

The Regents of the University of California

COMMITTEE ON HEALTH SERVICES

November 19, 2009

The Committee on Health Services met on the above date at Covell Commons, Los Angeles campus.

Members present: Regents De La Peña, Island, Lansing, Nunn Gorman, Pattiz, Ruiz, Stovitz, and Zettel; Ex officio members Blum, Gould, and Yudof; Advisory members Cheng and Powell; Staff Advisors Abeyta and Martinez

In attendance: Regents Bass, Bernal, Kieffer, Kozberg, Lozano, Makarechian, Marcus, Reiss, Schilling, and Varner, Regents-designate DeFreece and Hime, Faculty Representative Simmons, Secretary and Chief of Staff Griffiths, Associate Secretary Shaw, General Counsel Robinson, Chief Investment Officer Berggren, Chief Compliance and Audit Officer Vacca, Interim Provost Pitts, Executive Vice Presidents Darling and Taylor, Interim Executive Vice President Brostrom, Senior Vice Presidents Dooley and Stobo, Vice Presidents Lenz, and Sakaki, Chancellors Birgeneau, Block, Blumenthal, Desmond-Hellmann, Fox, Kang, Katehi, White, and Yang, Interim Director Alivisatos, and Recording Secretary Harms

The meeting convened at 9:15 a.m. with Committee Chair Lansing presiding.

1. **APPROVAL OF MINUTES OF PREVIOUS MEETING**

Upon motion duly made and seconded, the minutes of the meeting of September 17, 2009 were approved.

2. **AGREEMENT WITH LOS ANGELES COUNTY ON MARTIN LUTHER KING REPLACEMENT FACILITY**

The President recommended that the Committee on Health Services recommend that the Regents approve execution and implementation of the proposed Coordination Agreement between the University of California and Los Angeles County. (See attachment.)

[Background material was mailed to the Committee in advance of the meeting, and copies are on file in the Office of the Secretary and Chief of Staff.]

Committee Chair Lansing informed the Regents that over the past 18 months, a collection of diverse groups, including Los Angeles County Supervisors, private supporters, and the University of California, had come together to form a proposal to reopen the Martin Luther King Hospital (MLK) in Los Angeles. She observed that the Regents were all committed to the mission of outreach, diversity, and equal health care opportunities; they

had hesitated in becoming involved in this project because of the University's incredible financial difficulties. She said that the partners in the project had respectfully listened to the concerns of the Regents and had worked to address them. Committee Chair Lansing noted that the proposal would not have come together without the extraordinary work of Senior Vice President Stobo and President Yudof.

Dr. Stobo extended his thanks to the many individuals involved in the MLK project, particularly Associate Vice Presidents Muñoz and Nation, Deputy General Counsel Reynolds, and Committee Chair Lansing. He also thanked Regent De La Peña for his contribution to the item.

Dr. Stobo drew the attention of the Regents to the item's key document, entitled *Key Elements for Contract Between County and University Regarding Operation of MLK Community Hospital*. He observed that several changes to improve the document had been made, and that he would answer any questions the Regents might have. He explained that the contract proposed a reopening of MLK Hospital with 120 beds in what is presently the trauma unit, which is seismically compliant with state requirements through the year 2030. This community hospital would have an emergency room but no trauma unit at the outset. It would be part of a larger delivery system working in conjunction with ambulatory clinics in the area to deliver inpatient and outpatient services.

Dr. Stobo informed the Regents that the facility would be owned and operated by a new company, referred to, for now, as HospitalCo; neither the University nor Los Angeles County would own or operate the facility. UC would have no obligation to provide capital or ongoing financial support. HospitalCo would operate as a private, not-for-profit organization, a designation that would protect the public revenue streams that presently flow to other hospitals in the area while providing the greatest financial protection for Los Angeles County and UC. Both the University's Office of the General Counsel and an external opinion letter from the firm of McDermott Will & Emery indicate that there is minimal financial liability to UC if the proposed contract is agreed to.

Dr. Stobo explained that the board of HospitalCo would consist of seven members: two appointed by Los Angeles County, two by UC, and three jointly. No board member can be a current employee or officer of Los Angeles County or the University, and all members must have a minimum of ten years' experience in health care or a related area. He specified that, in response to concerns expressed by the Regents, the agreement now contains a clause that stipulates that after five years of operation, the method of appointing board members would be reviewed jointly. If both Los Angeles County and the University agree that there should be alternative means to appoint members, then the process could change, provided it did not disrupt the financial protections for Los Angeles County and UC.

