



June 14, 2011

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, California 94612-4305

Dear Board Members:

SUBJECT: APPROVE AND AUTHORIZE THE PRESIDENT OF THE BOARD TO SIGN A MEMORANDUM OF UNDERSTANDING WITH ALAMEDA COUNTY MEDICAL CENTER FOR THE HIGHLAND HOSPITAL ACUTE TOWER REPLACEMENT PROJECT, 1411 E. 31ST STREET, OAKLAND, CA; PROJECT NO. CPP05C204300000

RECOMMENDATION:

Approve and authorize the President of the Board to sign a Memorandum of Understanding (MOU) with Alameda County Medical Center (ACMC) for the Highland Hospital Acute Tower Replacement (ATR) Project.

DISCUSSION/SUMMARY:

The County leases facilities located on the Highland Hospital Campus to ACMC pursuant to the Medical Facilities Lease dated November 28, 2000. The County has undertaken a major, multi-year capital construction project on the Highland Campus.

Existing County and ACMC Agreements (all approved by your Board on June 23, 1998 and amended November 28, 2000) include:

1. Master Contract - Created "a partnership dedicated to providing comprehensive, high quality medical treatment, health promotion and health maintenance of Alameda County residents";
2. County Services Agreement - Concurrent with the Master Contract, the County and ACMC entered into a County Services Agreement (the "Services Agreement") pursuant to which the County contracted with ACMC to operate and manage the County's medical and health care facilities; and
3. Medical Facilities Lease - The County and ACMC also entered into a Medical Facilities Lease (the "Facilities Lease") in which the County leased to ACMC the Highland Hospital campus, Fairmont Hospital, and John George Pavilion properties for 30 years, ending in 2028.

The Facilities Lease expressed the Parties' intent for ACMC and the County to "jointly develop a working agreement (MOU) by which ACMC participates in the construction decision-making process...."

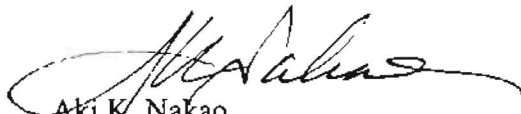
The MOU (attached) allows ACMC to participate in the design, development and construction decision-making process and other appropriate aspects of this large scale, complex, capital Project, and describes the roles and responsibilities of the parties during the Project. The MOU also addresses insurance provisions, indemnification, the project budget and financing, and lease and transfer provisions, including right of entry during construction and the transfer of assets upon completion of the project.

The MOU was approved by the Alameda County Medical Center Board of Trustees on June 21, 2011 and is being submitted for approval by your Board and execution by the Board President.

FINANCING:

There will be no increase in net County cost.

Respectfully submitted,



Aki K. Nakao
Director, General Services Agency

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Attachment

cc: Susan S. Muranishi, County Administrator
Patrick J. O'Connell, Auditor-Controller
Richard R. Karlsson, Interim County Counsel
Alex Briscoe, Director, Health Care Services Agency
Wright Lassiter III, CEO, ACMC

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of _____, 2011, by and between the County of Alameda ("County"), a political subdivision of the State of California, and the Alameda County Medical Center ("ACMC"), a public hospital authority created by the Alameda County Board of Supervisors pursuant to Section 101850 of the California Health and Safety Code (collectively the "Parties").

1. RECITALS

1.1 WHEREAS, the County and ACMC executed a Master Contract, dated June 23, 1998 and amended November 28, 2000 (the "Master Contract"), whereby they entered into a partnership dedicated to providing comprehensive, high quality medical treatment, health promotion and health maintenance of Alameda County residents; and

1.2 WHEREAS, concurrent with the execution and amendment of the Master Contract, the County and ACMC entered into and amended a County Services Agreement (the "Services Agreement") pursuant to which the County contracted with ACMC to operate and manage the County's medical and health care facilities; and

1.3 WHEREAS, pursuant to the terms of the Services Agreement, ACMC operates medical and health facilities at several locations within the County, including those on the Highland Campus located at 1411 East 31st Street in the City of Oakland ("Highland" or the "Facilities"); and

1.4 WHEREAS, the County and ACMC have also entered into a Medical Facilities Lease dated November 28, 2000 (the "Facilities Lease"), whereby the County leases Highland and other medical facilities to ACMC for a term of thirty (30) years; and

