

Agreement Concerning Pre-Closing Agreement and Project Changes

May 17, 2006

Restructured Relationship between Peninsula Healthcare District and Mills-Peninsula Health Services

Peninsula Healthcare District ("District") has requested that Mills-Peninsula Health Services ("MPHS") waive its right to propose a replacement project. MPHS is concerned with maintaining project budget stability despite the extended time period between the requested waiver and closing. After consideration of various factors that may impact the project budget, MPHS requests that the District agree that a number of changes to the project are acceptable to the District. It is possible that all, some or none of the delineated changes to the project will be made; however, MPHS requires the flexibility to make these changes if needed to control the project budget and meet the District's requested commitment to build the project.

The District's and MPHS' respective requests are summarized below.

I. Waiver of MPHS' Right to Propose a Replacement Project

MPHS waives its right to propose a replacement project under Section 3.01D of the Restructured Relationship Pre-Closing Agreement dated October 17, 2005 ("Pre-Closing Agreement") by and between MPHS and the District.

For reference purposes, Section 3.01D of the Pre-Closing Agreement reads in its entirety as follows:

"D. District's Secondary Consent to Replacement Project. Subject to the conditions therefor set forth in Section 3.01.D.1 below, MPHS shall have the right to propose a Replacement Project (as defined below). If MPHS proposes a Replacement Project, then the District shall not be bound to substitute such Replacement Project in lieu of the Improvements until the District's Board of Directors has consented to such Replacement Project ("**Secondary Consent**"). Such Secondary Consent shall be within the sole discretion of the District. The parties intend that any Replacement Project be sized in a manner consistent with projected needs and uses within the community and good business practices. If the District's Board of Directors fail to approve or disapprove any change that requires Secondary Consent hereunder within sixty (60) days after the District's Board of Directors is presented with the change, the District's Board of Directors shall be deemed to have not provided Secondary Consent of such change.

1. Replacement Project. As used in this Agreement, "**Replacement Project**" is a replacement project that may be proposed by MPHS that significantly changes the design of the New Facility so that the Replacement Project is, in effect, a different project than the New Facility. The parties agree that MPHS may propose a Replacement Project if either of the following occur:

(a) The total project costs to construct and equip the Improvements and conduct demolition and site preparation in accordance with the EIR and the Conditional Use Permit is projected to exceed four hundred eighty-eight million dollars (\$488,000,000); or

(b) It is not financially feasible for MPHS to pay for the total project construction of the Improvements and conduct demolition and site preparation in accordance with the EIR and the Conditional Use Permit. For purposes of this Section 3.01.D.1(b), financial feasibility of the project shall be determined in accordance with MPHS' and Sutter Health's policies and guidelines for financing the construction of hospitals and related improvements.

It is anticipated by the parties that if MPHS proposes a Replacement Project, the project size and projected scope of services will most likely be reduced to propose a Replacement Project that is financially feasible for MPHS to pay for, takes into account market conditions, reflects community health care needs and complies with regulatory requirements.

2. District Provides Secondary Consent. If the District provides its Secondary Consent to the Replacement Project, the parties shall then diligently and in good faith negotiate, and, if the negotiations are successful, enter into amended Definitive Agreements for such Replacement Project. The amended Definitive Agreements shall provide that the construction of the Replacement Project shall be at no cost to the District and in substantial conformity and compliance with any amended or new EIR and Conditional Use Permit to be obtained by MPHS, unless otherwise agreed to by the parties. If the parties are unable to agree to such amended Definitive Agreements, 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, upon such termination, neither party shall have any obligations to the other hereunder (except for those obligations of the parties that survive termination of this Agreement). Should this Agreement be terminated under this Section 3.01.D, then MPHS shall have no obligation to construct, or liability for not constructing, the Improvements or the Replacement Project. In addition, the parties agree the District shall pay MPHS for Pre-Closing Development Activities in accordance with Section 3.05.B.

3. No District Secondary Consent. If the District does not provide its Secondary Consent to the Replacement Project, then this Agreement shall terminate without default or breach by either party (except for those obligations of the parties that survive termination of this Agreement) upon notice

by one party to the other of its decision to terminate this Agreement. Should this Agreement be terminated under this Section 3.01.D, then MPHS shall have no obligation to construct, or liability for not constructing, the Improvements or the Replacement Project. In addition, the parties agree the District shall pay MPHS for Pre-Closing Development Activities in accordance with Section 3.05.B."