Dr. Stobo stated that HospitalCo would contract with UC for the provision of physician services, and that the contract would come before the Regents for approval prior to being implemented. He said that the inpatient facility would require approximately 20 full-time

physicians, referred to as hospitalists or intensivists. Physicians from White Memorial Hospital, Harbor-UCLA Medical Center, and other community organizations would complement the full-time UC physicians who would staff the hospital. HospitalCo, not UC or Los Angeles County, would hire all other employees, including community physicians associated with the facility.

Dr. Stobo informed the Regents that Los Angeles County will provide approximately \$500 million in construction funding for the hospital, an additional ambulatory care building, and two other buildings for ancillary services such as radiology and laboratories. The County will also provide a start-up fund of \$50 million, which will be disbursed to the hospital in five yearly payments of \$10 million each, beginning on July 1, 2010. Dr. Stobo explained that the earliest the hospital could likely open its first stage, with 40 beds, would be the last quarter of 2012. If it does open at that time, MLK would have a reserve of \$30 million immediately available, with two additional payments of \$10 million each by 2015. On the day the hospital opens, continued Dr. Stobo, it also will have access to \$28 million, \$8 million in cash, and \$20 million as a line of credit. Those funds can be accessed by a supermajority (five out of seven) vote of the HospitalCo board. Dr. Stobo noted that yearly operating funds from the County are comprised of an intergovernmental transfer of \$50 million, which goes from the County to the state government, where it is matched with federal dollars used to support underserved populations. The resulting \$100 million would then be disbursed to HospitalCo. In addition, Los Angeles County would transfer \$13 million to the hospital on a yearly basis.

As an additional funding guarantee, Los Angeles County has agreed to provide a letter of credit of \$100 million 30 days prior to the hospital opening; in addition, this financing would remain in place for six years following the opening. During the fifth year, if both UC and Los Angeles County agree that the letter of credit should be extended, it could be. If needed, the letter of credit will be drawn down automatically, as determined by an independent paying agent, as follows: payments by Los Angeles County to HospitalCo will be made on a quarterly basis. Within the first 15 days of a payment being due, the agent will receive notification that the payment has been made; if the agent does not receive notice, Los Angeles County will be informed that it is in arrears, and will have 15 additional days to make the payment. If it does not, the agent is authorized to draw on the letter of credit in an amount equal to the quarterly payment, which would be matched in Sacramento and given to the hospital. The \$100 million letter of credit would cover two years of operation for the hospital if the County ceases its payments.

Dr. Stobo observed that the State would provide regulatory and legislative flexibility in terms of permits and licenses, and would help ensure cost-based outpatient payments through Medicaid. The University will have the responsibility to work with the hospital to contract for the physicians who will be employed full-time to work in the facility. UC physicians will play a prominent role in determining quality and credentialing guidelines; the University also will determine when and if educational programs will be initiated in the facility and will have oversight of those programs. Dr. Stobo cautioned that very little discussion of educational programs has occurred to date because the priority has been on

establishing MLK as an effectively run and fiscally sound operation. However, he fully expects that the hospital will eventually play an important role in UC's education program for students and residents.

Dr. Stobo informed the Regents that he believes the arrangement he described protects UC financially while fulfilling the University's mission as a public trust that addresses important societal needs, such as the tremendous medical needs of the underserved population of Los Angeles County.

Committee Chair Lansing commented that Dr. Stobo and the MLK team had done remarkable work in less than 18 months. She expressed her confidence that the University was protected financially. The Committee Chair also thanked Mr. Muñoz, Dr. Nation, Regent De La Peña, President Yudof, and Chairman Gould for their help and support.

Regent Island voiced his appreciation for Committee Chair Lansing's many hours of counseling, advising, and consulting on the proposal, and for the dedication of Dr. Stobo and the Los Angeles County delegates. He stated that the community needs UC's involvement in the MLK facility. Regent Island reminded the Regents that the University operates five medical centers that are among the most complex in the world, and that it recently opened a hospital at UCLA, the Ronald Reagan Hospital, that cost over \$1 billion. He observed that the MLK arrangement, like all business arrangements, will involve some risk; he asked the Regents to not re-negotiate the arrangement, but to accept it as presented. He said that it had been competently created and evaluated, and that the Regents should not delay in approving it. Regent Island underscored that the University would provide quality care and oversight of the education programs, and that the provision of much-needed community health care was the best use of the University's role as a land-grant institution. He thanked President Yudof for his stewardship through the process.

