



EL CENTRO REGIONAL MEDICAL CENTER
BOARD OF TRUSTEES – SPECIAL JOINT MEETING WITH THE CITY OF EL CENTRO

TUESDAY, MAY 7, 2024
5:15 PM

CITY OF EL CENTRO
1249 W. MAIN STREET,
RDA MEETING ROOM
EL CENTRO, CA

PRESIDENT: Tomas Oliva

MEMBERS: Sylvia Marroquin; Martha Cardenas-Singh; Edgard Garcia; Sonia Carter; Patty Maysent-CEO, UCSD Health; Christian Tomaszewski-M.D.-CMO, UCSD; Pablo Velez-CEO ECRMC

CLERK: Belen Gonzalez

ATTORNEY: Douglas Habig, ECRMC Attorney
Elizabeth Martyn, City Attorney

This is a public meeting. If you are attending in person, and there is an item on the agenda on which you wish to be heard, please come forward to the microphone. Address yourself to the president. You may be asked to complete a speaker slip; while persons wishing to address the Board are not required to identify themselves (Gov't. Code § 54953.3), this information assists the Board by ensuring that all persons wishing to address the Board are recognized and it assists the Board Executive Secretary in preparing the Board meeting minutes. The president reserves the right to place a time limit on each person asking to be heard. If you wish to address the board concerning any other matter within the board's jurisdiction, you may do so during the public comment portion of the agenda.

BOARD MEMBERS, STAFF AND THE PUBLIC MAY ATTEND VIA ZOOM.

To participate and make a public comment in person, via Zoom or telephone, please raise your hand, speak up and introduce yourself.

Join Zoom Meeting: <https://ecrmc.zoom.us/j/87542845731?pwd=qObPFAZZzZuGxkox3pDFZ92XEyz3db.1>

Optional dial-in number: (669) 444-9171

Meeting ID: 875 4284 5731 **Passcode:** 052061

Public comments via zoom are subject to the same time limits as those in person.

OPEN SESSION AGENDA

ROLL CALL:

PLEDGE OF ALLEGIANCE:

PUBLIC COMMENTS: Any member of the public wishing to address the Board concerning matters within its jurisdiction may do so at this time. Three minutes is allowed per speaker with a cumulative total of 15 minutes per group, which time may be extended by the President. Additional information regarding the format for public comments may be provided at the meeting.

BOARD MEMBER COMMENTS:

NEW BUSINESS:

1. Review and Adopt Resolution NO. ECRMC 24-01 RESOLUTION OF THE BOARD OF TRUSTEES OF EL CENTRO REGIONAL MEDICAL CENTER APPROVING A JOINT POWERS AND AFFILIATION AGREEMENT BY AND AMONG THE EL CENTRO REGIONAL MEDICAL CENTER, THE CITY OF EL CENTRO AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ON BEHALF OF UC SAN DIEGO HEALTH

RECESS TO CLOSED SESSION:

A. **TRADE SECRETS.** The Hospital Board will recess to closed session pursuant to Govt. Code Section 37606(b) for the purpose of discussion and/or deliberation of reports involving hospital trade secret(s) as defined in subdivision (d) of Section 3426.1 of the Civil Code and which is necessary, and would, if prematurely disclosed create a substantial probability of depriving the hospital of a substantial economic benefit:

<u>Discussion of:</u>	<u>Number of Items:</u>
<u>X</u> hospital service;	<u>1</u>
<u> </u> program;	<u>0</u>
<u> </u> hospital facility	<u>0</u>

RECONVENE TO OPEN SESSION – BOARD PRESIDENT

ANNOUNCEMENT OF CLOSED SESSION ACTIONS, IF ANY – GENERAL COUNSEL

ADJOURNMENT: Adjourn. (Time:) Subject to additions, deletions, or changes.

TO: HOSPITAL BOARD MEMBERS
FROM: Pablo Velez, Chief Executive Officer
DATE: May 7, 2024
MEETING: Board of Trustees



SUBJECT: Review and Adopt Resolution No. ECRMC 24-01 RESOLUTION OF THE BOARD OF TRUSTEES OF EL CENTRO REGIONAL MEDICAL CENTER APPROVING A JOINT POWERS AND AFFILIATION AGREEMENT BY AND AMONG THE EL CENTRO REGIONAL MEDICAL CENTER, THE CITY OF EL CENTRO AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ON BEHALF OF UC SAN DIEGO HEALTH

BUDGET IMPACT: Does not Apply
A. Does the action impact/affect financial resources? Yes No
B. If yes, what is the impact amount: _____

BACKGROUND: El Centro Regional Medical Center (“ECRMC”) has a long-standing affiliation with the University of California San Diego (“UCSD”). UCSD is a nationally recognized leader in hospital and healthcare, which operates major hospitals and clinics throughout San Diego County and adjacent counties. The affiliation with UCSD has significantly benefited ECRMC by providing resources and expertise in hospital and healthcare financial, clinical and operational matters. ECRMC and UCSD now seek to formalize and expand their affiliation by entering into a Joint Powers Agreement (“JPA”). A JPA is an agreement between two or more public agencies that allows the agencies to cooperatively provide services or exercise shared powers outside each agencies normal jurisdiction.

DISCUSSION: The JPA proposed to the Board of Trustees provides for UCSD to manage financial, clinical and operational matters of ECRMC, subject to the governance of the Board. This agreement largely formalizes the relationship that has already existed between ECRMC and UCSD. The JPA provides no management fee to UCSD, but rather simply reimburses their actual costs for provision of services. Likewise, the JPA creates no financial obligations or liability to the City and expressly protects the City from such liabilities. The JPA maintains the current Board structure and does not impair the authority of the Board in any way. The JPA provides for a 5 year term that can be renewed by the parties. It also provides for transfer of the agreement to Imperial Valley Healthcare District (“IVHD”) if the negotiations contemplated under AB 918 result in a transfer of ECRMC into the new District. The JPA likewise provides for a right of first refusal for UCSD to acquire ECRMC in the event a transfer of ownership to a party other than IVHD is considered. Management recommends approval of the JPA.

RECOMMENDATION: Approve

ATTACHMENT(S):

- Resolution No. ECRMC 24-01: ECRMC RESOLUTION OF THE BOARD OF TRUSTEES OF EL CENTRO REGIONAL MEDICAL CENTER APPROVING A JOINT POWERS AND AFFILIATION AGREEMENT BY AND AMONG THE EL CENTRO REGIONAL MEDICAL CENTER, THE CITY OF EL CENTRO AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ON BEHALF OF UC SAN DIEGO HEALTH
- Joint Powers and Affiliation Agreement between ECRMC, the City of El Centro, and the Regents of the University of California on behalf of UC San Diego Health

Approved for agenda, Chief Executive Officer

Date and Signature: _____

Pablo Velez 5/6/24

TO: HOSPITAL BOARD MEMBERS
FROM: Pablo Velez, Chief Executive Officer
DATE: May 7, 2024
MEETING: Board of Trustees



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Approved for agenda, Chief Executive Officer

Date and Signature: Pablo Velez 5/6/24

RESOLUTION NO. ECRMC 24-01
RESOLUTION OF THE BOARD OF TRUSTEES OF EL CENTRO REGIONAL
MEDICAL CENTER APPROVING A JOINT POWERS AND AFFILIATION
AGREEMENT BY AND AMONG THE EL CENTRO REGIONAL MEDICAL CENTER,
THE CITY OF EL CENTRO AND THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA ON BEHALF OF UC SAN DIEGO HEALTH

Joint Powers Agreement (JPA)

WHEREAS, El Centro Regional Medical Center (“ECRMC”), the City of El Centro, and UC San Diego Health (“UCSD”) (collectively, the “Parties”) have had in place various agreements for association and management since 2015; and

WHEREAS, after an updated analysis of their roles and responsibilities, the Parties entered into a Letter or Intent to formalize their relationship through a joint powers authority; and

WHEREAS, that joint powers and affiliation agreement (JPA) now has been prepared; and

WHEREAS, the JPA provides for ECRMC’s formal affiliation with UCSD so that ECRMC may more fully utilize UCSD’s health care resources; and

WHEREAS, the JPA further provides that the City, through its ownership of the real estate and buildings that comprise the hospital, consents to and politically supports that relationship; and

WHEREAS, the JPA confirms UCSD’s ongoing and expanding role in providing high quality health care to the Imperial Valley; and

WHEREAS, the JPA also is consistent with the parties commitment to work with the Imperial Valley Healthcare District (IVHD) as the JPA agreement will be transferred to IVHD along with all other assets of ECRMC; and

WHEREAS, the approval of the JPA Agreement is in the best interests of El Centro Regional Medical Center at this time.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors as follows:

Section 1. The Recitals set out above are true and correct.

Section 2. El Centro Regional Medical Center hereby approves the Joint Powers and Affiliation Agreement in the form attached and incorporated as Exhibit “A” and authorizes its Board President to sign it.

Section 3. El Centro Regional Medical Center further authorizes the Vice-President and General Counsel to take any and all necessary steps to carry out the provisions of the JPA.

Section 4. This Resolution shall be effective upon completion of all necessary steps for its formation.