1.5 WHEREAS, the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1994 (SB 1953) requires all hospital facilities to meet new seismic standards, either through retrofit or replacement, by January 2013, with extensions to January 1, 2020 available under SB 306; and

1.6 WHEREAS, based upon an Evaluation Study, the County determined that the existing Acute Care Tower (the "H Building") located at Highland does not meet the current earthquake standards for hospitals mandated by state law, that it would not be possible to keep Highland operational during retrofit, and that the H Building cannot be cost-effectively retrofitted; and

1.7 WHEREAS, based upon those determinations, the County has undertaken the Highland Hospital Acute Tower Replacement Project (the "Project") to meet the requirements of SB 1953 and SB 306; and

1.8 WHEREAS, when the Parties entered into the Facilities Lease, the County had just

commenced construction of the Koret Foundation Critical Care Building Building; and

1.9 WHEREAS, paragraph 2.4.1 of the Facilities Lease expressed the Parties' intent for ACMC and the County to "jointly develop a working agreement (MOU) by which ACMC participates in the construction decision-making process where such construction decisions impact the provision of health care", including but not limited to, "ACMC participating in relevant periodic construction progress and design control meetings, and the development of the final punch list"; and

1.10 WHEREAS, the Services Agreement also provides for similar separate negotiated agreements for future capital projects or large scale, complex projects; and

1.11 WHEREAS, the County and ACMC desire to enter into a working agreement or MOU similar to that envisioned in the Facilities Lease and the Services Agreement to allow ACMC to participate in the design, development and construction decision-making process when and to the extent that it impacts the provision of health care;

1.12 NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference and to which the Parties hereby agree, and in further consideration of the covenants of the Parties hereinafter expressed, the Parties hereby further agree as follows:

2. DEFINITIONS

The definitions contained within the Master Contract are incorporated herein by reference and shall apply to this MOU. The following additional definitions also shall apply to this MOU except where otherwise provided:

2.1 **ACMC Project Representative.** "ACMC Project Representative" means such company or employee designated by ACMC, which representative is the Senior Project Manager of J-tech HCM, Inc., unless otherwise designated by ACMC. If the ACMC Project Representative changes, ACMC shall notify the County in writing of the change. The County shall be entitled to fully rely upon the statements, decisions and representations made by the ACMC Project Representative and such statements, decisions and representations shall be binding on ACMC. In addition to the ACMC Project Representative, only ACMC's Chief Executive Officer ("CEO"), Chief Operating Officer ("COO"), and Director of Facilities shall have the authority to speak on behalf of ACMC regarding the Project.

2.2 **Contractor.** "Contractor" means and refers to an entity, or its duly licensed successor or permitted assign, which is an independent contractor, licensed by the State to provide general construction services for the Project.

2.3 **County Project Manager.** "County Project Manager" means the County's Medical Facilities Program Manager, or her successor. If the County Project Manager changes,

the County shall notify ACMC in writing of the change. ACMC shall be entitled to fully rely upon the statements, decisions and representations made by the County Project Manager and such statements, decisions and representations shall be binding on the County. In addition to the County Project Manager, only County's GSA Director, Assistant Director and Technical Services Division Deputy Director shall have the authority to speak on behalf of the County regarding the Project.

2.4 **Design-Build.** "Design-Build" or "D/B" means the alternative procedure for bidding on construction projects authorized by California Public Contract Code Section 20133.

2.5 **Design-Build Entity.** "Design-Build Entity" means the Contractor selected by the County for the design and construction of Phase I, Phase II and Phase III of the Project. The D/B entity selected by the County is Clark Design/Build of California, Inc.

2.6 **GSA.** "GSA" means the General Services Agency of Alameda County, which Agency has responsibility for delivery and oversight of the Project.

2.7 **Highland Campus.** "Highland Campus" means the land and improvements known as the Highland Hospital and located at 1411 East 31st Street, Oakland, California.

2.8 **OSHPD.** "OSHPD" means the Office of Statewide Health and Planning Development.

2.9 **Program.** The "Program" means the Space Program and/or the Medical Equipment Program, as appropriate, included within the Project Manual for the Project.