Regent Bass thanked all of the University and County staff for their time and effort. She also acknowledged the generous contribution of Dr. Patrick Soon-Shiong and his wife, Michelle Chan, to the project. She informed the Regents that Dr. Soon-Shiong had served as a physician in South Africa under apartheid and during the Soweto uprising, and had a very keen understanding of health disparities. Regent Bass said that she was very moved by both Dr. Soon-Shiong's commitment to addressing the needs of the South Los Angeles community as well as his generous gift to the hospital. She reminded the Regents that they had asked County Supervisor Ridley-Thomas to obtain a County commitment for a \$100 million letter of credit as a final criterion for the agreement. Separately, she asked that the Regents guide her regarding any legislation that might be needed for the operation of the hospital, and stated that she would work with State Senator Florez to make it happen as quickly as possible. She encouraged the Regents to approve the item.

Committee Chair Lansing remarked that Regent Bass' leadership had been important to the process. She also expressed her gratitude to Dr. Soon-Shiong for his dedication, assistance, and expertise.

President Yudof observed that a vote to approve the reopening of the MLK Hospital would mark a proud day for the University. He stated that the hospital will provide top-quality medical care to people in need, and noted that there was some irony – in light of UC's current difficulties – that Los Angeles County had come to the University because of its strengths. He remarked that UC must maintain that strength to serve the community. He asked the representatives from the County to support the University and to wear buttons advocating for UC. The President informed the Regents that the *Key Elements* document is the coordinating agreement referred to in the resolution, and that any documents that are signed after this will have to be consistent with it. He stated his commitment to review all related proposals and to execute necessary documents, but only if they conform with the item. If there are any material non-conformities, he will consult with the appropriate Regents to resolve any concerns.

Regent Marcus stated that he wished to support the measure, but that his concerns had not been addressed completely. He noted that the University would be running a county hospital and that UC's reputation would become associated with it. He urged the Regents to consider the other actions being taken at the meeting when making their decision. He asked Dr. Stobo if the University could provide medical services without being a principal component of HospitalCo. Dr. Stobo replied that UC's role in appointing board members and helping control the operations is critical to ensuring that the University's physicians are in an environment that is conducive to the highest quality care. Without that level of participation, UC will not be able to control the quality of care at the hospital or adequately support its physicians working there. Regent Marcus expressed his view that the University was linking its reputation with a potentially unreliable partner. Dr. Stobo acknowledged the Regent's concern, but stressed that UC's role in the board appointment process would put a firewall between UC and the hospital in terms of financial liability; he agreed that there is no way to completely remove the political liability in the eyes of the public.

Regent Marcus stated that he was primarily concerned about public opinion of the University should the hospital fail. Noting that the Regents had not had time to view the revised agreement, he asked under what conditions the University would be able to disengage in the event that there is some breach in procedure or practice. Dr. Stobo responded that the document includes a series of agreements regarding termination: any abdication of Los Angeles County's financial agreements, either in terms of capital or ongoing operating costs; and any abdication on the part of UC regarding its responsibility to provide physician services and to participate actively in the development of quality oversight, credentialing guidelines, and educational activities. He noted that Regent De La Peña helped craft a provision governing breach of the contract related to the provision of physician services.

Dr. Soon-Shiong stressed that South Los Angeles needs centers of excellence; part of the mission of UC is to drive both excellence and care for all. He informed the Regents that the Chan Soon-Shiong Family Foundation has guaranteed \$100 million for the hospital behind the County's letter of credit. He stated that he personally walked through MLK after patient Edith Rodriguez died in the hospital's emergency room in 2007. He discovered that the death had nothing to do with poor financing, but with a failure of the staff to commit to care for the patients. The doctor stated that it is the responsibility of UC to bring its strength and reputation to the hospital. He informed the Regents that he has enlisted the cooperation of many partners in the project, including the National Cancer Institute, representatives of the Memorial Sloan-Kettering Cancer Center, the University of Southern California, St. John's Health Center, and Los Angeles Children's Hospital. Dr. Soon-Shiong underscored his belief that it is UC's moral responsibility to work to reopen King Hospital and that the financing structure that Los Angeles County has put in place and the leadership behind it will prevent an unreliable partnership from developing.