PASSED AND ADOPTED at a special meeting of the Board of Trustees of El Centro Regional Medical Center held on the 7th day of May, 2024.

EL CENTRO REGIONAL MEDICAL CENTER

By: _____
Tomas Oliva, President

ATTEST:

By: _____
Sylvia Marroquin, Vice-President

APPROVED:

By: _____
Douglas Habig, General Counsel

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss
CITY OF EL CENTRO)

SECRETARY'S CERTIFICATE

I, Belen Gonzalez, Board Executive Secretary of El Centro Regional Medical Center, El Centro, California, do hereby certify that the foregoing is a full, true and correct copy of **Resolution No. ECRMC 24-01** duly adopted at a special meeting of the El Centro Regional Medical Center Board of Trustees Meeting, held on the 7th day of May, 2024, which meeting all of the members of said Board of Trustees had due notice and at which the required quorum was present and voting and the required majority approved said resolution by the following vote at said meeting:

AYES:

NOES:

ABSENT:

ABSTAINED:

I further certify that I have carefully compared the same with the original minutes of said meeting on file and of record in my office; that said resolution is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes; and that said resolution has not been amended, modified or rescinded since the date of its adoption, and is now in full force and effect.

By: _____
Belen Gonzalez, Board Executive Secretary

Date: _____

CONFIDENTIAL

JOINT POWERS AND AFFILIATION AGREEMENT

by and among

EL CENTRO REGIONAL MEDICAL CENTER,

THE CITY OF EL CENTRO

and

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ON BEHALF OF UC SAN DIEGO
HEALTH**

_____, 2024

JOINT POWERS AGREEMENT

THIS JOINT POWERS AND AFFILIATION AGREEMENT (this “Agreement” or “Joint Powers Agreement”) is made and entered into as of the 7th day of May, 2024 (“Effective Date”), by and among EL CENTRO REGIONAL MEDICAL CENTER, a separate public agency and enterprise operation of the City of El Centro organized and operated under the provisions of Title 4, Division 3, Part 2, Chapter 5, Article 8 Govt. Code Section 37650 et seq, the “Municipal Hospital Law”); (“ECRMC”), THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (the “Regents”) on behalf of UC SAN DIEGO HEALTH, a corporation described in Article IX, Section 9, of the Constitution of the State of California (“UCSD”), and the CITY OF EL CENTRO, a municipal corporation and charter city. ECRMC, City and UCSD are hereinafter sometimes referred to collectively as the “Parties,” and each individually, as a “Party”.

RECITALS

A. The purpose of this Agreement is for the Parties to work together to carry out the provisions of a certain Letter of Intent between the parties dated February 27, 2023, as extended from time to time. The Letter of Intent shall terminate upon approval of this Agreement.

B. ECRMC operates (i) an acute care hospital and associated other operations and certain other healthcare facilities (each a “Facility” and collectively, the “Facilities”) and for the provision of healthcare and other related services.

C. CITY owns the real property and the buildings located on the real property, including but not limited to the main campus located at 1415 Ross Ave. (the “Facilities”) and holds the State license for operation of the hospital Facility.

D. CITY’s separate Financing Authority has issued the El Centro Financing Authority Hospital Revenue Refunding Bonds (El Centro Regional Medical Center Project) Series 2018 (hereafter “Bonds”) for seismic retrofit and construction at ECRMC payable from and secured on ECRMC’s revenues from the operation of the Facilities.

E. UCSD operates a premier multi-site healthcare system which primarily serves residents of San Diego County and surrounding areas, and has had a long-standing relationship with ECRMC including the provision of various administrative and clinical services since 2015.

F. ECRMC and the City have determined that UCSD would best serve the healthcare needs of the communities served by managing and overseeing operation of the Facilities and that entering into a joint powers arrangement, which includes the operation of the Facilities pursuant to the terms of this Agreement and associated agreements (collectively, the “Transaction” and Transaction Documents”), is in the best interest of the communities serviced by the Facilities.

G. The Parties also believe that the affiliation contemplated by the Transaction will result in: (i) an increase in access to more specialized healthcare for individuals located in the areas served by ECRMC; (ii) improved access to health care for vulnerable populations served by the Facilities; (iii) additional support for the long term stabilization of the Facilities’ financial position.

H. It is the intent of the Parties that this Agreement be a flexible and living document which could accommodate the participation of other entities as appropriate to carry out its purposes. It is the

further expressed intent of the governmental Parties hereto that this Agreement is intended to exercise the governmental authority granted pursuant to this Agreement pursuant to Govt. Code Section 6500 et seq which provides for the joint exercise of governmental powers.

I. The services performed and expenditures made under this Agreement shall be considered to be governmental in nature, for public and governmental purposes only, and all immunities from liability and limitations and damages afforded to the state and political subdivisions shall extend to the Parties to this Agreement.

J. This Agreement shall not be construed to, in any manner, aggregate or limit the rights, powers, duties and/or functions of any of the Parties hereto.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:.

ARTICLE I

ROLES OF UCSD AND ECRMC

1.1. ECRMC: For and during the Term (as defined herein), ECRMC agrees that UCSD shall act as the Manager of the Hospital and grants to UCSD the sole and exclusive right to operate, manage, supervise, direct, and control the management and operation of the Facilities (subject to the continuing consent of the City and the ECRMC Board retaining ultimate authority and responsibility for the Facilities as required by law and further described below).

1.2. UCSD. UCSD shall act as the Manager of the Hospital and agrees that it will (a) perform its duties and responsibilities hereunder in accordance with this Agreement as modified from time to time; and (b) use commercially reasonable efforts to: (i) provide the management services set forth in this Agreement in an efficient and cost effective manner, and (ii) comply, in all material respects, with all statutes, ordinances, rules and regulations established by any governmental authority having jurisdiction over the Facilities and which are applicable to the services provided by UCSD under this Agreement. Subject to the foregoing and to the other provisions of this Agreement, UCSD, without the approval of ECRMC (unless such approval is herein specifically required), shall have the exclusive control regarding the operation and management of the Facilities for purposes of furnishing services pursuant to this Agreement (including the exercise of its rights and performance of its duties provided for in ARTICLE III hereof); *provided, however*, that ECRMC shall retain the ultimate professional and administrative authority and responsibility for the Facilities in accordance with the Municipal Hospital District Law, California Code of Regulations, Title 22, Section 70713 or the applicable regulations for the state in which the Facilities are located along with all other obligations that ECRMC are required to maintain pursuant to the provisions set forth in ARTICLE IV. All matters requiring professional medical judgments shall remain the responsibility of the Facilities' Medical Staff (as defined herein) and allied health professionals, and UCSD shall have no responsibility, obligation, or liability whatsoever for such judgments. Without limiting the foregoing, and to the extent the UCSD is the same Person acting as the manager of the Facilities, the Parties hereby agree that, when making any decision or taking, or refusing or refraining from taking, any actions, permitted or required to be made by the UCSD under this Agreement, UCSD shall be entitled to consider such interests and factors as it desires without implicating any fiduciary duties or other obligations it may owe as manager of ECRMC.

1.3. Notwithstanding, UCSD shall not have the authority to require any payment or other action by City as to ECRMC, the Hospital or this Agreement.

1.4. Independent Contractor Relationship. It is expressly agreed by the Parties that UCSD at all times acting and performing under this Agreement as an independent contractor of ECRMC, and that no act, commission or omission by ECRMC, the City and/or UCSD shall be construed to make or constitute the other its partner, member, joint venturer or associate by virtue of this Agreement. UCSD and ECRMC each shall be responsible for the compensation and supervision of its own employees used to perform the management services under this Agreement. UCSD shall determine the methods, manner and means by which such services will be performed. UCSD shall be solely liable for the payment of all salaries, wages, and any unemployment, social security, and other payroll taxes for UCSD and its officers and employees (but not for ECRMC or City or their respective officers or employees), including any related assessments or contributions required by law.

1.5. Licenses; Permits. ECRMC shall be the holder of the pharmacy licenses, and other permits and contracts pertaining to the Hospital and Facilities, and shall be the “provider” within the meaning of all third-party contracts for the Facilities. The City shall be the holder of the license for the Hospital unless otherwise transferred as provided by law and regulation.

ARTICLE II

TERM

The initial term (the “Initial Term”) of this Agreement begins on the Effective Date (the “Commencement Date”) and shall continue for a period of five (5) years. At least 12-months prior to the expiration date of the Initial Term and any Renewal Term, the Parties will commence a process to meet and confer to modify and update this Agreement as necessary. If the Parties fail to agree on a renewal of this Agreement by the expiration date, there shall be a 180 day winding down period from the last day of the Initial or Renewal Term. The wind down process shall include termination of all agreements between the Parties unless the Parties otherwise mutually agree during the wind down period to continue certain arrangements after the wind down period. For purposes of this Agreement, “Term” shall mean the Initial Term and any Renewal Term. For purposes of this Agreement, the “Termination Date” shall be such date on which the final Term expires, or such date on which this Agreement terminates pursuant to ARTICLE VII hereof.