2.10 **Project.** The "Highland Hospital Acute Tower Replacement Project" or the "Project" consists of four phases: Phase 0 (referred to as the "Enabling" or "Make Ready" work) involves the tenant improvements needed to relocate staff and programs from the V, VA, C, D and F Buildings; Phase I involves vacating and demolishing the 1956 Clinic Building (the "V Building") and the Auditorium ("VA Building"), vacating Wings C, D and F, and construction of a three-story (approximately 79,552 square-foot) clinic, administration, and services building (the "Satellite Building") with attached parking structure (approximately 89,000 square feet); Phase II involves demolition of Wings C, D and F, site preparation for, and design and construction of, a nine-story, 169-bed, OSHPD permitted and Department of Public Health licensed, acute care hospital facility (the "Acute Tower") and a corridor connecting each new building with the existing Koret Foundation Critical Care Building (the "K" building); and Phase III involves demolition of the existing Acute Tower (the "H" Building), construction of Link/Entrance Building between the Satellite and Koret Building, the site work and landscaping of the main internal plaza, and construction of an outdoor terrace adjacent to the cafeteria located in the Satellite Building. The Acute Tower, together with the central utility plant ("CUP"), Service Yard, connecting corridor and Bridge from the new Acute Tower to the K Building entail approximately 327,017 square feet of space.

2.11 **Project Manual.** "Project Manual" means the Division 1 and Division 0 documents, dated November 3, 2009, which are part of the Contract between the County and Design-Build Entity for the design and construction of the Project.

2.12 **Risk Management Unit.** "Risk Management Unit" or "Risk Management" means the County's Risk Management Unit located with the Chief Administrator's Office.

3. SCOPE

3.1 **Scope of MOU.** The terms of this MOU shall extend and apply only to the Project. The terms and conditions of the Master Contract, Facilities Lease, and Services Agreement shall take precedence over and control in the event of any conflict with the terms of the MOU. Any omissions, deficiencies or ambiguities in this MOU shall be supplied, corrected or clarified by the Master Contract, Facilities Lease, and Services Agreement.

3.2 **Insurance.** The Project Manual requires the Design-Build Entity to obtain and maintain certain classes of insurance and to provide a blanket endorsement on such policies for the County and its consultants (see Document 007320, paragraph 3). While the Joint Powers Agreement (Attachment 2 to the Master Agreement) establishes the terms upon which various programs of insurance are developed and funded for ACMC, the Parties intend to address specific Project insurance requirements in a separate written agreement, which may incorporate the terms of this MOU by reference.

3.3 **ACMC Operations and Personnel.** This MOU shall apply only to work performed with respect to the Project and shall have no application to any other work performed on the Highland Campus by ACMC, its employees, or contractors of any tier. Notwithstanding this exclusion, the MOU shall apply to all work performed by ACMC, its employees, or its contractors related to the purchase or lease and installation of furniture, fixtures, medical equipment, and security, telecommunications, data and moving services for the Project when such products and services are paid for from the Project budget.

3.4 **County Operations and Personnel.** This MOU shall apply only to work performed with respect to the Project and shall have no application to any other work performed on the Highland Campus by the County, its employees, or contractors of any tier.

3.5 **ACMC Participation.** ACMC may participate in the construction decision-making process of the Project to the extent that such participation is required, anticipated or permitted by the Project Manual.

3.6 **Facilities Lease Terms Unaffected.** The rights and obligations of the parties pursuant to the Facilities Lease shall not be affected or changed as a result of this MOU, except as provided in Section 6 of this MOU.

4. DUTIES AND OBLIGATIONS

4.1. ACMC Duties. Throughout the term of this MOU, ACMC shall have the following duties and obligations:

4.1.1 Cooperation. ACMC shall fully cooperate with the County and the D/B Entity and their respective employees, contractors and agents in facilitating all aspects of the design, development and completion of the Project. ACMC shall timely review and respond to all design and construction matters when its approval is required or appropriate.

4.1.2. Meet. ACMC shall meet and confer with County regarding the Project, including implementation of the financing arrangements associated with the Project. ACMC agrees to make its employees, officers, and contractors available from time to time upon the request of the County to discuss issues of mutual concern.

4.1.3 OSHPD. ACMC shall make every effort to assist the County in obtaining the requisite OSHPD construction approvals. ACMC shall fully cooperate with the County, the D/B Entity and OSHPD throughout the compliance process.

4.1.4 DPH. ACMC bears responsibility for obtaining all required licenses for the Project from the California Department of Public Health ("DPH"). The Parties recognize the role the County will play in assisting ACMC in discharging this responsibility, therefore the County shall cooperate with ACMC and DPH throughout the licensure process and will require the Design-Build Entity (pursuant to Section 3.3.6 of Project Manual Document 005200) and other County contractors and consultants to similarly cooperate with ACMC and DPH in this endeavor.