Committee Chair Lansing echoed the need to have the University involved in the hospital to ensure its quality and voiced her belief that UC was protected financially through the agreement.

Regent Lozano expressed her gratitude for Committee Chair Lansing's leadership in forming a collaboration that allows the University to meet its moral obligations to the community without endangering its fiscal situation. She noted that this agreement formed an unprecedented partnership and it is an opportunity for UC to model a new system of delivery for integrated, high-quality health care in a community with tremendous need. Committee Chair Lansing stated that it had been a tremendous honor to work on the project, and that individuals rarely have the opportunity to work on something that really can make a difference and change lives.

Regent Kozberg remarked that the University has a proud tradition of working with Los Angeles County. She asked if Charles Drew University of Medicine and Science would be involved with MLK, when it might be, and how its level of participation would be determined. Dr. Stobo replied that the Charles Drew University had not been part of the negotiations, in an effort to keep negotiations from becoming even more complex. He noted that when the time came to include educational programs at MLK, Charles Drew University would be consulted and included.

Regent Pattiz expressed his intent to vote for the proposal and his concern that the complex negotiations surrounding the hospital are being made during an unprecedented time in the history of UC. He reflected that Dr. Soon-Shiong's substantial investment bolstered his confidence, but if the hospital fails, it will have a disastrous effect on the University. Committee Chair Lansing agreed that the King Hospital cannot fail, and reiterated her deep gratitude for the financial security enabled by the \$100 million from Dr. Soon-Shiong.

Regent Reiss recalled that the Governor asked for UC to become involved in the MLK project and that the President, despite reasonable qualms, elected to do so because he and the chancellors understand that the role of a great University is not to serve just the students, but also to serve the community. Addressing Regent Bass and Senator Florez particularly, she remarked that the day was not favorable for the students or the workers at UC. She stated her faith in their leadership and compassion, and implored them to reciprocate the cooperation of the University by holding hearings in Sacramento to communicate the dire circumstances at the campuses. She stated that the legislators should hear how the budget cuts are affecting students, particularly underrepresented minority students. Regent Reiss asked that Regent Bass and Senator Florez impress upon their colleagues that UC's ability to provide the best health care to the community is contingent upon its ability to offer salaries that will attract and retain the best physicians and researchers available. She urged them again to hold hearings that would allow the University to convey its message regarding its very critical situation.

Chairman Gould observed that the reopening of MLK is very important to the University and to Los Angeles County. He explained that the previous day's vote to increase student fees was extremely difficult. That step, and other difficult cost-cutting initiatives such as employee furloughs and layoffs, had caused the Regents to very carefully scrutinize any new commitments or risks. While 20 years of declining support from the State has caused the Regents to move hesitantly on the item, Chairman Gould expressed his belief that the MLK agreement is balanced, that it protects the University, and that it can endure. He voiced his strong support for the item and his belief that the reopening of King Hospital is the right thing to do.

Regent Blum offered that the passage of the item would mark a great day for the University. He noted that he and Senator Feinstein have spent significant time in South Los Angeles and understand the gravity of the situation.

Upon motion duly made and seconded, the Committee approved the President's recommendation and voted to present it to the Board.

The meeting adjourned at 10:05 a.m.

Attest:

Secretary and Chief of Staff

KEY ELEMENTS FOR CONTRACT BETWEEN COUNTY & UNIVERSITY

REGARDING OPERATION OF MLK COMMUNITY HOSPITAL

This document lists the key commitments that the County and the University would make to each other in a binding legal contract between them (“**Coordination Agreement**”) regarding MLK Community Hospital (“**Hospital**”).

Please note that this document *does not* separately list the important commitments that either party would make vis-à-vis the nonprofit entity licensing the Hospital (“**HospitalCo**”), any separate corporation operating the Hospital (“**OperatingCo**”), or the state of California (*e.g.*, CMAC, DHCS), *except* to the extent that commitments to be made in these other agreements are to be cross-referenced in the Coordination Agreement. The Physician Agreement between the University and HospitalCo, as well as any subsequent changes to the Coordination Agreement, require Regental approval.

The reopened MLK Hospital will be a free-standing community hospital operated by HospitalCo with 120 beds, an emergency room, and no trauma center. It will coordinate care with an ambulatory care system to include outpatient clinics in the service area. UC will not provide money for capitalization or operating expenses.

