

CONSTRUCTION AGREEMENT

by and between

PENINSULA HEALTHCARE DISTRICT,

a political subdivision of the

State of California

and

MILLS-PENINSULA HEALTH SERVICES,

a California nonprofit public benefit corporation

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CONSTRUCTION AGREEMENT

This Construction Agreement ("**Agreement**"), which the parties executed on _____, 2005, and the Effective Date of which shall be the effective date of the Master Agreement as determined under Section 4.01 of the Master Agreement (as defined below), is entered into by and between Peninsula Healthcare District, a political subdivision of the State of California ("**District**"), and Mills-Peninsula Health Services, a California nonprofit public benefit corporation ("**MPHS**").

Recitals

A. The District and MPHS entered into that certain Restructured Relationship Pre-Closing Agreement of even date herewith ("**Pre-Closing Agreement**"). The parties also have entered into that certain Master Agreement of even date herewith ("**Master Agreement**"), concurrently effective as of the Effective Date hereunder. All capitalized terms used in this Agreement, unless defined herein, shall have the meaning set forth in the Master Agreement. Pursuant to the terms and conditions of the Master Agreement, the parties have negotiated the terms and conditions of this Agreement and of the other Definitive Agreements, all of which the parties shall execute concurrently with this Agreement. Upon the Closing, the Definitive Agreements shall document and govern the parties' Restructured Relationship as provided in the Master Agreement.

B. For the various reasons recited in the Master Agreement, District and MPHS will establish the Restructured Relationship, effective as of the Effective Date hereof, pursuant to which MPHS shall develop, construct, and operate a new general acute care hospital ("**New Facility**"), and the appurtenant parking facility and parking areas, a medical office building, helipad and other related improvements and landscaping (the "**Related Improvements**"). The New Facility and the Related Improvements may be collectively referred to herein as the "**Improvements.**" Both District and MPHS have concluded that construction of a new facility (rather than substantial reconstruction of the Existing Hospital) is the most efficient and economical method to achieve timely compliance with the seismic standards for acute care hospital under Senate Bill 1953, which are codified in California Health and Safety Code Sections 130000 through 130070 et seq., and Section 18938 (the "**Seismic Standards**").

C. The parties' Restructured Relationship, as set forth in this Agreement and in the other Definitive Agreements, generally provides for MPHS' development and construction of the Improvements upon roughly twenty-one (21) acres of the Fully Merged Parcel as described in **Exhibit A** ("**New Facility Site**") during the term of the Construction Ground Lease, and its operation of the New Facility for the fifty (50)-year initial term and possible twenty-five (25)-year extended term of the Ground Lease. MPHS will lease from District, first under the Construction Ground Lease, and then, effective as of the Start Service Date, under the Ground Lease, the entire Fully Merged Parcel, the Marco Polo Lot and the Davis Drive Access (as described in **Exhibit A**); provided, however, that after MPHS demolishes the Existing Hospital and performs certain other items with respect thereto as set forth in this Agreement, the parties will record the Phase 3 Map and MPHS will release from the Ground Lease that certain 4.15 acres of the Final Merged Parcel ("**District's 4.15 Acre Parcel**") and the Marco Polo Lot, both of which shall comprise portions of the District Controlled Land.

D. Under the terms of this Agreement, MPHS will design and build the Improvements on the New Facility Site. MPHS shall build the Improvements at no cost to District and in substantial conformity and compliance with the EIR, the Regulatory Approvals, and the AA Plans, and shall build the New Facility (exclusive of the medical office building and Related Improvements) in conformity with the Seismic Standards. MPHS shall own and operate the Improvements during the term of the Ground Lease.

E. MPHS will pay for the development, entitlement, permitting, and construction of the Improvements at no cost to District in accordance with the terms of this Agreement and the other Definitive Agreements.

F. Sutter Health will guaranty MPHS' performance of its obligations under this Agreement to construct the Improvements, to demolish the Existing Hospital, and to prepare the District's 4.15 Acre Parcel, pursuant to a Guaranty Agreement ("**Guaranty Agreement**") in the form of Exhibit K to the Master Agreement.

G. MPHS will conduct the demolition of the Existing Hospital and the preparation of the District's 4.15 Acre Parcel after the Start Service Date of the New Facility in accordance with this Agreement. MPHS will pay for the demolition of Existing Hospital and the preparation of the District's 4.15 Acre Parcel.

H. The parties desire to enter into this Agreement as part of the restructuring of their relationship and to implement as of the Closing certain provisions of the Pre-Closing Agreement and Master Agreement and to establish certain rights and obligations with respect to the construction of the Improvements and the demolition of the Existing Hospital.