ARTICLE III

RIGHTS AND DUTIES OF UCSD AS MANAGER

3.1. General Responsibilities.

(a) Subject to the control that ECRMC and/or City must maintain under applicable law or under this Agreement, UCSD shall provide sufficient and qualified management personnel, with the applicable personnel holding any licensure required by law, to:

(i) Manage, and direct the hospital operations at the Facilities;

(ii) Manage, in consultation with the ECRMC Board the selection, retention, supervision and discharge of, the Facilities’ executive leadership team; *provided that* such persons may, at UCSD’s election and in its sole judgment, be employees of UCSD; for employees of ECRMC the decision to hire or fire such individual shall ultimately lie with the entity employing such individual.

(iii) Manage and oversee the Facilities’ human resources department(s); provide guidance regarding personnel policies and guidelines for adoption by the applicable entity;

and negotiate, on ECRMC's behalf and at ECRMC's expense, with any labor union lawfully entitled to represent the employees at the Facilities; notwithstanding, any collective bargaining agreement or labor contract resulting therefrom must first be approved by the ECRMC Board, who shall be the only entity authorized to execute the same;

(iv) Subject to the obligations of ECRMC set forth in Section 4.7, procure and supervise for ECRMC the appropriate types, categories and amounts of insurance to cover the real and personal property of the Facilities, and to supervise the actions of the staff in securing certificates of such insurance, each as may from time to time be required pursuant to any leases, loan agreements or similar agreements with any lessors or lenders of ECRMC to the Facilities (and subject to any other terms and conditions thereof) or otherwise; *provided, however*, that the payment to any insurance provider shall be and remain the sole responsibility of ECRMC, and UCSD shall have no responsibility whatsoever for such payment; and provided that the City shall continue to be an additional insured on all such insurance.

(v) Direct the food service operation at the Facilities;

(vi) Supervise the purchasing of all outside services, food supplies, pharmaceutical supplies, medical supplies, materials, and equipment incidental to the operation of the Facilities; *provided, however*, the payment to for these items and services shall be and remain the sole responsibility of ECRMC and UCSD shall have no responsibility whatsoever for such payment. To the extent available to ECRMC as an "affiliate" of UCSD through this Joint Powers Agreement, UCSD may facilitate such purchasing and procurement of goods and services through then existing UCSD GPO arrangements;

(vii) Assist and supervise ECRMC's compliance with all appropriate governmental requirements or regulations and with all ECRMC's and Facilities' licenses and certifications and assist with the implementation of corporate compliance plan(s) for adoption by ECRMC and/or the Facilities;

(viii) Subject to the provisions of Section 4.5, support and manage ECRMC's information systems for the following areas: Accounts Payable, Contract Management, Payroll, Benefits, Financial Reporting, Marketing, Medical Records, Coding and Billing, and General Ledger;

(ix) Supervise the Facilities' marketing department(s) or staff(s) and use commercially reasonable efforts to cause compliance by such Facilities' marketing departments with all applicable federal and state healthcare laws and regulations;

(x) Supervise quality assurance and performance improvement processes and assist ECRMC with implementation of such systems at the Facilities, including risk management, patient/family satisfaction, licensing and accreditation, and program evaluation;

(xi) Subject to the legal authority of the ECRMC Board, manage the relationships of the Facilities with any partner, joint venturer, co-owner or similar party of any healthcare facility and to make all decisions and take all necessary or appropriate actions on behalf of the Facility according to the terms of any partnership agreement, joint venture agreement, limited liability company agreement, bylaws or any similar agreements or governing documents with respect to any such partnership, joint venture, limited liability company or similar entity of any kind;

(xii) Subject to the legal authority of the ECRMC Board, handle, on a timely basis, any negotiations, and discussions for the purpose of attempting to cure any defaults that may exist with respect to ECRMC's contractual or regulatory obligations (provided that UCSD shall have no obligation to cure any monetary default except with funds from the relevant Facility or ECRMC); and

(xiii) Subject to the Facilities' capital budgets and ECRMC Board approvals, supervise the maintenance and the undertaking of all alterations and repairs at each Facility, and to prepare and submit to ECRMC, on an annual basis no fewer than thirty (30) days prior to the end of the year, a list of, and a budget relating to, capital items to be acquired for, or altered or repaired at the Facilities. Such budget shall include an allocation for capital purchases, alterations and repairs to be undertaken by UCSD, in its discretion, and which allocation may be modified by UCSD, in its sole discretion, including by substitution, for such year so long as the aggregate budget for such item does not result in a Material Deviation (as defined below in this subsection); *provided, however*, that such amount may be increased to meet emergency needs if UCSD determines such needs are commercially reasonable and provides prior written notice to ECRMC. Further, in the event capital purchases, alterations or repairs become necessary in order to preserve or procure necessary licenses and permits to operate the Facilities, at the request of UCSD, ECRMC will convene as soon as possible as allowed by law (preferably within two (2) days of the request of UCSD) to consider such additional expenditures as may be necessary to maintain necessary licenses and permits and approval of such expenses shall not be unreasonably withheld, conditioned or delayed. Notwithstanding, UCSD is also authorized to make such expenditure even without such approval to extent such expenditure is required by law, or in order to avoid immediate harm to or interruption of hospital operations and then will be reported to the ECRMC Board through its Chair within five (5) days of the expenditure.. For purposes hereof, the determination of whether an expenditure constitutes a capital item shall be made in accordance with generally accepted accounting principles ("GAAP"), consistently applied. The term "Material Deviation" shall mean either (a) exceeding any individual line item in such budget by more than twenty percent (20%), or (b) exceeding the Permitted Expenditure Amount by more than ten percent (10%). The term "Permitted Expenditure Amount" shall mean the total expenditure amount of all line items in such budget.

(b) In performing its duties under this Agreement, UCSD may rely on the recommendations of the Facilities' medical staff (and its designated committees) and departmental chairpersons (collectively "Medical Staff") and its Chief Medical Officer relative to the quality of professional services provided by individuals with clinical privileges.

3.2. Financial Responsibilities. UCSD shall use commercially reasonable efforts to:

(a) Manage the preparation of an annual operating budget for the Facilities, based on anticipated revenues and expenses at such Facility for the annual approval by ECRMC and endeavor to cause the Facilities to operate within its budget, notifying ECRMC in a reasonable time period (at least quarterly) of all material changes or deviations from the budget projections, and making recommendations to ECRMC concerning such changes or deviations;

(b) Oversee the timely preparation of financial and operating reports with respect to the Facilities, which shall include all reports required by any lender or lessor to ECRMC, budgetary comparisons and capital improvement reports and periodic reports summarizing UCSD's actions and performance hereunder; *provided, however*, that it shall be the sole responsibility of ECRMC to solicit and retain, at the expense of ECRMC, certified public accountants to undertake the year end audit of the

Facilities' operations, and to cause said accountants to issue their certified statements of profit and loss and the balance sheet for the Facilities and for ECRMC for each fiscal year;

(c) Oversee the Facilities' billing functions regarding the collection of all amounts due to the Facilities from all sources, including, but not limited to, amounts due from patients, and due under Medicare, Medicaid or other governmental or private insurance programs (the "Receivables"), and to retain on behalf of ECRMC, at the Facilities' expense, counsel to undertake litigation or similar action before any court, dispute resolution service, administrative agency or board in order to collect any of the Receivables;

(d) Review, when appropriate, the reserve requirements of ECRMC's lenders or governmental agencies with jurisdiction over the Facilities in an effort to assist in ensuring that all such reserve requirements are being met on a timely basis;

(e) Supervise the preparation and filing of all material reports, statements of affairs or records required by any federal, state or local government, or by any agency thereof, with regard to the operations of the Facilities as may be necessary to obtain reimbursements or funds therefrom, provided that the retention of any third party for the preparation of such reports shall be an expense of the Facilities;

(f) Review the financial performance and the operations of any partnership, joint venture, or similar arrangements in which the Facility may be a party, member, or co-owner of any sort;

(g) Oversee the payroll records for the Facilities' staff(s);

(h) Oversee the payment of all accounts payable, and all amounts owing, by the Facilities provided that the CEO and CFO retain at all times authority to execute checks and approve payments and expenditures with approval authority consistent with that which exists at the time of execution of this Agreement; and

(i) At the direction of ECRMC, review, oversee and negotiate the terms of any working capital or other similar loan agreements and related debt instruments with respect to ECRMC which pertains to a Facility and assist ECRMC as needed to meet all debt service requirements for the Bonds.

3.3. Third Party Contracts. Subject to the legal authority of the ECRMC Board, UCSD, in the performance of its duties under this Agreement, may review, negotiate, and enter into contracts with third parties regarding certain services for the Facilities. Such services may include, but shall not be limited to, therapy services, auditing services, coding services, lab services, ancillary services, insurance and brokerage services, food service, linens and other supplies, accounting services, consulting services, marketing, and bookkeeping and billing services. Prior to entering into contracts for and on behalf of any of the Facilities with such persons that require or are likely to result in an annual expenditure that is net negative to the overall operation budget by more than \$100,000, UCSD shall obtain ECRMC Board approval.