Key Terms of Coordination Agreement

- A. **County’s Commitments.** The County shall fulfill the following commitments:
1. **Physical Plant and Equipment.** Make available to HospitalCo (via conveyance or lease) designated facilities and equipment meeting applicable OSHPD, CMS, and Joint Commission structural requirements, provided that HospitalCo signs an appropriate lease or conveyance. County agrees to provide HospitalCo and University a preliminary list of the equipment, by general type, by no later than July 1, 2010 and structural plans for the designated facilities by no later than September 1, 2010. A final list of equipment shall be prepared and mutually approved by the parties.
 2. **Financial Support.** To establish and support ongoing operation of a 120 bed Hospital, the County agrees to the following funding commitments.
 - a. **Start-Up Fund.** County shall establish and capitalize a one-time start-up fund for the Hospital. Such funds shall be used for necessary expenses related to opening the hospital, including but not limited, to consultant services, staffing, equipment and supplies, as well as supplemental funding for operating expenses incurred during the period before all beds are operational. The fund shall total \$50,000,000 and be capitalized by budgeting and reserving \$10,000,000

increments by each July 15, beginning on July 15, 2010. Such funds will be provided to HospitalCo after execution of the LAC-HospitalCo Agreement on an as-requested basis up to the then budgeted and reserved amount. This will make available to HospitalCo \$30,000,000 prior to Hospital's anticipated opening.

- b. *LAC-Funded Line of Credit and Reserve.* County shall make available to HospitalCo a revolving Line of Credit in the amount of \$20,000,000 at the County Treasury Pool rate, to be available when hospital operations commence, and establish and capitalize a one-time reserve fund for the Hospital totaling \$8,000,000 to be capitalized in full by the date hospital operations commence. LAC shall include provisions in the LAC-HospitalCo Agreement providing that the Hospital may only access the Line of Credit and reserve funds under "exigent circumstances" as determined by an affirmative vote of 5 of the 7 HospitalCo board members.
- c. *Intergovernmental Transfer.* County shall annually make an intergovernmental transfer (IGT) of \$50,000,000 for the benefit of the Hospital.

The County shall transfer twenty five percent of the total annual IGT by September 15, December 15, March 15, and June 15 to the State and provide confirmation to a third party paying agent that the payment has been made. If the third party paying agent has not received confirmation that the required payment was made within 15 days of the date that the transfer was due, it shall send written inquiry to the County ("Inquiry Letter"). To assure that the IGT occurs, the County shall, for a six year period beginning 30 days before Hospital is scheduled to open, have in place Letter(s) of Credit, which at the outset shall be in the amount of \$100,000,000. Such Letter(s) of Credit shall provide that, in the event that the County has not transferred to the State the full amount of any quarterly payment, the financial institution will, on behalf of the County, transfer to the State the amount of any unpaid IGT for the particular quarter. The paying agent will initiate this draw under the Letter(s) of Credit unless it receives written confirmation – within 15 days of issuing the Inquiry Letter – that the County has made the scheduled transfer in its entirety. During the fifth year after the hospital has opened, the parties shall meet and confer, in good faith, on whether the Letter(s) of Credit should be maintained for an additional period of time. Any such extension of the County's obligation to maintain Letter(s) of Credit shall be memorialized in a formal amendment to the Coordination Agreement.

- d. *Indigent Care Payment.* County shall annually make a payment of \$13,300,000 to support indigent care services furnished at the Hospital.
- e. *Growth Factor.* County shall calculate a Growth Factor equal to the amount by which any funds specially allocated by the Legislature for services in South Los Angeles for any year increase above the amount of such funds allocated for the year that the Hospital first treats patients; however, in no event shall the Growth

Factor exceed the amount by which Medi-Cal payment to hospitals operated by the County have increased above amounts received during the year that the Hospital first treats patients. County shall use such growth factor to calculate the increased payment amount by applying the Growth Factor to the IGT amount.

County shall provide the benefit of the increased payment amount so calculated to HospitalCo either as part of payments made via the IGT or through the Indigent Care Payment, at the County's discretion.

f. *Memorializing the Financial Commitment.* The Parties understand and agree that the County shall annually set aside funds or make payments necessary to meet the financial commitments in subsections a, b, c and d of section A.2 of the Coordination Agreement. The County commits to providing an annual appropriation in the amount necessary to effectuate the terms in subsections a, b, c and d in section A.2 (e.g. \$50,000,000 for the intergovernmental transfer – as adjusted by the growth factor provided for in subsection e of section A.2 – and \$13,300,000 for indigent care services). University understands and agrees that the appropriation of these funds is contingent on the University continuing to meet its obligations as set forth in Section B.