4.1.5. Testing and Inspection. As and to the extent requested by the County, ACMC shall provide appropriate and qualified personnel to fully participate in the testing and inspection of Project systems and equipment.

4.1.6. Site Conditions or Campus Activities. ACMC shall notify the Project Manager of any conditions of the site and/or events or activities occurring on the Highland Campus that could affect the Project and ACMC shall work with the County and the D/B Entity to ameliorate or mitigate such potential effects.

4.2. County Duties. Throughout the term of this MOU, the County shall have the following duties and obligations:

4.2.1 Cooperation. County shall fully cooperate with ACMC and its employees, contractors and agents in implementing the design and completion of the Project. County shall use its best efforts to minimize any disruption to or interference with ACMC's day-to-day operations resulting from the Project.

4.2.2. Meet. County shall meet and confer with ACMC regarding the Project, including implementation of the financing arrangements associated with the Project. The County agrees to make its employees, officers, and contractors available from time to time upon the request of ACMC to discuss issues of mutual concern.

4.2.3 Compliance with Law. County shall use its best efforts to require its contractors and sub-contractors to comply with all applicable laws and/or regulations, but in no event shall such efforts be required to include action by the County that would result in claims against the County by the Design-Build Entity.

4.2.4. Manual of Procedures. As necessary and appropriate, the County Project Manager and ACMC Project Representative will develop one or more Manuals of Procedures ("MOP") generally describing ACMC's role and participation in the Project.

5. PROJECT FUNDING

5.1. The Project Budget. The County has established a Project budget of \$668 million to satisfy "hard costs" (e.g., demolition and construction) and "soft costs" (e.g., professional services) of the Project. County and ACMC will endeavor to complete the Project within the Project budget. No additional County funds are available for the Project and, if the costs exceed the budget, the County and ACMC will mutually agree to revisions to the Program to bring the costs within the Project budget; provided, however, that if the County and ACMC are unable to reach a mutual agreement, then the County Board of Supervisors shall make such revisions to the Program to bring costs within the Project budget.

5.2. Project Financing. The County intends to finance the Project with a combination of commercial paper and bonds. ACMC shall fully cooperate with the County in the implementation of the funding mechanisms, including the use of all or part of the Highland Campus as collateral to secure the Project Financing which may require ACMC to subordinate existing leases to the interest of bond holders or other lenders.

6. LEASE AND TRANSFER PROVISIONS

6.1. Right of Entry. To accomplish the purpose of this MOU, ACMC hereby grants and conveys to the County, its agents, and/or its representatives (including but not limited to its employees, agents, consultants, Contractors and the D/B Entity) the right to enter and use the Property and to perform work related to the Project for and during the duration of the Project.

6.1.1. Incidental Rights. This right of entry and access includes the grant of all additional or necessary and appropriate rights which are incidental to the right of entry or are required to effectuate the purpose of this MOU and/or to complete the Project.

6.1.2. Control of Access to Project Site. The Project Manual gives the D/B Entity control over the means and methods of construction and responsibility for the Site of the

Project (see, for example, Project Manual, General Conditions, Section 007200, paragraph 7.2). The County's access to the Project Site is likewise limited by the Project Manual (see Project Manual, General Conditions, Section 007200, paragraph 8.3).

6.2. **Consent to Project.** ACMC hereby expressly consents to the Project and authorizes the County to take all necessary actions to implement and complete the Project, including but not limited to the demolition of various existing structures located on the Highland Campus.

6.3. **Partial Release of Facilities.** At such time as County is prepared to re-take possession of all or part of the Premises for the Project, the County shall give ACMC reasonable notice and opportunity to quit such Premises. Concurrent with the re-taking by the County, ACMC shall release such Premises from the Facilities Lease Agreement.

6.4. **Lease of Project Facilities.** Upon achieving Substantial Completion (as that term is defined in the Project Manual, References and Definitions, Section 014200, paragraph 1.5.1.74) of all or part of the Project, the County and ACMC shall amend or modify the Facilities Lease Agreement to lease the new substantially completed facilities to ACMC by listing them in Exhibit A of the Facilities Lease Agreement. The County may elect to modify the Facilities Lease Agreement to lease individual structures or habitable portions thereof to ACMC as those elements of the Project reach Substantial Completion. For example, the County may lease and ACMC shall accept the demise of the Satellite Building when construction of that structure is Substantially Complete. The County shall have full and absolute discretion in determining when construction is Substantially Complete and when the lease and transfer should occur.