Agreement

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

ARTICLE I CONSTRUCTION OF NEW FACILITY

1.01. Demolition of Existing Buildings and Improvements on Merged Front Parcel. If not previously performed pursuant to the terms of the Pre-Closing Agreement, MPHS, at its sole cost and expense, shall demolish all of the existing buildings and improvements on that portion of the Merged Front Parcel upon which MPHS will construct the parking facility.

1.02. Plans for the New Facility and Improvements. The plans and specifications for the Improvements are generally contained in the EIR, the Regulatory Approvals, and the AA Plans. MPHS shall keep the District informed of the status and progress of MPHS' pursuit of final approval of the Regulatory Approvals and any material changes or modifications of any of the Regulatory Approvals or the AA Plans.

1.03. District and MPHS Secondary Approvals. If, after the Effective Date, the City or any other governmental agency exclusive of the District with jurisdiction over any of the Regulatory Approvals requires, or if MPHS requests, any material change to the EIR, the Regulatory Approvals, or the Improvements, and any such change would result in either

(i) Improvements that are materially different than provided for in the EIR or the Conditional Use Permit, or (ii) a "**Material Reduction**" (as defined below), then each of the parties shall not be bound by any such change(s) until each party's Board of Directors has approved such change(s) (the "**Secondary Approval**"). The District may not unreasonably withhold or condition its Secondary Approval of any change requested by MPHS, and neither party may unreasonably withhold or condition its Secondary Approval of any change required by any governmental agency. The parties intend that the Improvements, especially the New Facility, be sized in a manner consistent with projected needs and uses within the community and good business practices. The parties intend that a Material Reduction be permitted if regulatory changes, market conditions or community health care need warrant such changes, or such changes are necessary to obtain required regulatory permits or approvals. Any changes to the EIR, the Regulatory Approvals, or the Improvements that do not result in either (a) a New Facility or other Improvements that are materially different than provided for in the EIR or the Conditional Use Permit, or (b) a Material Reduction, shall not require either party's Secondary Approval. If either party's Board of Directors fails to approve or disapprove any change that requires such party's Secondary Approval hereunder within sixty (60) days after such party's Board of Directors is presented with the change, such party's Board of Directors shall be deemed to have provided Secondary Approval of such change. However, in no event shall a reduction that exceeds fifty percent (50%) in the number of beds of the New Facility be permitted without the District's express Secondary Approval.

A. Material Reduction. As used in this Agreement, "**Material Reduction**" is any reduction in the size of the New Facility that reduces the total square footage of the New Facility or the number of beds therein by an amount greater than fifteen percent (15%).

B. No Secondary Approval. If either party does not provide its Secondary Approval and such approval was not unreasonably withheld or conditioned, then this Agreement shall terminate without default or breach by either party upon notice by one party to the other of its decision to terminate this Agreement and the parties shall not have any further obligations to one another hereunder (except for those obligations of the parties that survive termination of this Agreement). Should this Agreement be terminated under this Section 1.03.B, then the District shall have the remedies set forth under Section 5.02.A.3 of the Master Agreement and MPHS shall have the remedies set forth under Section 5.04.A.2 of the Master Agreement.

1.04. Demolition and Construction Contracts. MPHS shall enter into such demolition and construction contracts as MPHS deems appropriate for the demolition of the existing buildings and construction of the Improvements. MPHS shall use commercially reasonable efforts to cause each of such contracts to include insurance provisions from the contractor and all subcontractors that meet the insurance requirements set forth in Section 3.04 of this Agreement, including without limitation that naming of the District as an additional insured under all such contractors' and subcontractors' policies.

1.05. Construction of Improvements. MPHS shall use its commercially reasonable efforts to cause the construction of the Improvements to be conducted and the Improvements to be constructed and completed in conformance with the EIR, the Regulatory Approvals, the AA Plans, and any other plans and specifications relevant thereto and ready for occupancy in accordance with the times specified in this Section 1.05. Subject to obtaining Regulatory

Approvals, MPHS shall use its commercially reasonable efforts consistent with Sutter Health's ability to meet its financial obligations to complete the Improvements by the date legally required by Seismic Standards. Notwithstanding the foregoing, MPHS shall use its commercially reasonable efforts to substantially complete construction of the Improvements (other than those Improvements that are to be constructed on the Existing Hospital Site) by no later than December 31, 2013.

1.06. Notice to District. MPHS shall give District ten (10) days prior notice before the start of construction on the Improvements, or of any distinct component thereof for which MPHS shall use a different general contractor, or of the demolition of the Existing Hospital, or of the start of construction on the Improvements on the Existing Hospital Site, to allow District to post any notices of non-responsibility that District desires to post.

1.07. Compliance With Law and Standards. The New Facility shall be constructed, all work on the Premises shall be performed, and all other Improvements on the Premises shall be constructed in accordance with all valid laws, codes, ordinances, rules, regulations, and orders of all federal, state, county, or local governmental agencies or entities having jurisdiction over the Premises, including, with regard to the New Facility, the Seismic Standards. Work performed on the Premises under this Agreement shall be done in a good workmanlike manner.