3. *Board Appointments.* County shall observe designated standards and procedures for making appointments to the HospitalCo board.

B. **University's Commitments.** University shall fulfill the following commitments:

1. *Board Appointments.* University shall observe designated standards and procedures for making appointments to the HospitalCo board.

2. *Participation in Start-Up.* University shall participate in clinical planning and other activities which require physician expertise in connection with the opening of the Hospital.

3. *Physician Coverage.* HospitalCo will contract with UC for the services of full time hospitalists/intensivists (approximately 20) to provide a broad spectrum of physician services necessary to provide inpatient services for a 120 bed hospital. This contract will be provided in a Physician Agreement to be negotiated between University and HospitalCo. This obligation shall be contingent upon University's ability to secure initially and on an ongoing basis payments for its physician services that in University's discretion are reasonable for the type, quality, and volume of services furnished. Without limiting the foregoing, University shall make available to HospitalCo qualified University employees to act as the hospitals' Chief Medical Officer and all hospitalists/intensivists. HospitalCo may arrange for other non-University physician services. University physicians shall adhere to their obligations under the Medical Staff bylaws and any other requirements binding upon physicians from regulatory venues. The intent is that UC Physicians would be part of a larger inpatient hospital medical staff

which would include community physicians and medical groups. UC will not be required to provide health professionals or staff other than physicians.

4. **Teaching.** The University shall have the primary responsibility to direct and manage efforts to establish teaching activities for medical students, residents and fellows consistent with accreditation standards and time frames for the reestablishment of educational programs.
5. **Quality of Clinical Care.** University shall work with County and HospitalCo representatives to establish a subcommittee of the HospitalCo board to oversee all aspects of quality assurance in accordance with HospitalCo's bylaws. Additionally, University will assure that its physicians play an active ongoing role in all medical staff functions including but not limited to credentialing, quality assurance, and quality improvement activities.

C. **Mutual Commitments.**

1. **HospitalCo.** Both parties shall ensure that an entity, HospitalCo, with a seven member Board of Directors/Trustees, is formed or otherwise put in place to act as a license holder. The parties will both work to assure that University and County each have the permanent right to appoint two Board members, and the right mutually to appoint the remaining Board members. After five years, University and County may reconsider their authority to appoint members of HospitalCo's Board, and will, if mutually agreed, jointly request HospitalCo to modify such Board appointment authority.
2. **Use of Name.** Neither party shall represent to third parties that the Hospital is owned, licensed, or operated by the University or the County. Neither party shall represent to third parties that the University or the County is financially liable for the activities or debts of the Hospital. However, the HospitalCo is permitted to represent that it is staffed by University physicians.
3. **Acknowledgement.** Both parties shall acknowledge that the University and the County are not responsible for the financial viability of the Hospital, are not liable for the Hospital's debts, and that the University is not a source of capital or operating funds for the Hospital.

- D. **Term.** Unless terminated earlier pursuant to the provisions of Section E of the Coordination Agreement, the agreement shall be effective on the date it is fully executed and shall continue until same date the physician care agreement provided for in Section B.3 terminates or expires or, if later and if applicable, the same date as the lease provided for in Section A.1 terminates or expires.

E. **Termination of the Agreement.**

1. **Termination by Either Party:** This Agreement may be terminated by either the County or the University based on the occurrence of any of the events as set forth below. However,

such termination shall occur only after a reasonable period has been given in order to cure the default, and the defaulting party is unable substantially to cure the default.

a. Designated actions by the HospitalCo and/or OperatingCo.