Section 3.05 (C) of the Pre-Closing Agreement is modified in its introduction sentence to read: "If this Agreement terminates in accordance with either of Sections 3.01 (C) or 3.01 (D), or due to breach by MPHS, then..."

II. District's Consent to Project Changes

The District consents to the project changes set forth on Exhibit A, attached hereto. The District and MPHS acknowledge and agree that MPHS will construct the project with or without some or all of the project changes described on Exhibit A. The District and MPHS also acknowledge and agree that no other consent or approval by the District or Secondary Approval by the District shall be required for these proposed project changes.

For reference purposes, Section 3.01C of the Pre-Closing Agreement reads in its entirety as follows:

"C. District and MPHS Secondary Approvals. If 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, the Improvements, or the Definitive Agreements, 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 the District'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, the Improvements, or the Definitive Agreements 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.

1. 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%).

2. 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, upon such termination, neither party shall have any obligations to the other hereunder (except for those obligations of the parties that survive termination of this Agreement). Should this Agreement be terminated under this Section 3.01.C, then MPHS shall have no obligation to construct, or liability for not constructing, the Improvements. In addition, the parties agree the District shall pay MPHS for Pre-Closing Development Activities in accordance with Section 3.05.B."

III. Effectiveness of Agreements

The District and MPHS agree that the agreements between them as discussed herein shall be effective only if an election of the voters of the District, as described in the Pre-Closing Agreement, takes place on August 29, 2006. If, for any reason, the election does not take place on August 29, 2006, these agreements shall have no effect.

Dated: _____

Donald E. Newman, M.D., Chair,
PHD Board of Directors

Dated: _____

Robert W. Merwin, Chief Executive Officer
Mills-Peninsula Health Services

EXHIBIT A

Project Changes

- I. Project Changes that May Be Deferred
(With possibility that changes may be added back at a later time)
- A. Shell (or do not build out) unrequired spaces such as:
- Most conference rooms on first floor (keep main conference center, which is divisible into 4 parts)
 - Medical Office Building ("MOB") business offices
(move to temporary leased space for HR, IT, other administrative functions, business offices)
 - Women's out-patient services
 - Any shelled rooms currently shown as unassigned in the plan
 - 3 operating rooms (open 7 operating rooms instead of 10)
 - 1 Nuclear Medicine camera room
 - Technology dock
 - Helipad
 - Fitness Center
- B. Re-use all medical equipment
- Defer some bed purchases
 - Install 1 MRI and shell out Room 2
 - Relocate at least 1 CT scanner
- C. Re-use Furniture
- D. Delay communications and entertainment systems
- Eliminate redundant AT&T connection
- E. Change exterior finishes
- Delete fountain at main entrance drop off and change to planter
 - Delete colored concrete (use standard city color)
 - Downgrade exterior lighting fixtures
 - Reduce plant sizes to required minimums
 - Downgrade exterior artwork required by the City
 - Delete fancy paving at fire road
- F. Downgrade interior finishes
- Reduce use of moisture resistant board to wet areas

- Change drop in ceilings to standard
- Change wall finish from class 5 to class 4 walls
- Reduce amount of redundant interior lighting
- Reduce security system to required minimum
- Lighting fixture value engineering
- Light fixture value engineering substitutions
- Downgrade interior artwork

II. Scope Reductions

(Project changes not possible to defer and, if made, must be made during construction)

- A. Eliminate top floor of hospital (35 beds)
- B. Eliminate remaining shelled beds (70 beds, total)
- C. Eliminate top level of MOB (keep structure to add later; also reduces future site parking)
- D. Tenant improvement allowance for top floor (dollars are included in deferrable items above)
- E. Eliminate 3 elevator stops for top floor
- F. Eliminate level 4 of MOB (keep structure to add later; also reduces future site parking)
- G. Tenant improvement allowance for level 4 (dollars are included in deferrable items above)
- H. Eliminate 3 elevator stops for level 4
- I. Eliminate top level 3 of MOB (keep structure to add later; also reduces future site parking)
- J. Tenant improvement allowance for level 3 (dollars are included in deferrable items above)
- K. Eliminate 3 elevator stops for level 3
- L. Reduce MOB structural system to preclude adding future floors

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