

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“**Agreement**”) is entered into effective as of the last date signed below (the “**Effective Date**”), by and between Adventist Health Mendocino Coast, a California nonprofit public benefit corporation (“**Hospital**”) and City of Fort Bragg, a California public entity (“**Public Entity**”). Hospital and Public Entity are sometimes referred to in this Agreement as a “**Party**” or, collectively, as the “**Parties**.”

RECITALS

A. Hospital is a California nonprofit religious public benefit corporation that operates a general acute care hospital in Fort Bragg, California and provides a disproportionate share of healthcare services to the Medicare and Medicaid population in addition to supporting many programs that benefit the indigent, uninsured or underinsured population in Fort Bragg.

B. Hospital desires to participate in the drug discount program established under Section 340B of the Public Health Services Act (the “**340B Program**”).

C. In order to participate in the 340B Program Hospital must enter into an agreement with a unit of government pursuant to which Hospital commits to provide health care services to low-income individuals without Medicare or Medicaid benefits at no reimbursement or considerably less than full reimbursement from these individuals.

D. Hospital desires to make such a formal commitment to Public Entity, and Public Entity agrees to accept such commitment on behalf of the residents of Fort Bragg.

In consideration of the mutual agreements and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, it is mutually agreed, by and between the Parties to this Agreement, as follows:

AGREEMENT

THE PARTIES AGREE AS FOLLOWS:

1. **Commitment of Hospital to Provide Indigent Care.**

Hospital agrees to continue its historical commitment to the provision of health care to indigent, uninsured and underinsured patients by adhering to the Hospital community benefit plan. During the fiscal year ending December 2022, Hospital provided at least \$450,000 in traditional charity care. Pursuant to its commitment to continue to provide indigent care, it is Hospital's intention that indigent care provided during the term of this Agreement will be consistent with its historical commitment, a minimum of \$450,000 per year. In any event, Hospital will ensure that all patients presenting to its emergency department shall continue to receive necessary care, as required by law, regardless of ability to pay.

2. **Acceptance and Acknowledgements of Public Entity.**

(a) Public Entity accepts the commitment of Hospital set forth above;

(b) Public Entity hereby acknowledges that the health care services provided by Hospital hereunder are in the public interest and based on the representations of Hospital are being provided to individuals who are neither entitled to Medicare or Medicaid benefits; and

(c) Based on the representations of Hospital, Public Entity acknowledges that Hospital is providing these services at no reimbursement or considerably less than full reimbursement from the patients.

3. **Representations of Hospital.** Hospital represents that as of the Effective Date:

(a) Hospital, constitutes a non-profit religious public benefit corporation duly organized

and validly existing in good standing under the laws of the State of California with the corporate power and authority to enter into and perform its obligations under this Agreement; and

(b) Hospital, is a tax-exempt corporation of under Section 501(c)(3) of the Internal Revenue Code of the United States, as amended and under applicable laws of the State of California.

4. **Term and Termination.**

(a) **Term.** This Agreement shall commence on the Effective Date and shall remain in force for a period of 1 year (the “**Initial Term**”). Upon the expiration of the Initial Term, this Agreement shall renew for a successive 1-year periods (each a “**Renewal Term**”), subject to the termination provisions of this Agreement. The Initial Term, together with all subsequent Renewal Terms, are collectively referred to herein as the “**Term.**”

(b) **Termination.** This Agreement may be terminated as follows:

i. Either Party may terminate this Agreement without cause and without penalty upon 30 days’ advance written notice to other Party.

ii. This Agreement shall automatically terminate should the 340B Program be discontinued or the Hospital withdraws from the 340B program.

5. **Notice.** All notices required or permitted under this Agreement shall be in writing and shall be delivered either: (a) by overnight delivery using a nationally recognized overnight courier (e.g., Federal Express, UPS or other similar service), in which case notice shall be deemed delivered 1 business day after deposit with such courier or (b) by personal delivery, in which case notice shall be deemed delivered upon receipt. In each case, notice shall be delivered or sent to the address indicated below, or such other address as provided by a party, from time to time, pursuant to this section.:

If to Hospital addressed to:

Adventist Health Mendocino Coast
700 River Drive
Fort Bragg, CA 95437
Attn: Hospital Administration
707-961-1234

If to Public Entity addressed to:

City of Fort Bragg
416 N. Franklin St.
Fort Bragg, CA 95437
Attn: City Manager
707-961-2823

Copy to:

Adventist Health System/West
One Adventist Health Way
Roseville, CA 95661
Attn: Director, Pharmacy

6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, except regarding its conflict of laws rules that cause another jurisdiction’s laws to govern instead. The Parties consent to the jurisdiction and venue of Sacramento County, California courts.

7. **Dispute Resolution.** In the event of any controversy or dispute related to or arising out of this Agreement, the Parties agree to meet and confer in good faith to attempt to resolve the controversy or dispute without an adversary proceeding. If the controversy or dispute is not resolved to the mutual satisfaction of the Parties within 5 business days of notice of the controversy or dispute, the Parties agree to waive their rights, if any, to a jury trial, and to submit the controversy or dispute to a retired judge or justice pursuant to Section 638 et seq. of the California Code of Civil Procedure, or any successor provision, for resolution in accordance with Chapter 6 (References and Trials by Referees), of Title 8 of Part 2 of the California Code of Civil Procedure, or any successor chapter. Notwithstanding the above in

this Section, the Parties agree to submit the controversy or dispute with claim(s) totaling \$5,000 or less to small claims court in accordance with Chapter 5.5 (Small Claims Court), of Title 1 of Part 1 of the California Code of Civil Procedure, or any successor chapter. The Parties agree that the only proper venue for the submission of claims is the County of Sacramento, California, and that if applicable, the hearing before the referee shall be concluded within 9 months of the filing and service of the complaint. The Parties reserve the right to contest the referee's decision and to appeal from any award or order of any court.

8. **Entire Agreement.** This Agreement is the entire understanding and agreement of the parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings, or discussions between the Parties. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement.

9. **No Third-Party Beneficiaries.** Nothing in this Agreement shall confer any rights upon any person or entity that is not a Party to this Agreement or a successor or an assignee of a Party to this Agreement.

10. **Severability.** If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of the Parties to this Agreement to the greatest extent possible. All other provisions of this Agreement shall remain in full force and effect.

The Parties, through their duly authorized representatives, have executed this Agreement as of the last date signed below.

Hospital

Adventist Health Mendocino Coast, a California nonprofit public benefit corporation

Date

By: Dean Shepardson
Its: Treasurer

Public Entity

City of Fort Bragg, a California public entity

Date

By: Peggy Ducey
Its: City Manager