**

#### 3.1 **Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2021 through June 30, 2024. The parties agree that, as of the Effective Date, this Agreement shall replace and supersede any prior or current Agreement

between County and Contractor for the same or similar services. Upon execution of this Agreement, the parties shall reconcile any payments made or pending for services rendered on and after the Effective Date to comply with the terms of this Agreement.

### 3.2 **Extension of Term**

The term of the Agreement may be extended by mutual written, signed agreement by both parties.

### 3.3 **Termination**

#### 3.3.1 Without Cause Termination

This agreement may be terminated by either party at any time upon ninety (90) days written notice to the other party.

The County may immediately terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon (1) unavailability of Federal, State, or County funds or (2) closure of the County, SMMC, or the department of SMMC at which Contractor is to provide services, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding or closure.

#### 3.3.2 Immediate Termination

This Agreement may be immediately terminated as follows:

- A. Upon any of the Contractor Provider's loss, restriction, or suspension of his or her professional license to practice medicine in the State of California;
- B. Upon either party's suspension or exclusion from the Medicare or Medi-Cal Program;
- C. If any of the Contractor Provider(s) violate the State Medical Practice Act;
- D. If any of the Contractor Provider(s)'s professional practice imminently jeopardizes the safety of patients;
- E. If any Contractor Provider(s) are convicted with a felony or health care crime;
- F. If any Contractor Provider(s) violate ethical and professional codes of conduct of the workplace as specified under state and federal law;

- G. Upon revocation, cancellation, suspension, or limitation of any Contractor Provider(s)'s medical staff privileges at the County;
- H. If any Contractor Provider(s) have a guardian or trustee of its person or estate appointed by a court of competent jurisdiction;
- I. If any Contractor Provider(s) become disabled so as to be unable to perform the duties required by this Agreement;
- J. If PAFMG fails to maintain professional liability insurance required by this Agreement;
- K. Upon County's loss of certification as a Medicare and/or Medi-Cal provider; or
- L. Upon the closure of the County, SMMC, or the medical service at SMMC in relation to which the Contractor is providing services.

### 3.3.3 Termination for Breach of Material Terms

Either party may terminate this Agreement at any time in the event the other party engages in an act or omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement shall provide the breaching party with no fewer than thirty (30) days advance written notice specifying the nature of the breach. The breaching party shall then have thirty (30) days from the date of the notice (or such longer period as is specified in the notice) in which to remedy the breach and conform its conduct to this Agreement. If such corrective action is not taken within the time specified, this Agreement shall terminate at the end of the notice and cure period (typically sixty (60) days) measured from the date of initial notice without further notice or demand. Notwithstanding the foregoing, County shall have the option of withdrawing its acceptance of a Contractor Provider, as described in Section 1.3.1 without terminating this Agreement. Withdrawal of acceptance of a Contractor Provider will not, of itself, constitute grounds for termination of this Agreement by either party.

### 3.3.4 Patient Records Upon Termination and Notice to Patients

All original patient records shall be property of the County. Upon termination of this Agreement, Contractor shall return any such records as may be in Contractor's possession to County, subject to Contractor's right to copies of records. Contractor, however, shall have the right to view, inspect and copy patient records for billing, treatment, and quality improvement purposes.

### 3.3.5 National Practitioner Data Bank Required Reporting

In consideration of automatic termination under 3.3.2. listed above, County is required to report all professional review actions based on reasons related to professional competence or conduct that adversely affect a Contractor Provider(s) clinical privileges for a period longer than 30 days to the National Practitioner Data Bank (NPDB). Additionally, County is required to report to the NPDB any voluntary surrender or restriction of clinical privileges while under, or to avoid, an investigation.

### 3.3.6 California Reporting Requirements

In consideration of automatic termination under 3.3.2 listed above, County is required to report to the Medical Board of California all actions taken against physicians, which deny, restrict for 30 days or more in a 12-month period, or terminate staff privileges for medical disciplinary cause or reason. If the termination or restriction occurred due to a resignation or other voluntary action following notice of an impending investigation, that also must be reported.