3.4. Legal Matters. UCSD will: (a) prepare or coordinate with outside legal counsel for the preparation of documents for the operation of the Facilities, including managed care contracts, supplier/vendor contracts, service contracts, equipment leases and other ancillary contracts; (b) prepare or coordinate licensure and other regulatory applications; (c) coordinate all litigation involving the Facilities with local counsel or the insurance of ECRMC; (d) coordinate with local counsel on local law issues affecting the Facilities; (e) process working capital requests and apply for, negotiate and obtain letters of credit; and (f) coordinate with local counsel to provide counsel to the Facilities' human resources department(s). The Parties acknowledge that all

outside counsel expenses under this Section shall be an expense of ECRMC and that the ECRMC Board shall retain the right to select such outside legal counsel or local counsel. Notwithstanding the foregoing, nothing shall limit UCSD's ability to defend, settle or otherwise dispose of litigation against UCSD in its individual capacity and not as an agent of ECRMC.

3.5. Other Management Services. UCSD shall have the authority to provide ECRMC with other services they jointly determine are necessary or appropriate, including ongoing consulting and training in key areas, such as documentation, management systems, quality assurance, staffing efficiency and expense control, and risk management, provided that the retention of any third party to provide such services shall be an expense of the Facilities. For the avoidance of doubt, UCSD's duties to ECRMC shall be solely limited to services in support of or relating to the Facilities. Notwithstanding anything herein to the contrary, in no event shall UCSD be delegated or otherwise responsible for any roles, responsibilities, or obligations in support of or relating to the provision of administrative or management services by or to any affiliate of ECRMC such as to medical groups, independent practice associations, or similar provider organizations that are not Facilities, unless expressly agreed otherwise by UCSD and those parties or unless provided as part of UCSD's management in support of ECRMC's existing provider network.

3.6. Payment of Expenses. All debts, obligations, other liabilities and expenditures of every kind required or permitted by UCSD under this Agreement, including, without limitation, any costs incurred in connection with the operation of the Facilities, are for ECRMC's account, and ECRMC shall be liable for all such expenditures ("ECRMC Expenditures"), except for UCSD's Staff Services (described below). UCSD is authorized by ECRMC to pay all ECRMC Expenditures (consistent with Section 4.2(1) below) from funds from ECRMC and the Facilities assuming there are sufficient funds for such payment. ECRMC, as applicable, shall pay directly any ECRMC Expenditures not paid from funds from the Facilities, and neither City nor UCSD nor any of its affiliates shall be obligated to advance any of its own funds to or for the account of ECRMC or Facility, or to incur any liability on behalf of ECRMC, unless ECRMC, shall have furnished UCSD with funds necessary for the discharge thereof prior to incurring such liability. UCSD's "Staff Services", which are not reimbursable by ECRMC, are exclusively limited to the salaries and benefits of UCSD's employees, officers and home office staff, as well as UCSD's home office overhead expenditures, including but not limited to lease expenditures, accountant and/or audit expenses, insurance policies, legal fees, third party accounts, payroll processing and human resources administration, not otherwise payable to UCSD pursuant to Article VII of this Agreement.

3.7. Notwithstanding any provision of this Agreement or any other document between the Parties, no action of UCSD shall be inconsistent with the provisions of the Bond Documents or Bond Covenants except as otherwise directed by the City as applicable per their respective authority except as agreed with the Majority Bondholder as defined under the Bond Trust Agreement ("Lender") under the terms of the Bond documents.

3.8. Reserved.

ARTICLE IV-1

RIGHTS AND DUTIES OF ECRMC

4.1. Cooperation with UCSD. ECRMC shall promptly and fully cooperate in all reasonable respects with UCSD in operating and supervising the operations of the Facilities.

4.2. Payment of Bonds and Related Requirements. ECRMC shall take all necessary steps to meet the requirements of the Bond, including but not limited to timely payment and compliance with all other covenants.

4.3. Operating Capital. ECRMC shall use commercially reasonable efforts to ensure that the Facilities have access to a level of funding reasonable and necessary for the operation of the Facilities on a sound financial basis (including the reimbursable expenses owed to UCSD).

4.4. Capital Improvements. ECRMC shall ensure that the Facilities have access to working capital reasonable and necessary to make all necessary capital improvements to the Facilities in order to maintain and continue standards of operation of the Facilities as rehabilitation and long term acute care facilities, as applicable.

4.5. Support Operations. ECRMC shall provide (at no additional cost to UCSD) and be responsible for administrative services, staffing, payroll, information technology systems, financial and accounting systems (including but not limited to billing, accounts payable, financial reports, and general ledger), and the signing of any reports or filings for the Facilities.

4.6. ECRMC understands that at no time will it look to the City to provide any Operating Capital or Capital Improvements or other funding.

4.7. ECRMC Insurance.

(a) ECRMC shall maintain, at its sole expense, professional liability and general liability insurance, Workers Compensation, Property, Directors & Officers Liability, Employment Practices Liability, Managed Care E&O, Cyber Liability, Crime, Fiduciary and other customary policies as may be required by applicable law or contracts to which it is a party, which insurance shall cover ECRMC and their employees or anyone engaged by or acting on behalf of any of them at the Facilities. Such insurance coverages shall be provided an insurer that is properly licensed and qualified to do business in the State in which the Facility is located. No insurance may be maintained through “self-insurance” unless approved in writing in advance by UCSD, which approval will not be unreasonably withheld, conditioned or delayed. ECRMC shall name both the City and UCSD as additional insureds in connection with such insurance. Management and ultimate authority for settlement of all claims against ECRMC shall remain within the responsibility and authority of ECRMC.

(b) ECRMC shall submit to UCSD and City a COI evidencing the coverage required herein prior to the Commencement Date. The COI shall contain an unqualified requirement that the insurance ECRMC provide UCSD and City with thirty (30) days’ written notice of any cancellation or lapse of said policy or any change to UCSD’s additional insured status of said policy, unless related to the failure to pay any premium, in which event the insurance ECRMC shall provide UCSD with ten (10) days’ written notice. All policies must contain a waiver of all rights of subrogation against UCSD.

4.8. On-Site Management Facilities. As part of the consideration for UCSD’s services provided under this Agreement, ECRMC shall provide adequate space at the Facilities for a management office, for the use of UCSD to conduct the business of the management of the Facilities.

4.9. Responsibility of ECRMC. Notwithstanding the authority granted to UCSD in this Agreement, the ECRMC Board, including the Medical Staff of the Facilities, as the case may be, will at all times retain sole and ultimate control and authority over patient care (including the provision of all medical, clinical or professional services rendered by or on behalf of the Facilities or such providers at the Facilities and otherwise); medical, clinical or professional services (including professional judgment relating thereto);

the Facilities (including, among other things the all Facility assets and operations); and such other duties and responsibilities that must be retained under applicable law, each case to the fullest extent as may be required by applicable law, including but not limited to:

(a) ECRMC shall be fully liable and legally accountable and responsible at all times to all patients and governmental organizations for all patient care and funds received, and for all other aspects of the operation and maintenance of the Facilities. In this regard, it is specifically emphasized that during the Term, ECRMC shall be and remain fully liable and legally accountable and responsible to the governments of the United States and the applicable state where the Facility is located, and the agents of said governments, with respect to all matters concerning the Facilities' continued participation in the Medicare and Medicaid programs under Title XVIII and Title XIX of the Social Security Act (42 U.S.C. § 1395 et seq.; 42 U.S.C. § 1396 et seq.);

(b) The ECRMC Board shall remain solely responsible for all obligations as set forth in 42 C.F.R. § 482.12 and California Code of Regulations, Title 22, Section 70713 or the applicable regulations for the state in which a Facility is located; and

(c) It is and will remain the ultimate responsibility of ECRMC (or the board of the Medical Staff of a Facility, as the case may be) to approve all decisions to credential, re-credential, appoint, grant clinical privileges to and discipline such Facility's Medical Staff in accordance with the medical staff bylaws and applicable law.

ARTICLE IV-2

RIGHTS AND DUTIES OF THE CITY

4.10. City Consent. City has and shall continue to consent to this Agreement pursuant to the provisions of the Municipal Hospital Law.

4.11. City at all times shall promptly cooperate in all reasonable respects with UCSD and ECRMC under this Agreement to the extent provided by the Municipal Hospital Law in operating and supervising the operations of the Facilities and in maintaining the state license for operation of the hospital Facility.

4.12. Ownership of Facilities: Consistent with the Municipal Hospital Law, City at all times shall own the real property and buildings for the Facilities.

4.13. At no time shall City be responsible for any of the duties of ECRMC under this Agreement, including but not limited to operating expenses, capital costs or compensation to UCSD.

4.14. At no time shall City be responsible for any of the duties of UCSD under this Agreement.

ARTICLE V

COMPENSATION

5.1. Reimbursable Costs. UCSD shall not receive a management fee for any of the services provided for herein, Notwithstanding, UCSD shall be reimbursed all compensation and benefits costs

associated with the employment of the ECRMC Chief Executive Officer and for any reasonable expenses and actual costs incurred by UCSD for the time (in excess of 20 hours per week), travel, lodging and meals expense of the UCSD's home office staff who travel to the Facilities, and for any ECRMC Expenditures or other amounts to which it is entitled pursuant to Section 3.6 or any other provisions hereof. UCSD will provide receipts or other appropriate evidence of these expenses prior to UCSD withdrawing such reimbursements from funds from the Facilities. In the event the funds from the Facilities are not sufficient to pay such reimbursements, ECRMC shall pay to UCSD any deficiency within thirty (30) days after receipt of UCSD's written request therefore. If UCSD is required by law to obtain a license in any jurisdiction in which ECRMC operates and in which UCSD is not currently so licensed, ECRMC agrees to reimburse UCSD for all reasonable expenses related thereto.