- i. *Licensure.* Failure to secure licenses, permits or registrations necessary to operate a general acute care Hospital by a deadline to be specified in the final Coordination Agreement or loss of any such licenses, permits or registrations thereafter. The parties acknowledge that the effort to secure such licenses, permits or registrations may be comprised of one or more attempts, and that any unsuccessful attempt, by itself, shall not be considered an event of default so long as licensure is achieved by the deadline.
- ii. *Accreditation.* Failure to secure initial accreditation from The Joint Commission or other appropriate accrediting body(ies) by a deadline to be specified in the final Coordination Agreement or subsequent denial of accreditation. The parties acknowledge that the effort to secure initial accreditation may be comprised of one or more attempts, and that any unsuccessful attempt, by itself, shall not be considered an event of default, so long as accreditation is achieved by the deadline.
- iii. *Provider Agreements.* Failure to secure Medicare and Medi-Cal provider agreements by a deadline to be agreed upon by both parties. The parties acknowledge that the effort to secure Medicare and Medi-Cal agreements may be comprised of one or more attempts, and that any unsuccessful attempt, by itself, shall not be considered an event of default, so long as provider agreements are in place by the deadline.
- iv. *OSHPD.* Failure to secure OSHPD approval as needed to open the Hospital. The parties acknowledge that the effort to secure OSHPD approval may be comprised of one or more attempts, and that any unsuccessful attempt, by itself, shall not be considered an event of default, so long as OSHPD approval is timely achieved.
- v. *Exclusion/Debarment/False Claims.* The occurrence of any of the following:
 - (1). Exclusion or suspension from participation in a federal health care program;
 - (2). debarment by federal or state government contracting agencies;
 - (3). conviction for activity that (1) violates §1320a-7b or (2) qualifies as a federal health care program offense under 18 U.S.C. §14(a).

- vi. *Bankruptcy*. The filing of a petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code (Title 11, U.S. Code).
- vii. *HospitalCo-Funded Reserve*. Failure of HospitalCo to fund and maintain a reserve, as provided for in its contracts with County and University, and as set forth in its corporate bylaws. The reserve shall be an annual amount of 2% (or a lesser amount if there are insufficient funds) of the annual operating expenses to be set aside during any year in which revenue exceeds operating expenses. This obligation to set aside a reserve shall exist until such time as HospitalCo has accumulated a reserve of at least 10% of the operating expenses based on the average operating expenses for the previous three years. The reserve fund balance shall be available for use only under “exigent circumstances” as determined by an affirmative vote of 5 of the 7 HospitalCo board members. The obligation to set aside the reserve remains in effect each year, unless the reserve fund balance is at the 10% level.

- b. **Medi-Cal Funding Requirements**. If HospitalCo/Hospital is unable to obtain (i) reimbursement based on State general fund and related federal financial participation for inpatient services to Medi-Cal beneficiaries at a rate which is at least 60% of hospital costs, (ii) Medi-Cal payment for debt services costs on a County project on the Hospital site pursuant to Welf. & Inst. Code Section 14085.5 (SB. 1732) or (iii) reimbursement for outpatient services to Medi-Cal beneficiaries under the same methodology as is established in Welf. & Inst. Code Section 14105.24 (CBRC) or, if any of those reimbursement systems are changed or repealed, and HospitalCo/hospital is unable to obtain the equivalent amount of Medi-Cal funds as would have been available had those reimbursement systems not been modified or repealed. Further, the parties may terminate in the event that the State materially reduces or eliminates the special funding to the County for the South Los Angeles area.

2. ***Termination by University Only***: Termination of the Coordination Agreement by the University may also occur as provided in this section, based on any of the following events of default. However, such termination shall occur only after a reasonable period has been given in order to cure the default, and County is unable substantially to cure the default.

- a. County fails to make available the physical plant and equipment as required under section A.1.
- b. County fails to maintain its financial commitment as required under section A.2.

- c. Any breach of the Physician Agreement will also constitute an event of default under this Coordination Agreement and will constitute grounds for termination.

Termination pursuant to this section does not preclude University from asserting that a material breach has occurred.

- 3. **Termination by County Only:** Termination of the Coordination Agreement by the County may also occur as provided in this section based on any of the following events of default. However, such termination shall occur only after a reasonable period has been given in order to cure the default, and University is unable substantially to cure the default:

- a. University fails to provide assistance in the start up to the extent required under section B.2.
- b. University fails actually to furnish the physicians services referenced in Section B.3.
- c. University fails to fulfill its obligations under section B.4.

Termination pursuant to this section does not preclude the County from asserting that a material breach has occurred.

- F. **Renegotiation.** The parties agree to negotiate in good faith revisions to the financial terms of the Coordination Agreement, including but not limited to the amount of the IGT or the Indigent Care Payment, in the event that changes are made to the Medi-Cal Program or to federal health care laws or regulations which materially affect the amount of revenue that Hospital would receive for its care to inpatients or outpatients, or the amount of supplemental revenue the County receives for the South Los Angeles area. Nothing in this paragraph limits or supersedes UC's termination rights under section E2.