## **Section 4: Insurance and Indemnification**

### 4.1 **Insurance**

Contractor shall not commence work under this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the County. Contractor and PAFMG shall furnish County with Certificates of Insurance evidencing the required coverage, and there shall be a specific contractual endorsement extending Contractor's and Contractor Provider(s)'s coverage, as applicable, to include the contractual liability assumed by Contractor pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

#### 4.1.1 Violation of This Section or Decrease/Cancellation of Coverage

In the event of either (1) violation of any provision of Section 4 of this Agreement or (2) receipt of notice by the County that any insurance coverage required under Section is will be diminished or cancelled, County at its option may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

#### 4.1.2 Workers' Compensation and Employer Liability Insurance

Contractor and PAFMG, as applicable, shall have in effect during the entire life of this Agreement workers' compensation and employer liability insurance providing full statutory coverage. In signing this Agreement, Contractor makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

4.1.3 Liability Insurance

Contractor and PAFMG shall each take out and maintain on their own behalf, and shall ensure that all Contractor Providers maintain on their own behalf, during the life of this Agreement such bodily injury liability and property damage liability insurance as shall protect shall protect Contractor, PAFMG and Contractor Provider, while performing work covered by this Agreement, from any and all claims for property damage which may arise from their respective operations or actions under this Agreement. Such insurance shall not be less than the amount specified below.

Such insurance shall include:

- A. Comprehensive general liability insurance... \$1,000,000 (Contractor and PAFMG)
- B. Motor vehicle liability insurance..... \$-0-
- C. Professional liability insurance.....\$1,000,000/\$3,000,000 (PAFMG only)

4.1.4 County as Certificate Holder

County and its officers, agents, employees, and servants shall be named as Certificate Holder on any such policies of general liability insurance. Such policies shall also contain a provision that the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only. Said certificate(s) of insurance is (are) attached hereto.

#### 4.2 **Tail Coverage**

If Contractor or PAFMG, as applicable, obtains one or more claims-made insurance policies to fulfill its obligations, Contractor or PAFMG, as applicable, will: (i) maintain coverage with the same company during the term of this Agreement and for at least three (3) years following termination of this Agreement; or (ii) purchase or provide coverage that assures protection against claims based on acts or omissions that occur during the period of this Agreement which are asserted after the claims-made insurance policy expired.

#### 4.3 **Hold Harmless**

a. It is agreed that Contractor shall defend, hold harmless, and indemnify County and its officers, employees, agents, and servants from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this Agreement or result from the performance of any work required of or payments made pursuant to this Agreement, and which result from the negligent (or malicious/reckless) acts or omissions of Contractor and/or its officers, employees, agents, and servants (including, but not limited to PAFMG and Contractor Providers), provided that this shall not apply to injuries or damages which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

b. Contractor shall defend, hold harmless, and indemnify County from and against any and all claims for wages, salaries, benefits, taxes, and all other withholdings and charges payable to, or in respect to, Contractor Provider for services provided under this Agreement.

c. It is agreed that County shall defend, save harmless, and indemnify Contractor and its officers, employees, agents, and servants (including Contractor Provider(s)) from any and all claims, suits, or actions of every name, kind, and description brought by a third party which arise out of the terms and conditions of this Agreement and which result from the negligent (or malicious/reckless) acts or omissions of County and/or its officers, employees, agents, and servants, provided that this shall not apply to injuries or damages which Contractor and/or Contractor Provider has been found in a court of competent jurisdiction to be solely liable by reason of their own negligence or willful misconduct.

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

e. In the event of concurrent negligence (or malicious/reckless acts) of County and/or its officers, employees, agents, and servants, on the one hand, and Contractor and/or its officers, employees, agents, and servants, on the other hand, then the liability for any and all claims for injuries or damage to persons and/or property which arise out

of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative negligence.

## **Section 5: Miscellaneous Provisions**

### **5.1 Confidentiality**

This Agreement is not confidential. If the contracted amount exceeds \$200,000, the Agreement is subject to review and approval of the Board of Supervisors pursuant to Government Code Section 31000. Further, this Agreement is a public record pursuant to the California Public Records Act.

### **5.2 Notice Requirements**

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, certified or registered mail, return receipt requested -or- deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt, for transmittal, charges prepaid, addressed to the address below. In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

If to County: Chief Executive Officer  
San Mateo Medical Center  
222 W 39<sup>th</sup> Avenue  
San Mateo, CA 94403  
Facsimile: 650/573-2950

With Copy to: County Counsel's Office  
400 County Center, 6<sup>th</sup> Floor  
Redwood City, CA 94063  
Facsimile: 650/363-4034

If to Contractor: Sutter Bay Medical Foundation  
dba Palo Alto Medical Foundation  
for Health Care, Research and Education  
333 Distel Circle  
Los Altos, CA 94022  
Attn: Finance – Physician Administrative Contracts  
Sutter Health  
2000 Powell Street, Suite 1000  
Emeryville, CA 94608  
Attn: Office of the General Counsel

### **5.3 Merger Clause, Amendment, and Counterparts**

This Agreement, including the Exhibits and Attachments attached hereto and incorporated herein by reference, 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, whether written or otherwise, are not binding. All subsequent modifications shall be in writing and signed by the parties.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Agreement supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties, including the "Professional Services Agreement" between the parties for General Surgery Services, effective as of July 1, 2018.

