

**\*Revised\***

**Additions shown by underline; deletions shown by strikethrough.**

H1 Attachment

**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.*** ~~University shall furnish a broad spectrum of physician services necessary to operate the Hospital as provided in the physician coverage agreement to be negotiated between University and HospitalCo (or Operating Co.) 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 Hospital's chief medical officer and all hospitalists/intensivists. HospitalCo may arrange for other non-University physician services with the concurrence of the University. University physicians shall adhere to their obligations under the hospital Medical Staff bylaws and any other requirements binding upon physicians from regulatory venues. 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 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. ~~specified in the final Coordination Agreement or subsequent termination, revocation or expiration of such agreement.~~ 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 County 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.