5.2. Other Agreements for Services. The Parties agree that to the extent there are existing or future agreements between UCSD and ECRMC for clinical or other services outside of this Joint Powers Agreement, nothing contained herein is intended to limit or otherwise alter the terms of those agreements and that UCSD shall have any and all rights to compensation for services as may otherwise be provided for in those separate agreements.

ARTICLE VI

TERMINATION

6.1. Termination by ECRMC. If at any time during the Term any of the following events shall occur and not be remedied within the applicable period of time herein specified (if any), then ECRMC shall have the right to terminate this Agreement immediately upon written notice:

(a) If at any time during the Term, UCSD shall fail in any material respect to make any payment of any monetary obligation due and payable by UCSD pursuant to this Agreement (other than a failure to make any such payment resulting from a default by ECRMC under this Agreement or otherwise caused by ECRMC) within five (5) days following receipt by UCSD of written notice thereof from any other Party hereto (*provided, however*, in no event shall the other parties hereto be required to give more than two (2) such written notices hereunder during any consecutive twelve (12) month period), then ECRMC shall have the right to terminate this Agreement immediately upon written notice.

(b) If at any time during the Term, UCSD shall, in any material respect, fail to comply with, observe or perform any material non-monetary covenant, agreement, term or provision of this Agreement required to be complied with, observed, or performed by UCSD (other than Section 6.1(a) above), and such material failure shall continue for a period of sixty (60) days after receipt of written notice thereof by ECRMC to UCSD, unless such failure cannot be cured within a period of sixty (60) days, in which case such failure shall not be deemed to continue so long as UCSD commences to cure such failure within the sixty (60) day period and UCSD proceeds thereafter with due diligence and good faith to complete the curing.

(c) If at any time UCSD shall apply for or consent to the appointment of a receiver, trustee, or liquidator such party, as applicable, or of all or a substantial part of its assets, file a voluntary petition in bankruptcy or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or any answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or if an order, judgment or decree shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating such party bankrupt or appointing a receiver, trustee, or liquidator of such party with respect to all or a substantial part of the assets

of such party, and such order, judgment or decree shall continue un-stayed and in effect for any period of sixty (60) consecutive days, then ECRMC shall have the right to terminate this Agreement immediately upon written notice as allowed by applicable law.

(d) [Reserved]

6.2. Termination by UCSD. If at any time during the Term any of the following events shall occur and not be remedied within the applicable period of time herein specified (if any), then UCSD shall have the right to terminate this Agreement immediately upon written notice:

(a) ECRMC shall fail to keep, observe, or perform any material covenant, agreement, term or provision of this Agreement required to be kept, observed, or performed by any of them (except as described in Section 6.2(b) below) and such failure shall continue for a period of thirty (30) days after written notice thereof by UCSD to ECRMC, unless such failure cannot with due diligence be cured within a period of thirty (30) days (in UCSD's reasonable discretion), in which case such failure shall not be deemed to continue so long as ECRMC commences to cure such failure within the thirty (30) day period and proceeds with due diligence to complete the curing thereof within sixty (60) days after receipt by ECRMC of a notice of default (or such longer period as is reasonably required to effect such cure if ECRMC is diligently proceeding to do so);

(b) ECRMC fails to make any payment required hereunder and such default shall continue for a period of thirty (30) days after written notice from UCSD to ECRMC (*provided, however,* in no event shall the other UCSD be required to give more than two (2) such written notices hereunder during any consecutive twelve (12) month period);

(c) The Facilities or any material portion thereof shall be materially damaged or destroyed by fire or other casualty and (i) ECRMC shall fail to undertake to repair, restore, rebuild, or replace any such material damage or destruction within forty-five (45) days after such fire or other casualty, or at such time as provided by an insurance carrier, or shall fail to complete such work diligently, and (ii) ECRMC shall fail to permit UCSD to undertake to repair, restore, rebuild, or replace, at ECRMC's expense, any such material damage or destruction within forty-five (45) days after such fire or other casualty (subject to the provisions of insurance); or

(d) ECRMC shall apply for or consent to the appointment of a receiver, trustee, or liquidator such party, as applicable, or of all or a substantial part of its assets, file a voluntary petition in bankruptcy or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or any answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or if an order, judgment or decree shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating such party bankrupt or appointing a receiver, trustee, or liquidator of such party with respect to all or a substantial part of the assets of such party, and such order, judgment or decree shall continue un-stayed and in effect for any period of sixty (60) consecutive days.

6.3. Survival Rights Upon Termination. If any Party exercises its option to terminate pursuant to this ARTICLE VII, each Party shall account for and pay to the other all sums due and owing pursuant to the terms of this Agreement within thirty (30) days after the effective date of termination. Any term or provision hereof relating to a disputed amount sum shall survive the termination hereof until the final resolution of the applicable dispute. Without limiting the generality of the foregoing, within thirty (30) days after the effective date of termination of this Agreement, ECRMC shall pay to UCSD all accrued fees and reimbursable expenses of UCSD, together with all accrued and unpaid interest thereon. All other rights and obligations of the Parties

under this Agreement shall terminate (except as set forth in Article XIII, ARTICLE XV, ARTICLE XVI, Section 6.3, Section 6.4, and Section 6.5 hereof).

6.4. Cooperation After Termination. Upon the expiration or earlier termination of this Agreement, UCSD shall cooperate with ECRMC and use commercially reasonable efforts to effect an orderly transition to avoid any interruption in the rendering of the above-described services to the Facilities (including, continuing to provide management services for three (3) months following expiration or termination on the same compensation basis, provided, that, all fees then owing to UCSD are paid and the fees for such three (3) month period is placed in an escrow account reasonably satisfactory to the Parties, which escrowed amount will be used solely to compensate the UCSD pursuant hereto). In the event of such expiration or earlier termination, UCSD shall promptly surrender to ECRMC all keys, contracts, other documents and records maintained by UCSD in connection with the operations of the Facilities as soon as practical, but in no event later than the later of thirty (30) days after the Termination Date or the date that UCSD ceases providing services under this Agreement. In addition, upon the expiration or earlier termination of this Agreement, UCSD shall return to ECRMC, as appropriate, all original electronic and paper documents and all copies thereof, except for one copy which UCSD may maintain for record purposes only, which relate in any way to the performance of services hereunder, and the operation and maintenance of the Facilities in the possession, custody or control of UCSD. For any requests of UCSD made after the Termination Date that do not involve obligations of UCSD already required under this Agreement but not as yet completed prior to the Termination Date, UCSD will be promptly reimbursed by ECRMC for any of UCSD's reasonable and documented out-of-pocket costs and expenses (including but not limited to the reasonable expenses of UCSD's travel expenses and reasonable, fees, disbursements and other reasonable and documented charges of legal counsel to UCSD) and will be promptly and reasonably compensated by ECRMC for any material efforts made at the request of ECRMC.

6.5. No Personal Liability. The Parties agree that the liability of ECRMC and UCSD under the terms of this Agreement shall be limited solely to the assets of ECRMC, on the one hand, and the amounts otherwise owed to UCSD pursuant to this Agreement on the other hand, it being intended that no officers, manager(s), director(s) or members of ECRMC or officers, members or managers of the UCSD shall be deemed personally liable for any judgment, costs or damages incurred by UCSD or ECRMC hereunder. The Parties further agree that neither UCSD or ECRMC shall look to the City nor any City official, officer, employee, attorney or agent to indemnify either for their respective liabilities under this Agreement and shall not attempt to hold any official, officer, employee, attorney or agent of City as personally liability for any judgment, costs or damages incurred by UCSD or ECRMC relative to their respective actions in operation of the Facilities as set forth in the Agreement. UCSD and ECRMC each shall indemnify, defend and hold harmless the City, its officers, agents and employees, from and against any and all liabilities, claims or demands arising or alleged to arise out of their respective actions under this Agreement.

ARTICLE VII **ROLE OF THE CITY**

(a) City is a body corporate and politic of the State of California. City has the legal authority but not the requirement under the Municipal Hospital Law to consent to this JPA Agreement.

(b) As provided by the provisions of the Municipal Hospital District Law, the City consents to the joint affiliation with ECRMC and UCSD.

(c) The Parties agree that this Agreement does not create any financial obligations or responsibilities for the City and that neither ECRMC or UCSD shall have the right to look to the City for payment of any financial expenses or obligations under this Agreement.