#### 5.4 **Partial Invalidity**

In the event any provision of this Agreement is found to be legally invalid or unenforceable for any reason, the remaining provisions of the Agreement shall remain in full force and effect provided that the fundamental rights and obligations remain reasonably unaffected.

#### 5.5 **Assignment**

Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign its rights or obligations hereunder to any affiliate of County or Sutter Health, respectively, without the prior written consent of the other party. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

#### 5.6 **Independent Contractor**

Contractor and Contractor Provider(s) are performing services and duties under this Agreement as independent contractors and not as employees, agents, or partners of or joint ventures with County. County does retain responsibility for the performance of Contractor and Contractor Provider(s) as and to the extent required by law and the accreditation standards applicable to County. Such responsibility, however, is limited to

establishing the goals and objectives for the service and requiring services to be rendered in a competent, efficient, and satisfactory manner in accordance with applicable standards and legal requirements. Contractor shall be responsible for determining the manner in which services are provided and ensuring that services are rendered in a manner consistent with the goals and objectives referenced in this Agreement.

5.7 **Regulatory Requirements**

Nothing in this Agreement or any other written or oral agreement, or any consideration in connection with this Agreement, contemplates or requires or is intended to induce or influence the admission or referral of any patient to or the generation of any business between County, SMMC, Contractor, PAFMG, Contractor Provider or any other physician. This Agreement is not intended to influence Contractor's, PAFMG's, or any Contractor Provider's judgment in choosing the medical facility appropriate for the proper care and treatment of their patients, or restrict any physician from establishing medical staff membership or clinical privileges at any other healthcare facility.

5.8 **Alternate Dispute Resolution and Venue**

The parties firmly desire to resolve all disputes arising hereunder without resort to litigation in order to protect their respective reputations and the confidential nature of certain aspects of their relationship. Accordingly, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be mediated. If mediation is unsuccessful, the parties may take the dispute to Superior Court in San Mateo County.

5.9 **Third-Party Beneficiaries**

This Agreement is entered into for the sole benefit of County and Contractor. Nothing contained herein or in the parties' course of dealings shall be construed as conferring any third-party beneficiary status on any person or entity not a party to this Agreement, including, without limitation, any Contractor Provider(s).

5.10 **Governing Law**

This Agreement shall be governed by the laws of the State of California.

5.11 **Non-Disclosure of Names**

Notwithstanding any other provision of this Agreement, names of patients receiving public social services hereunder are confidential and are to be protected from unauthorized disclosure in accordance with Title 42, Code of Federal Regulations, Section 431.300 *et seq.* and Section 14100.2 of the California Welfare and Institutions Code and regulations adopted thereunder.

For the purpose of this Agreement, all information, records, data, and data elements collected and maintained for the operation of the Agreement and pertaining to patients shall be protected by Contractor and Contractor Provider(s) from unauthorized disclosure.

With respect to any identifiable information concerning a Medi-Cal patient that is obtained by Contractor or Contractor Provider(s), Contractor and Contractor Provider(s): (i) will not use any such information for any purpose other than carrying out the express terms of this Agreement; (ii) will promptly submit to California Department of Public Health (CDPH) and the applicable Medi-Cal plan all requests for disclosure of such information; (iii) will not disclose, except as otherwise specifically permitted by this Agreement, any such information to any party other than CDPH and the applicable Medi-Cal plan without prior written authorization specifying that the information is releasable under Title 42, CFR, Section 431.300 *et seq.*, under Section 14100.2 of the Welfare and Institutions Code and regulations adopted thereunder, or as ordered by a court or tribunal of competent jurisdiction; and (iv) will, at the expiration or termination of this Agreement, return all such information to CDPH and the applicable Medi-Cal Plan or maintain such information according to written procedures sent to health plan by CDPH and the applicable Medi-Cal plan for this purpose.