6.5 **Transfer of Assets.** Concurrent with the modification of the Facilities Lease Agreement, the County shall convey and deliver, and ACMC shall accept, certain equipment and all furniture and furnishings, inventory of supplies, pharmaceuticals and disposables then on hand within the Facilities being transferred or being held in warehouse space and having been specifically designated for the use at the Facilities being transferred.

6.5.1. On or before the transfer date, ACMC and County shall mutually agree upon an equipment inventory list as of the day of transfer. All furniture and furnishings and the equipment inventory shall become the property of ACMC and shall be listed as an attachment to the Bill of Sale. Payment for equipment shall be made by ACMC to County in the amount of \$1 in cash or immediately available funds at the time the inventory is presented.

6.5.2. Except as otherwise set forth herein, the transferred assets are to be transferred from County to ACMC in an "as-is, where-is" condition, but free and clear of liens and encumbrances, except for liens created pursuant to the Master Contract in favor of County or liens created to fund the Project.

7. GENERAL PROVISIONS

7.1 **Term.** The term of this MOU shall be for the duration of the Project or until the termination of the Master Contract, whichever is earlier, unless terminated before by one or both of the Parties pursuant to the termination provisions of the Master Contract; provided, however, that the required notice of termination shall only be thirty (30) days. The terms and conditions in Article 4.1.3, 4.1.4, 6 and 7.2 of this MOU shall survive the termination of the MOU.

7.2. Indemnification.

7.2.1 ACMC agrees, at its expense, to defend, indemnify and hold harmless County, its Board of Supervisors, officers and employees, from and against all liabilities and claims, actions, causes of action, proceedings, losses, damages, costs or expenses, including attorneys', consultants' and experts' fees and costs arising out of: (1) any breach of any representation or warranty made or given by ACMC in this MOU; or (2) any breach of any of the provisions of this MOU or the negligent acts, omissions or intentional misconduct by ACMC or any of its officers, employees, subcontractors or agents in performance of the services rendered pursuant to this MOU; or (3) any negligent acts, omissions or intentional misconduct by one or more of its contractors or agents in performance of services rendered by such contractors or agents on behalf of ACMC. This obligation of ACMC to indemnify County includes, but is not limited to, any and all liability, fines, penalties and consequences from any noncompliance or violations of such laws, ordinances, codes and regulations by contractors or agents performing services on behalf of ACMC.

7.2.2 County agrees, at its expense, to defend, indemnify and hold harmless ACMC, its Board of Trustees, officers and employees, from and against all liabilities and claims, actions, causes of action, proceedings, losses, damages, costs or expenses, including attorneys', consultants' and experts' fees and costs arising out of: (1) any breach of any representation or warranty made or given by County in this MOU; or (2) any breach of any of the provisions of this MOU or the negligent acts, omissions or intentional misconduct by County or any of its officers, employees, subcontractors or agents in performance of the services rendered pursuant to this MOU; or (3) any negligent acts, omissions or intentional misconduct by one or more of its contractors or agents in performance of services rendered by such contractors or agents on behalf of County. This obligation of County to indemnify ACMC includes, but is not limited to, any and all liability, fines, penalties and consequences from any noncompliance or violations of such laws, ordinances, codes and regulations by contractors or agents performing services on behalf of County.

7.2.3 Each indemnified Party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying

party shall not relieve such indemnifying party from any liability which it may have otherwise on account of this Paragraph.

7.3 **Integration.** Except for the Master Contract, Services Agreement and Facilities Lease, this MOU contains the entire agreement of the Parties with respect to the subject matter of this MOU. It is the express intention of both the County and ACMC that any and all prior or contemporaneous contracts, promises, negotiations, or representations, either oral or written, relating to the subject matter of this MOU have no force, effect, or legal consequence of any kind.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding, to be effective as of the date first herein written.

ALAMEDA COUNTY MEDICAL CENTER

COUNTY OF ALAMEDA

Chief Executive Officer and Trustee

President, Board of Supervisors

By: _____
President, Board of Trustees

Approved as to Form:
Richard R. Karlsson, Interim County Counsel

Approved as to Form:

By:  _____

By: _____
Douglas B. Habig
General Counsel

Andrea L. Weddle
Senior Deputy County Counsel