(d) The City promptly shall fill any vacancy on the ECRMC Board of Directors, after consulting with and considering, in good faith, any recommendations or suggestions offered by UCSD and/or ECRMC, *provided however* that at all times while this Agreement remains in force and effect, the City shall retain on the ECRMC Board of Directors at least two (2) seats for representatives selected by UCSD.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES OF ECRMC

ECRMC represents and warrants to UCSD, applicable (subject to the limitations and exceptions disclosed in the correspondingly numbered schedules to this Agreement) as follows as of the Closing Date:

8.1. **Organization; Capacity.**

ECRMC is separate public agency and enterprise operation of the City. With the consent of the City, and in compliance with the Municipal Hospital Law, ECRMC has the requisite power and authority to enter into this Agreement and the other Transaction Documents to which ECRMC will become a party hereunder.

8.2. **Authority; Non-contravention; Binding Agreement.**

(a) The execution, delivery and performance by ECRMC of this Agreement and the other Transaction Documents to which it is a party or will become a party, and the consummation by ECRMC of the Transaction and its obligations under the Transaction Documents, as applicable: (i) have been, or will be, duly and validly authorized and approved by all necessary governing actions, on the part of ECRMC, none of which actions have been modified or rescinded and all of which actions remain in full force and effect; and (ii) are within ECRMC's authority under the Municipal Hospital Law or the existing ECRMC Bylaws .

ARTICLE IX

REPRESENTATIONS AND WARRANTIES OF UCSD

UCSD represents and warrants to ECRMC (subject to the limitations and exceptions disclosed in the correspondingly numbered schedules to this Agreement) as follows as of the Closing Date:

9.1. **Organization; Authority.** UCSD is a constitutional corporation, validly existing and in good standing under the Laws of the State of California. UCSD has the requisite power and authority to enter into this Agreement and the other Transaction Documents to which UCSD will become a party hereunder.

9.2. **Powers; Consents; Absence of Conflicts With Other Agreements.**

(a) The execution, delivery and performance by UCSD of this Agreement and the other Transaction Documents to which it is a party or will become a party, and the consummation by UCSD of the Transactions and its obligations under the Transaction Documents (i) have been or will be, duly and validly authorized and approved by all necessary corporate approvals on the part of UCSD, none of which actions have been modified or rescinded and all of which actions remain in full force and effect, and are not, and will not be, in contravention or violation of the terms of UCSD's organizational or governing documents, and (ii) except as set forth on Schedule 9.2(a)(ii), do not require any Approval of, filing or registration with, the issuance of any Permit by, or any other action to be taken by, any Governmental Authority to be made or sought by UCSD.

(b) This Agreement and the other Transaction Documents to which UCSD is or will become a party are and will constitute the valid and legally binding obligations of UCSD and are and will be enforceable against UCSD in accordance with the respective terms hereof and thereof, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or other Laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity.

ARTICLE X **COVENANTS**

10.1. Community Benefit Commitments. ECRMC and UCSD are committed, in both tangible and measurable ways, to continue to deliver high-quality health care services to all residents of ECRMC regardless of insurance status, income or demographics in manners as mutually agreed upon by the parties. Without limiting the generality of the foregoing and in furtherance of the foregoing, ECRMC and UCSD, from and after the Effective Time will use commercially reasonable efforts to ensure:

(a) The Facilities will remain certified to participate in the Medicare program and provide services to Medicare beneficiaries in a non-discriminatory manner.

(b) The Facilities will remain certified to participate in the Medi-Cal program and provide services to Medi-Cal beneficiaries in a non-discriminatory manner.

(c) The Facilities will provide medical care and treatment at the ECRMC Facilities without regard to insurance status, income or ability to pay, in a manner consistent with the patient financial assistance policies and procedures maintained by UCSD for its other hospitals and other health care facilities, including subject to any amendments to such policies.

10.2. Governance Matters.

(a) Consistent with the provisions of ARTICLES III and IV, UCSD, University of California Board of Regents and the Chancellor will have authority with respect to the operation of the Hospital and the other Facilities, except as otherwise specifically delegated to the ECRMC Board of the Hospital (the "ECRMC Board"), which ECRMC Board is intended to be the "governing body" as specified in the ECRMC Board Bylaws and/or as previously provided for in this Agreement.

(b) The ECRMC Board has been established pursuant to the provisions of the Municipal Hospital Law and City ordinance, and operated pursuant to the provisions of the Law as well as the Bylaws of the ECRMC Board (the "ECRMC Board Bylaws"). The Bylaws are interpretive and do not have the force of law. The ECRMC Board composition may be altered only by the City by ordinance in compliance with the Municipal Hospital Law. UCSD may request and the City shall consider different or additional Board members to the extent allowed by the Municipal Hospital Law. The ECRMC Board Bylaws may not be rescinded or materially amended without the prior agreement of ECRMC and the City.

(c) The Parties agree that in the event the Imperial Valley Healthcare District has not acquired the assets and assumed operation of the Facilities from the City and ECRMC by January 1, 2026, then the City may appoint a ECRMC Board that shall no longer include all of the members of the City Council and which may have a majority of members who are community members and will include two seats appointed by UCSD as well as the Chief Medical Officer and Chief of the Medical Staff of ECRMC.

ARTICLE XI
ADDITIONAL COVENANTS

11.1. Medical Staff Matters.

(a) The Medical Staff bylaws (the “Medical Staff Bylaws”) will be adopted and approved by ECRMC Board as the Medical Staff Bylaws of the Hospital; provided; however, UCSD may propose that the Medical Staff Bylaws be conformed to bring them into conformity with quality improvement initiatives, requirements of The Joint Commission, CMS, and other accreditation, licensing or regulatory bodies, and industry best practices.

(b) The ECRMC Board pursuant to the terms of the ECRMC Board Bylaws shall provide advice and recommendations to UCSD executive leaders regarding organizing and supervising the medical staff of the Hospital and other Facilities, as applicable (the “Medical Staff”), including without limitation approving amendments to the Medical Staff bylaws and rules and regulations and assuring that the Medical Staff establishes mechanisms to achieve and maintain high quality medical practice and patient care.

(c) The ECRMC Board will, pursuant to the terms of the ECRMC Board Bylaws, approve Medical Staff appointments and reappointments, the granting of clinical privileges, and the reduction, modification, suspension, or termination of medical staff appointments and clinical privileges pursuant to the provisions of the Medical Staff Bylaws.

(d) The Medical Staff officers, committee chairs and other medical staff leaders as of the Effective Date will continue to serve in such capacities for the remainder of their current tenure, subject to removal and replacement in accordance with the Medical Staff Bylaws.

ARTICLE XII
SALE OR ASSIGNMENT OR ASSETS OR FACILITIES

12.1. No Sale or Assignment. Except as provided in 12.3 below, during the term of this Agreement, neither ECRMC or City will sell or otherwise transfer all or any portion of the Facilities without One Hundred and Eight (180) days prior written notice to UCSD. If ECRMC and/or the City attempts to transfer all or any portion of the Facilities, UCSD will have the option, but not the requirement exercisable in its sole and absolute discretion, to treat such sale or transfer as a breach of this Agreement and terminate this Agreement pursuant to Section 6.2(a) of this Agreement.

12.2. UCSD Assignment. UCSD shall not directly or indirectly, voluntarily or by operation of law, sell, assign, mortgage, encumber or otherwise transfer all or any part of its interest in or rights with respect to this Agreement (each, an “UCSD Assignment”), without ECRMC’s prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed.

12.3. Potential Assignment to Imperial Valley Healthcare District (“IVHD”). Notwithstanding anything to the contrary herein, the Parties agree and understand that, a potential transfer of the assets of ECRMC and other real property owned by the City, along with other facilities, licenses, operation and employees, to the IVHD is contemplated. UCSD and ECRMC understand that the City intends to condition any such transfer upon the transfer and assumption by IVHD of this Agreement and the Bonds, including all of the rights and obligations of both the City and ECRMC as appropriate.

12.4. UCSD Option to Acquire. To the extent that the Parties then owning the assets and Facilities either before or after any assignment pursuant to Section 12.3 determine to attempt to sell or otherwise transfer

ownership of the material assets and/or operations of the Facilities to an entity not a party to this Agreement, UCSD shall have a full right and option to acquire or receive the assets, at its sole discretion and determination, under the same terms and conditions as proposed to or offered by the outside third-party or entity (the “UCSD Option”). This UCSD Option shall exist for so long as this Agreement remains in place and for an additional 24 months following termination of this Agreement.

ARTICLE XIII

NO LIABILITY; INDEMNIFICATION; EXPENDITURE LIMITATION

13.1 Indemnification of ECRMC and City By and Liability of UCSD.

(a) Consistent with the provisions of Section 6.5 above, and if and only to the extent not otherwise covered by insurance, UCSD shall indemnify, defend, indemnify, protect and hold harmless the City and ECRMC, and its and their respective agents, officers, directors, and employees (the “City/ECRMC Indemnitees”), from and against any and all liability, claims, loss, cost, damage or expense (including, without limitation, reasonable attorneys’ fees and expenses and court costs, costs and expenses of defense, appeal and settlement of any proceedings instituted against any of such City/ECRMC Indemnitees and all reasonable costs of investigation in connection therewith) incurred by any of them in connection with, by reason of, or arising out of any third party claims which are primarily caused by the UCSD’s gross negligence, fraud or willful misconduct in connection with the performance of its duties or obligations under this Agreement. The UCSD’s obligations under this Section 13.1(a) shall survive the expiration or earlier termination of this Agreement.