#### 5.12 **Disclosure of Records**

Contractor agrees to provide upon reasonable notice to County, to any federal or state department having monitoring or reviewing authority, to County's authorized representatives, and/or to their appropriate audit agencies access to and the right to examine and audit all records and documents necessary to determine compliance with this Agreement, to determine compliance with relevant federal, state, and local statutes, ordinance, rules, and regulations, and to evaluate the quality, appropriateness, and timeliness of services performed under this Agreement. Contractor shall comply with all provisions of the Omnibus Budget Reconciliation Act of 1980 regarding access to books, documents, and records.

Without limiting the foregoing, Contractor shall maintain such records and provide such information to County and to government officials as may be necessary for compliance by County with all applicable provisions of all state and federal laws governing County. Upon request, County and government officials shall have access to and be given copies of, at reasonable times at the Contractor's place of business (or such other mutually agreeable location in California), the medical records, books, charts, business records, and papers relating to the Contractor's provision of health care services to patients, the cost of such services, payments received by the Contractor from patients (or from others on their behalf), and the financial condition of Contractor. Such records

described herein shall be maintained at least four (4) years from the end of the contract term.

All records of Contractor shall be maintained in accordance with the general standards applicable to such book or record keeping and shall be maintained during any governmental audit or investigation.

5.13 **Electronic Signature**

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

5.14 **Exhibits and Attachments**

The following exhibits and attachments are included hereto and incorporated by reference herein:

- Exhibit A—Services
- Exhibit B—Payments
- Exhibit C—Performance Metrics
- Exhibit D—List of Contractor Providers
- Exhibit E—Corporate Compliance SMMC Code of Conduct (Third Parties)
- Attachment I—§ 504 Compliance

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: SUTTER BAY MEDICAL FOUNDATION DBA PALO ALTO MEDICAL FOUNDATION FOR HEALTH CARE, RESEARCH AND EDUCATION

	06/03/2021	
Contractor Signature	Date	Robert Nordgren, M.D. Peninsula Area CEO



COUNTY OF SAN MATEO

By:  
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:  
Clerk of Said Board

**ACKNOWLEDGMENTS**

The undersigned hereby acknowledges receipt of a copy of this Agreement and acknowledges the terms contained herein.

**PALO ALTO FOUNDATION MEDICAL GROUP, INC.**

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

Name: Kurt Vande Vort, M.D.

Title: Chief Executive Officer

## **EXHIBIT A**

### **SERVICES**

In consideration of the payments specified in Exhibit B, Contractor shall ensure that Contractor Provider(s) listed in Exhibit D perform the services described below under the general direction of the Chief Medical Officer and the SMMC Chief of Surgery.

- I. While providing coverage shifts, Contractor Provider(s) shall provide professional general surgery services in the Division of SMMC, Department of Surgery, including inpatient, outpatient, and emergency care, as further described below in this Exhibit A.
- II. Contractor Provider(s) shall participate in such scheduled Call Coverage Shifts for general surgery service as set forth in Section VII of this Exhibit A and as may be further mutually arranged and agreed upon in writing by members of the Department of Surgery from time to time under the supervision of the Chief of Surgery.

Contractor Provider(s) shall develop a schedule for "on-call" and/or "emergency-call" status during other than scheduled times and for twenty-four (24) hours each Saturday, Sunday, or holiday. "On-call" and "emergency-call" ("Call Coverage Shifts") are defined as being available by telephone or pager to the hospital medical staff, nursing supervisor, and administrator on call as needed. In addition, Contractor Providers must adhere to the guidelines of the San Mateo County Trauma System by being immediately available by telephone and must make every reasonable effort to be present at the hospital at the time of the patient's arrival.

It is expressly understood that Contractor Provider(s) and any other of Contractor's subcontractors for medical specialty services are subject to these conditions, that all will accept scheduling for "on-call" status, and that each will be responsible for his/her portion of "on-call" time. All physicians who take calls for medical specialty services must have SMMC privileges.

General Surgery Call Coverage Shifts are provided 274 nights per year, Monday – Friday, 5:00 p.m. – 7:00 a.m. and Saturday and Sunday 7:00 a.m. – 7:00 a.m.

- III. Contractor Provider(s) shall participate in such teaching and/or training programs as are, or may be, established by the medical staff at SMMC. Each individual's participation in continuing education is documented and considered at the time of reappointment to the medical staff and/or renewal or revision of individual clinical privileges.
- IV. Contractor Provider(s) shall fulfill those requirements for active staff membership set forth in Articles 3 and 4.2 of the SMMC Medical Staff Bylaws, Rules and Regulations

and maintain such active staff status as a condition of the Agreement. If Contractor Provider(s) have not already completed such training within two years prior to the effective date of this Agreement, Contractor Provider(s) shall complete the SMMC's General Compliance Training within 30 days of execution of this Agreement.