1.08. District Cooperation. District, subject to its reasonable review and approval thereof with respect to any material amendments or changes to the Conditional Use Permit, the EIR or the AA Plans, which review and approval the District shall not unreasonably withhold, condition, or delay, agrees to execute any documents, petitions, applications, and authorizations that may be necessary or appropriate to obtain all Regulatory Approvals and all other authorizations, permits, and consents as needed for MPHS to perform the construction and demolition; provided, however, that any such authorizations, permits, or consents shall be obtained at the sole cost and expense of MPHS and MPHS agrees to protect and save District and the property of District, including the Premises, free and harmless from any such cost and expense.

1.09. Guaranty of Construction Obligations. Sutter Health shall guarantee the obligation of MPHS under this Agreement to construct the Improvements, to demolish the Existing Hospital, and to prepare the District's 4.15 Acre Parcel pursuant to a Guaranty Agreement substantially in the form attached hereto as **Exhibit B**.

ARTICLE II DEMOLITION OF EXISTING HOSPITAL

2.01. Notice to District. After the Start Service Date and after MPHS has moved all operations of Existing Hospital into the New Facility, which MPHS covenants to complete within six (6) months after the Start Service Date, MPHS shall give District notice of the date on which MPHS is prepared to commence to demolish Existing Hospital, which date shall be no later than six (6) months after the date of MPHS' notice to the District. District shall give MPHS notice of its acknowledgement of such date. The date determined by MPHS and provided to the District shall be the "**Demolition Start Date.**"

2.02. Demolition. On the Demolition Start Date, MPHS shall commence, and thereafter shall use commercially reasonable efforts to complete, demolition of the Existing Hospital and preparation of the District's 4.15 Acre Site within one (1) year after the Start Service Date, but not later than within two (2) years after the Start Service Date. MPHS anticipates that such demolition and preparation of the District's 4.15 Acre Site shall be completed within one (1) to two (2) years after the Start Service Date depending upon issues that may arise during demolition. MPHS may prepare or leave that portion of the Existing Hospital Site that will remain in MPHS' Leasehold Estate under the Ground Lease after the Phase 3 Map is recorded and the District's 4.15 Acre Site is removed from MPHS' Leasehold Estate in whatever state or condition that MPHS deems appropriate for its completion of the construction of the post-demolition Improvements thereon. MPHS shall leave, and shall clean and prepare at no cost to the District, the District's 4.15 Acre Parcel in the condition required under the Regulatory Approvals, including without limitation Condition #86 to the Conditional Use Permit or any successor thereto to which the District consents.

2.03. Compliance With Law and Standards. The demolition of Existing Hospital and the preparation of the District's 4.15 Acre Parcel shall be conducted in accordance with all Regulatory Approvals and all valid laws, building codes, ordinances, regulations, and orders of all federal, state, county, or local governmental agencies or entities having jurisdiction over such work.

2.04. Notice re District's 4.15 Acre Parcel and Punch List. When MPHS has substantially completed the preparation of the District's 4.15 Acre Site and is ready to record the Phase 3 Map therefor and return such parcel and the Marco Polo Lot to the District's possession and control, MPHS shall provide the District with written notice thereof. Within a reasonable time after the District receives such notice from MPHS, MPHS and the District shall jointly conduct a walk-through inspection of the District's 4.15 Acre Site and the Marco Polo Lot and shall negotiate in good faith to agree upon: (i) what work, if any, MPHS must perform or items MPHS must complete to place the District's 4.15 Acre Site into the condition required under this Agreement and the Marco Polo Lot to the condition it was in prior to the commencement of the Construction Ground Lease (all such work or items shall be "**MPHS' Punch List Work**"); and (ii) the schedule for MPHS to complete MPHS' Punch List Work. If the parties cannot agree upon any of the items set forth in the preceding sentence within five (5) business days after the walk-through inspection, either party may demand by written notice to the other party that the parties submit any disputed item to the dispute resolution process set forth in the Master Agreement. Upon MPHS' completion of MPHS' Punch List Work (and the District's approval thereof after additional inspection(s)), the parties shall execute a document (the "**Punch List Confirmation**") that confirms that MPHS has completed all of MPHS' Punch List Work and that the parties have recorded the Phase 3 Map.

ARTICLE III INDEMNITY AND INSURANCE

3.01. Indemnity by MPHS. MPHS shall defend, indemnify, and hold District and District's property, including the Premises, free and harmless from any and all liability, claims, loss, damages, expenses, injury, demand, action, cause of action, legal or administrative proceeding, penalty, fine, lien, judgment, cost, or expense whatsoever of any kind or character to