(b) Subject to Section 13.1(a) hereof, UCSD assumes no liability whatsoever for any acts, omissions or delinquencies of City or ECRMC, agents, officers, directors or employees, or any previous operators of the Facilities, or any previous property manager or other agents of either ECRMC or the City. Subject to Section 13.1(a) hereof, UCSD assumes no liability for known or previously unknown violations of environmental, healthcare laws or other laws or regulations which become known during the Term. Any such environmental violations or hazards or healthcare violations or other violations of law discovered by UCSD shall be brought to the attention of ECRMC in writing and, except to the extent caused by a grossly negligent act or material omission of UCSD, ECRMC shall be responsible for such violations or hazards. In addition, except to the extent caused by a negligent act or omission of UCSD, and subject to Section 13.1(a) hereof, UCSD assumes no liability for any failure of computer hardware or software of miscellaneous computer systems to accurately process data (including, but not limited to, calculating, comparing, and sequencing) or for any damages arising from, incident to, or in connection with, the pre-existing conditions of the structure, equipment, or the environment of the Facilities.

(c) Further for the avoidance of doubt, UCSD makes no, and hereby disclaims any, warranties whatsoever, including, without limitation, warranties of merchantability or fitness for a particular purpose or implied warranties, with regard to any goods or third-party services purchased or used by ECRMC, or the Facilities under this Agreement. ECRMC agrees that ECRMC will not make any claim against UCSD for defects in any such product or service, for breach of warranty, or for any other claim arising out of any such product or services purchased or used by ECRMC, the City or the Facilities under this Agreement.

13.2. Indemnification of UCSD by ECRMC. Consistent with the provisions of Section 6.5 above, and if and only to the extent not otherwise covered by insurance, ECRMC agrees to defend, indemnify, protect and hold harmless UCSD and its members, affiliates and its and their respective agents, officers,

directors, and employees (the “UCSD Indemnitees”) from and against any and all liability, claims, loss, cost, damage or expense (including, without limitation, reasonable attorneys’ fees and expenses and court costs, costs and expenses of defense, appeal and settlement of any proceedings instituted against any of such UCSD Indemnitees and all reasonable costs of investigation in connection therewith) incurred by any of them in connection, by reason of, or arising out of: (a) UCSD’s performance of services or undertaking of responsibilities under this Agreement, unless (and then, only to the extent) caused by UCSD’s gross negligence, fraud or willful misconduct, or (b) any damage to property, or injury or death to persons, occurring in or with respect to any of the Facilities, unless (and then, only to the extent) caused by UCSD’s fraud or willful misconduct. ECRMC shall pay to UCSD all indemnifiable expenses upon final disposition of such proceeding; *provided*, that UCSD shall be obligated to repay the amount of such expenses advanced to UCSD if it is finally determined by a court of competent jurisdiction that UCSD was not entitled under this Agreement to indemnification. Without limitation on their Expense Advancement Obligation, ECRMC shall be permitted to satisfy their obligations under this Section 13.2 with any available insurance proceeds. No UCSD Indemnitee shall be liable pursuant to this Agreement (a) for the acts, receipts, neglects, defaults or omissions of any other UCSD Indemnitee or agent of ECRMC or the City, (b) for any loss on account of defect of title to any property of ECRMC, (c) on account of the insufficiency of any security in or upon which any money of ECRMC shall be invested or (d) for any loss incurred through any bank, broker or other similar person or entity. ECRMC’s obligations under this Section 13.2 shall survive the expiration or earlier termination of this Agreement.

13.3. Control of Defense of Indemnifiable Claims. The indemnified party shall promptly notify the indemnifying party in writing of any such claim and shall provide the indemnifying party with all available evidence in its possession to enable the indemnifying party to defend such claim; *provided, however*, that the failure to give any such notice shall not disqualify any indemnified party from the right to indemnification unless such failure is adversely prejudicial to the indemnifying party. The indemnifying party shall have the sole and exclusive right to select counsel and shall pay all expenses of the defense, including, without limitation, attorneys’ fees and court costs. If necessary, the indemnified party shall join as a party to the suit but shall be under no obligation to participate except to the extent that such participation is required as a result of being a named party to the suit. The indemnified party shall offer reasonable assistance to the indemnifying party in connection therewith at no charge to the indemnifying party except for reimbursement of reasonable out-of-pocket costs and expenses incurred by the indemnified party in rendering such assistance. The indemnified party shall have the right to participate and be represented in any such suit by its own counsel at its own expense. The indemnifying party shall not settle any such suit if such settlement would have an adverse effect on the rights of the indemnified party, including imposing a burden on the indemnified party or if the indemnifying party is not responsible for or does not pay all amounts owed in relation to such settlement, in each case, without obtaining the prior written consent of the indemnified party, which consent shall not be unreasonably withheld, conditioned or delayed. It is the intention of the Parties that, if the indemnifying party wrongfully denies its indemnification obligations hereunder, and the indemnified party is required to enforce the indemnifying party’s obligation hereunder, then the indemnified party shall be entitled to recover its reasonable attorneys’ fees, expenses and costs incurred therein.

13.4. Limitation of Expenditure Obligation. Notwithstanding anything to the contrary in this Agreement, but excluding UCSD’s indemnity obligations set forth in Section 13.1 above, UCSD shall have no obligation whatsoever to make any advance to or for the account of ECRMC or any Operator or Facility, or to pay any amount contemplated for, or required of, UCSD under this Agreement, or to incur any expenditure obligation – whether ordinary or capital – except to the extent that funds are available for such purpose (in UCSD’s reasonable judgment) either from capital funds provided by ECRMC, the Operators or otherwise from the Facilities’ funds. Moreover, if UCSD so requests, from time to time, ECRMC shall, and cause the Operators to, sign, as principal, any contract or agreement which UCSD is authorized or required to execute pursuant to this Agreement to evidence that UCSD is acting solely as ECRMC’s and the Operator’s agent and not as principal.

13.5. ECRMC'S AND CITY'S REMEDIES. AS A MATERIAL PART OF THE CONSIDERATION TO UCSD, ECRMC AND THE CITY AGREE THAT, AND EXCEPT FOR ECRMC'S, AND THE CITY'S RIGHTS, REMEDIES AND RECOVERIES UNDER THIS AGREEMENT, IN NO EVENT WILL UCSD OR ITS MEMBERS, PARTNERS, EQUITY HOLDERS, DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES, OR SUCH AFFILIATES' SHAREHOLDERS, MEMBERS, PARTNERS, EQUITY HOLDERS, DIRECTORS, OFFICERS, OR EMPLOYEES, OR ANY SUCCESSORS OR ASSIGNS BE LIABLE TO ECRMC, OPERATORS OR ANY THIRD PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, WITHOUT LIMITATION, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL DAMAGES, INCIDENTAL DAMAGES, INDIRECT DAMAGES, EXEMPLARY DAMAGES, SPECIAL, ENHANCED DAMAGES, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED UPON OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE AND ECRMC HEREBY WAIVES ALL CLAIMS AGAINST THE FOREGOING ASSUMES ALL RISK RELATING TO THERETO, KNOWN AND UNKNOWN.

13.6. UCSD'S REMEDIES. AS A MATERIAL PART OF ITS CONSIDERATION, UCSD AGREES THAT, IN NO EVENT WILL CITY OR ECRMC OR THEIR MEMBERS, DIRECTORS, OFFICERS, OR EMPLOYEES BE LIABLE TO UCSD UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, WITHOUT LIMITATION, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL DAMAGES, INCIDENTAL DAMAGES, INDIRECT DAMAGES, EXEMPLARY DAMAGES, SPECIAL, ENHANCED DAMAGES, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED UPON OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE AND UCSD HEREBY WAIVES ALL CLAIMS AGAINST THE FOREGOING AND ASSUMES ALL RISK RELATING TO THERETO, KNOWN AND UNKNOWN.

13.7. Performance of Undertakings. Each Party shall perform faithfully at all times any and all covenants, undertakings, stipulations, and provisions applicable to such Patty contained in the Transaction Documents.

13.8. Dispute Resolution. Except as otherwise set forth in any other agreement between the Parties with respect to a specific matter in dispute governed by such agreement, in the event of any dispute, controversy, or disagreement arising out of or relating to this Agreement, including allegations of breach, termination, validity, interpretation, and performance thereof (each, a "Dispute"), the Parties agree to meet and confer in good faith to attempt to resolve the Dispute without an adversary proceeding. If the Dispute is not resolved to the mutual satisfaction of the Parties within fifteen (15) Business Days of a Party's receipt of notice of the Dispute from the affected Party setting forth the nature of such Dispute and the request that the Parties meet and confer to discuss the Dispute, the Parties may pursue all available remedies under this Agreement to resolve Dispute.