- V. Contractor Provider(s) shall attend regularly and serve without additional compensation on committees responsible for peer review activities, quality assurance, and utilization review as outlined in the SMMC Medical Staff Bylaws, Rules and Regulations.
- VI. During the term of this agreement, Contractor Provider(s) shall collectively provide on average, a minimum of nine (9) hours per month of medical staff administrative support to hospital and nursing with respect to scheduling clinic, surgery and call coverage and in meeting surgical and anesthesia standards as defined by the Joint Commission, Title XXII, and other applicable standards.

Administrative services to be provided by Contractor Provider(s) shall include the following:

- a. Quarterly review of the performance metrics set forth in Exhibit C of this Agreement with the development of subsequent corrective action plans as needed
  - b. Monthly review of productivity data on both a department and individual basis
  - c. Participate on and meet regularly with the Credentials Committee
  - d. Review of surgery clinic performance with the development of corrective action plans as needed
  - e. Compile weekly clinic/OR schedule for Contractor Providers
  - f. Compile Contractor Providers' call schedule
- VII. General Surgery Responsibilities and Expectations
- a. While providing coverage of the general surgery service, Contractor shall ensure that Contractor Provider(s) provide professional general surgery services including inpatient, outpatient, and emergency care. The area of coverage for Contractor Provider(s) within the field of general surgery shall include surgical services to address diseases of the gastrointestinal tract, liver, pancreas, intra-abdominal organs, breast, endocrine glands, and skin and soft tissues, including thoracic surgery.

- b. For the entire term of the Agreement, Contractor shall ensure that Contract Provider(s) provide on-site coverage for a minimum of three (3) clinics per week, each of which clinic shall be of at least four (4) hours in length, with each of general surgery outpatient clinic sessions conducted at the SMMC outpatient clinics, as identified by the SMMC Chief Medical Officer, Chief of Surgery, or designee.
- c. For the entire term of the Agreement, Contractor shall ensure that Contract Provider(s) provide on-site coverage and be available to perform general surgery professional services for a minimum of four (4) hours of general surgery on four (4) days per week, on days of the week mutually determined in consultation with the Chief of Surgery. Contractor Providers shall provide such services for three (3) weeks out of every four (4) week period and Contractor and the County acknowledge that the County intends to enter into an agreement with Dr. David Jegge pursuant to which he will provide such general surgery services every fourth week.
- d. Contractor shall ensure that Contractor Provider(s) provide 274 Call Coverage Shifts per year (specifically, Contractor/Contractor Providers shall not provide such Call Coverage Shifts every fourth night and every fourth weekend, as coordinated with the SMMC Chief of Surgery, for as long as the County contracts with Dr. Jegge for such Call Coverage Shift services), including performance of surgical procedures as determined necessary by the Division of General Surgery.
- e. Contractor shall ensure that Contractor Provider(s) provide inpatient postoperative care as dictated by standard surgical practice and in compliance with SMMC medical staff requirements for the general practice of medicine.
- f. In order to provide comprehensive general surgery services for the term of this Agreement, County intends to contract directly with Dr. David Jegge for the following services:
  - 1. One half-day surgery clinic block per week (on Wednesday, unless a different day is otherwise agreed in advance by Dr. Jegge and the SMMC Chief of the Department of Surgery) of at least four (4) hours in length, with a target of 20 patients seen in each half-day clinic.
  - 2. One half-day surgery block of approximately four (4) hours in length, during the fourth week each month with the specific date to be mutually agreed by the Contractor and the Chief of the Department of Surgery.

3. Provision of Emergency Department and inpatient consultations, every fourth night and every fourth weekend, including performance of surgical procedures as determined necessary by the Chief of Surgery.
  4. Provision of inpatient postoperative care as dictated by standard surgical practice and in compliance with SMMC medical staff requirements for the general practice of medicine.
- g. If the County is unable to continue a contract with Dr. Jegge or the contract with him expires or terminates for any reason, the County shall have the right to require Contractor to provide the services set forth in Paragraph f of this Section VII , above, and if County requires Contractor to provide these services, County will increase the monthly compensation payable to Contractor under this Agreement as described in Exhibit B of this Agreement by \$27,677 per month.

## **EXHIBIT B**

### **PAYMENTS**

In consideration of the services specified in Exhibit A, County will pay Contractor based on the following:

- I. Payment hereunder has been calculated by County in a manner consistent with reimbursement for general surgery services based on MGMA 2019 Physician Compensation and production Report, General Surgery, Western Median, 1.6 FTE.
- II. Subject to achievement of the Performance Metrics as described in Exhibit C, Contractor shall be paid at fixed rate of NINE HUNDRED FORTY-SEVEN THOUSAND EIGHT HUNDRED SIXTY FIVE DOLLARS (\$947,865) per year, to be paid in monthly installments of SEVENTY EIGHT THOUSAND NINE HUNDRED EIGHTY-NINE DOLLARS (\$78,989) (one-twelfth of the annual rate) for each month worked.
- III.
  - A. Contractor compensation for general surgery from the County will be based on the service hours of clinic and surgical time set forth in Section VII of Exhibit A. If the contract terms of services are amended such that the current numbers of clinic sessions and surgical time in Exhibit A are changed, the compensation shall be adjusted in proportion to the change in service hours.
  - B. Additionally, the compensation in this Agreement has been based upon an assumed level of productivity. The annualized average monthly Medicare Resource-Based Relative Value Scale Relative Value Work Units (wRVUs) for the SMMC general surgery services department as a whole must meet 8,811 wRVUs (based upon MGMA 2019 available data 1.6 FTE). If the average monthly work units for Contractor's productivity vary by fifteen percent (15%) over a six (6) month period, the Agreement will be modified to match the level of productivity. Both parties shall have the right to review and audit the other party's data supporting the calculation of productivity. This Section II.B shall not be effective unless and until County shall make available to Contractor accurate and complete monthly reports of each Contractor Provider's productivity in wRVUs.
- IV. Failure of Contractor to perform the listed services in any given month constitutes a material breach of this Agreement, and in such circumstances, the County, at its option, may withhold payment for any portion of services not rendered, terminate the Agreement pursuant to the termination provisions above, work with the Contractor to reach a schedule for returning the Contractor to performance under this Agreement, revise this Agreement pursuant to the terms of this Agreement, pursue any remedy available at law, or any combination of these options. The Contractor is not entitled to payment for non-performance of services listed by this

Agreement.

- V. For SMMC patients treated at Mills-Peninsula Hospitals, Contractor shall bill all payers, including Medicare, Medi-Cal, Health Plan of San Mateo, commercial insurance, or “self-pay” patients. Contractor shall claim against third-party payer for payment, and County shall bear no financial responsibility for such patient with such third-party payers.
- VI. Contractor shall be paid monthly in equal installments of the annual compensation set forth below. These payments will be subject to the performance metrics that are set forth in Exhibit C to this Agreement and Contractor’s compensation may be reduced due to a failure to meet the performance metrics in a prior quarter, as described below and in more detail in Section II of Exhibit C.

To incentivize Contractor to meet SMMC quality and performance standards set forth in Exhibit C, Contractor will be at risk for a reduction in compensation of ten percent (10%) of the total annual fee, which is equal to TWENTY-THREE THOUSAND SIX HUNDRED AND NINETY-SEVEN DOLLARS (\$23,697) per quarter. A maximum of TWENTY-THREE THOUSAND SIX HUNDRED AND NINETY-SEVEN DOLLARS (\$23,697) will be refunded by Contractor to County on a quarterly basis if the metrics are not met. If Contractor’s compensation for clinical services is reduced for any reason (such as a reduction in the total amount of services), the amount of the reduction in compensation shall also be proportionately reduced.

- VII. Contractor’s annual compensation is based on the following:

A.	Scheduled clinics and surgical time described in Exhibit A, Section VII	\$698,665
B.	Call Coverage General Surgery \$800/Call Coverage Shift x 274	\$219,200
C.	Medical Director and scheduling clinic, surgery and call coverage: \$2,500/month	\$30,000
	<b>Total:</b>	<b>\$947,865</b>

- VIII. Unless increased pursuant to Paragraph g of Section VII of Exhibit A, total payment for services performed under this Agreement will not exceed NINE HUNDRED FORTY-SEVEN THOUSAND EIGHT HUNDRED SIXTY-FIVE DOLLARS (\$947,865) per year. Over the three year term of this Agreement, the maximum amount payable will not exceed TWO MILLION EIGHT HUNDRED FORTY-THREE THOUSAND FIVE HUNDRED AND NINETY-FIVE DOLLARS (\$2,843,595).

IX. Payments shall be directed to:

Palo Alto Medical Foundation

Standard Mail:

PAMF Physician Checks

P.O. Box 619100

Roseville, CA 95661

FedEx, UPS, or Other carrier that does not deliver to P.O. Boxes:

PAMF Physician Checks

Sutter Shared Services

9100 Foothills Blvd

Roseville, CA 95747

## EXHIBIT C

### PERFORMANCE METRICS

- I. Both County and Contractor acknowledge the need for a quality-based performance payment model based on mutually acceptable units of measurement. Amounts at risk will be reconciled quarterly to Contractor on the basis of the following metrics achieved by Contractor Provider(s):
  - A. Ninety five percent (95%) of the time, Contractor Providers will staff the clinic as scheduled. If Contractor Provider is treating a patient in the Emergency Department or in the Operating Room, it is the Contractor's responsibility to find replacement clinic coverage. At no time will the same Contractor Provider be scheduled to be clinic and in Operating Room or Emergency Department.
  - B. In at least ninety five percent (95%) of cases in which the provider is more than thirty (30) minutes late for the start of clinic, a plan of action will be communicated to the PSA and the nurse practitioner assisting in the clinic.
  - C. Documentation, including charge capture, will be completed within seventy-two (72) hours for each patient of a Contractor Provider, with no more than ten (10) delinquent charts per month for the group. A chart is delinquent if not closed within 21 days.
  - D. Central Line Insertion Practice (CLIP) appropriate documentation to meet CDPH requirements will be completed within 48 hours of procedure. .
  - E. Surgical site infection rates for General Surgery less than the higher of (i) 2.5% or (ii) the surgery department average (excluding Contract providers).

Compliance is measured by meeting or exceeding each of the metrics listed in this Exhibit C, Section I.

- II. Both the County and Contractor acknowledge Contractor cannot achieve the metrics detailed in Section I of this Exhibit C, without assistance and cooperation from the County and, at times, there are conditions the Contractor cannot control. Therefore, the County must meet the following operational conditions, and failure to do so will have the consequences described below in Exhibit C, Section III.
  - A. Ninety percent (90%) or better on time (8:00 a.m.) arrival for clinic staff. Noncompliance is defined as clinic staff unable to begin assisting patients and provider after 8:15 a. m.
  - B. The Surgical Group Medical Director will meet with Medical Director of Specialty Services at mid-quarter (six (6) weeks into each quarter) to review metrics which are not tracking to

meet the goal.

- C. Patients seen in the Surgical clinic will be ninety five percent (95%) compliant with SMARTT expected practice guidelines, as set forth in Exhibit G.
- D. The Surgical Group Medical Director or designee will meet at least once per quarter with the Medical Director of 2A/B to work on operational barriers delaying or prevailing surgery for 2A/B patients.
- E. A list of surgical clinic charts which are fourteen (14) days past due will be presented by the PSA to the surgeon to sign and 100% will be completed and signed off the same day in clinic

III. In the event that the County fails to meet any of the conditions listed in Subsections II.A through II.E of this Exhibit C during any quarterly period during the term of this Agreement, Contractor shall be entitled to a credit of \$4,739 (equal to one-fifth (1/5) of \$23,697 as set forth in Section VI of Exhibit B) for that quarter for each condition that the County failed to achieve during that quarter that may be offset against any amounts to which the County would otherwise be entitled due to the Contractor's failure to meet performance metrics during the same quarter. Thus, whether the County is entitled to amounts from Contractor due to Contractor's failure to meet performance metrics is affected by whether Contractor actually meets or failed to meet the metrics described in Section I of this Exhibit C to the Agreement, as well as whether County meets the conditions set forth in Section II of this Exhibit C to the Agreement. By way of example, the calculation each quarter will follow this logic:

If Contractor fails to achieve 2 out of 5 metrics during a given quarter, Contractor's compensation will be reduced by two fifths (2/5th) of the \$23,697 total that is at risk for failure to meet all five of the metrics set forth in this Exhibit C (i.e., \$9,479). Contractor would, however, be entitled to retain the three fifths (3/5th) of the \$23,697 that corresponds to the three performance metrics achieved during that quarter (i.e. \$14,218). If however, in the same quarter the County fails to achieve one of its five operational conditions, Contractor shall be entitled to receive an additional amount equal to one fifth (1/5) of the \$23,697 performance incentive amount at risk during the quarter (i.e. \$4,739). Therefore, in this example, where Contractor has failed to achieve two of the five performance operational conditions, the Contractor shall be subject to a reduction in compensation corresponding to the two performance metrics that the Contractor failed to achieve, less the amount corresponding operational condition that the County failed to achieve.

The County's failure to achieve operational conditions in any given quarter shall only be considered in determining whether the Contractor is entitled to an offset for the Contractor's failure to achieve performance metrics under this Agreement and under no circumstances shall County's failure to achieve operational standards result in Contractor receiving compensation beyond that

set forth in Exhibit B to this Agreement.

As stated above, under no circumstances shall Contractor ever receive for any quarter an amount greater than the total quarterly payment amount of \$236,967 set forth in Section II of Exhibit B. Once the determination of Contractor compliance with performance metrics is complete following each quarter, any “reduction” assessed from the calculation of the quarter in accordance with this Exhibit C will be withheld from the monthly payment immediately following the date upon which County informs Contractor of the extent of its compliance with the performance metrics for the preceding quarter.

Contractor’s earned contractual compensation will be reduced by up to a maximum of TWENTY-THREE THOUSAND SIX HUNDRED NINETY-SEVEN DOLLARS (\$23,697) for failure to meet or exceed metrics each quarter. Each metric is valued at FOUR THOUSAND SEVEN HUNDRED AND THIRTY-NINE DOLLARS (\$4,739) each quarter.

**Exhibit D**

List of Contractor Providers

Kimberly Dalal, MD  
Pamela Foster, MD  
Monica Grova, MD  
Eric Kubat, MD  
Blake Read, MD  
Albert Wetter, MD  
Randolph Wong, MD

## **EXHIBIT E**

### **CORPORATE COMPLIANCE SMMC CODE OF CONDUCT (THIRD PARTIES)**

Contractor recognizes and is fully dedicated to advancing SMMC's commitment to full compliance with all Federal, State, and other governmental health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements.

Contractor will comply with all Federal, State or other governmental health care program requirements.

The Undersigned, to the extent its contractual duties require it to submit the reports covered in this paragraph, will promptly submit accurate information for Federal health care cost reports including, but not limited to, the requirement to submit accurate information regarding acute available bed count for Disproportionate Share Hospital (DSH) payment.

Contractor will report to the SMMC Compliance Officer any suspected violation of any Federal health care program requirements within fifteen (15) days of discovery of the violation.

Contractor has the right to use the SMMC Disclosure Program by calling the Compliance Hotline at (800) 965-9775 or reporting incidents directly to the Compliance Officer. SMMC is committed to non-retaliation and will maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

Contractor understands that non-compliance with Federal and State health care program requirements, and failing to report any such violations, could result in termination of the Agreement and/or any other penalties as permitted by law.

Contractor is responsible for acquiring sufficient knowledge to recognize potential compliance issues applicable to the duties outlined in the Agreement and for appropriately seeking advice regarding such issues.

Contractor will not offer, give or accept any "kickback," bribe, payment, gift, or thing of value to any person or entity with whom SMMC has or is seeking any business or regulatory relationship in relation to said business or regulatory relationship (other than payments authorized by law under such relationships). Contractor will promptly report the offering or receipt of such gifts to the SMMC Compliance Officer.

Contractor will not engage in any financial, business, or other activity which may interfere or appear to interfere with the performance of the duties under the Agreement or that involve the use of SMMC/County property, facilities, or resources.

Contractor will cooperate fully and honestly in the event that SMMC and/or County is audited by an outside agency including, but not limited to, compliance audits regarding enforcement of Federal and State regulations, any applicable accreditation standards, and/or SMMC system-wide policies.

***TO REPORT VIOLATIONS,  
CALL THE COMPLIANCE HOT LINE: (800) 965-9775***

Contractor, in executing this Agreement, certifies that an authorized representative has received this Code of Conduct, understands it, has authority to commit Contractor to this Code of Conduct, and has committed Contractor to comply with this Code of Conduct.

# ATTACHMENT I

## Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

Contractor (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R.

84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

**Name of 504 Person:** Robert Nordgren, MD

**Name of Contractor(s):** Sutter Bay Medical Foundation dba  
Palo Alto Medical Foundation for  
Health Care, Research, and Education

**Street Address or P.O. Box:** 795 El Camino Real, 3<sup>rd</sup> Floor Administration

**City, State, Zip Code:** Palo Alto, CA 94301

I certify that the above information is complete and correct to the best of my knowledge

**Signature:**



**Title of Authorized Official:** Peninsula Area CEO

**Date:** 06/03/2021

\*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."