13.9. Waiver of Trial by Jury. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS. THIS IS AN AFFIRMATIVE WAIVER OF THE PARTIES' RIGHTS TO A JURY TRIAL UNDER CALIFORNIA LAW, CALIFORNIA CODE CIVIL PROCEDURE § 631. BY SIGNING BELOW ON THE SIGNATURE LINES, EACH PARTY IS EXPLICITLY WAIVING JURY TRIAL AND AUTHORIZING ANY AND ALL PARTIES TO FILE THIS

WAIVER WITH ANY COURT AS THE WAIVER REQUIRED UNDER CALIFORNIA CODE CIVIL PROCEDURE § 631(f)(2).

13.10. Governing Law. The Parties agree that all disagreements, disputes or claims arising out of or relating to this Agreement or the Transaction shall be governed by and construed in accordance with the applicable Law of the State of California without giving effect to any choice or conflicts of Law provision or rule thereof that would result in the application of the applicable Law of any other jurisdiction other than the applicable Law of the United States, where applicable and with venue in Imperial County.

ARTICLE XIV

SUCCESSORS AND ASSIGNS – See Section XII

14.1. Binding Effect. This Agreement shall be binding upon the respective successors and permitted assigns of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

14.2. Subcontracting. The UCSD may subcontract any of its management responsibilities and duties under this Agreement, *provided, however,* that UCSD shall remain responsible and liable for the fulfillment of all its obligations and duties set forth in this Agreement.

ARTICLE XV

PROTECTION OF PROPRIETARY INFORMATION

15.1. Property Interests/Confidentiality of UCSD's Protected Information.

(a) UCSD's Protected Information. All information concerning the UCSD's businesses or assets that is not generally known to the public, including, but not limited to, the technical systems, methods, policies, procedures and controls, copyrights, trade names, trademarks, service marks, "know-how" and all other intellectual property rights related thereto employed by the UCSD, along with the processes, procedures, and the information and materials compiled or prepared by or on behalf of UCSD in connection with UCSD's management of healthcare facilities, including without limitation marketing plans of UCSD, business plans and strategies of UCSD, pricing information of UCSD, information on competition of UCSD, demographics of relevance to UCSD, suppliers and providers of services of UCSD, structure, status and activities of the UCSD; organizational documents of the UCSD; books, records, tax returns, appraisals and similar documents of the UCSD; financial and performance statements of the UCSD; and financing arrangements of UCSD (collectively "UCSD Protected Information") are and shall remain the confidential property of the UCSD and are not, at any time, to be utilized, distributed, copied or otherwise employed or acquired by ECRMC or the City, except as authorized in writing by the UCSD or except as may be required by law. UCSD Protected Information used in this Section 15.1 does not include any information collected or prepared by UCSD exclusively for the benefit of or on behalf of ECRMC.

(b) Ownership. The UCSD shall own all rights, title and interest, including but not limited to all intellectual property rights, in and to UCSD Protected Information. To the extent that ownership in such UCSD Protected Information does not automatically vest in UCSD, ECRMC and the

City hereby transfer and assign to UCSD, as applicable, all rights, title and interest which ECRMC or the City may have in the UCSD Protected Information.

(c) Survival. The provisions of this Section 15.1 shall survive the expiration or sooner termination of this Agreement.

15.2. Property Interests/Confidentiality of ECRMC's Protected Information.

(a) Work Product. "Work Product" means all work, ideas, inventions, discoveries, processes and improvements, computer programs, specifications, operating instructions, notes, technical drawings, designs and all related documentation (whether or not patentable) created or first reduced to practice by UCSD, alone or with others, in providing the services to ECRMC under this Agreement and exclusively used in the provision of the services and not at any other location by UCSD.

(b) Owner of Medical Records, ECRMC Protected Information and Work Product.

(i) "Medical Records" mean all information concerning the healthcare services provided to an individual in any aspect of healthcare delivery by ECRMC in a Facility, and/or documenting healthcare or health status of an individual. "ECRMC Protected Information" means all information concerning ECRMC's businesses or assets that is not generally known to the public, including, but not limited to, information relating to the assets, business, operations, management, performance, structure, status and activities of ECRMC; organizational documents of ECRMC; books, records, tax returns, appraisals and similar documents of ECRMC; financial and performance statements of ECRMC; and business plans and strategies of ECRMC. ECRMC shall own all rights, title, and interest, including but not limited to all intellectual property rights, in and to all ECRMC Protected Information and Work Product. To the extent that ownership in such ECRMC Protected Information and Work Product does not automatically vest in ECRMC, UCSD hereby transfers and assigns to ECRMC, as applicable, all rights, title, and interest which UCSD may have in such ECRMC Protected Information and Work Product. UCSD agrees to complete and execute any other documents reasonably requested by ECRMC to confirm the conveyance of all ECRMC Protected Information and Work Product.

(c) Use and Disclosure of Medical Records, Protected Information and Work Product. UCSD acknowledges that it will be given access to Medical Records, ECRMC Protected Information and Work Product in connection with ECRMC's businesses and their operations, and ECRMC and the City acknowledge that each will be given access to UCSD Protected Information in connection with UCSD's businesses and their operations. Each Party shall comply with all applicable laws concerning the privacy, security and confidentiality of Medical Records. Each of the Parties further acknowledges that the other Parties have devoted and will devote substantial time, money and effort in the development of UCSD Protected Information, ECRMC Protected Information and Work Product (as applicable) and in maintaining the proprietary and confidential nature thereof. Each of the Parties expressly acknowledges and agrees that the UCSD Protected Information, ECRMC Protected Information and Work Product (as applicable) is proprietary and confidential and that if any of the UCSD Protected Information, ECRMC Protected Information and Work Product (as applicable) were used or imparted to a person or entity that is in competition with UCSD and/or ECRMC such disclosure would result in hardship, loss, irreparable injury and damage to UCSD and/or ECRMC the measurement of which would be difficult, if not impossible, to determine. Accordingly, each of the Parties expressly agrees that the other Parties have a legitimate interest in protecting the UCSD Protected Information, ECRMC Protected Information and Work Product (as applicable) and their business goodwill, and that it is necessary for them to protect their businesses from such hardship, loss, irreparable injury and damage. Each of the Parties agrees that it will use commercially reasonable efforts and take steps to protect and safeguard the UCSD Protected Information, ECRMC

Protected Information and Work Product (as applicable), that such Party will not, directly or indirectly, use, disclose, distribute, or disseminate to any other person, entity, business or corporation or otherwise employ the UCSD Protected Information, ECRMC Protected Information and Work Product (as applicable), either for such Party's own benefit or for the benefit of another, except as required in the ordinary course of UCSD's engagement by ECRMC, upon the approval of the owner of such information or as required by law. Each of the Parties shall use such UCSD Protected Information, ECRMC Protected Information and Work Product (as applicable) only in the course of its duties to the other Parties under this Agreement and for no other purpose.

(d) Duty Not to Use or Disclose After Termination. The confidentiality obligations set forth in Section 15.1 and Section 15.2 shall continue as long as ECRMC Protected Information, UCSD Protected Information and Work Product and/or records remain confidential (except that the obligations shall continue if ECRMC Protected Information, UCSD Protected Information or Work Product are disclosed and lose their confidential nature through improper means, including, but not limited to, any breach of this Agreement or otherwise) and shall survive the termination of this Agreement.

(e) Ownership of Records and Copies. Any and all documents, records and copies of records, including, but not limited to, hard copies or copies stored on a computer or disk, e-mail, databases, etc. pertaining to Medical Records, ECRMC Protected Information and Work Product that are made or received by UCSD in the course of its engagement with UCSD shall be deemed to be the property of ECRMC. Any and all documents, records and copies of records, including, but not limited to, hard copies or copies stored on a computer or disk, e-mail, databases, etc. pertaining to UCSD Protected Information that are made or received by ECRMC in the course of its engagement with UCSD shall be deemed to be the property of UCSD.

(f) Return Upon Termination. Upon termination of this Agreement for any reason, (i) UCSD shall deliver to ECRMC all documents, records and copies of records, including, but not limited to, hard copies or copies stored on a computer or disk, e-mail, databases, etc. pertaining to Medical Records, ECRMC Protected Information and Work Product and all other property of ECRMC, to the extent in UCSD's possession or under UCSD's custody or control, within ten (10) business days, provided however, ECRMC agrees that UCSD may retain a copy of such information for litigation, dispute resolution purposes and similar purposes and (ii) ECRMC shall, deliver to UCSD all documents, records and copies of records, including, but not limited to, hard copies or copies stored on a computer or disk, e-mail, databases, etc. pertaining to UCSD Protected Information and all other property of UCSD, to the extent in ECRMC's possession or under ECRMC's or custody or control, within ten (10) business days. Each Party shall maintain such records for the longer of the applicable period under law or five (5) years and afford access to such information upon the other Party's reasonable request.

(g) Violations. In the event of any violation of these confidentiality obligations, a Party shall be authorized and entitled to obtain immediate and permanent injunctive relief, as well as any other relief permitted by law. Each Party waives any requirement that the other Party post a bond as condition for obtaining any such relief.

(h) The provisions of this Section 15.2 shall survive the expiration or sooner termination of this Agreement.

15.3. Remedies. The Parties agree that an aggrieved party who is the beneficiary of any restriction contained herein may not be adequately compensated for damages for a breach of the covenants contained in this ARTICLE XV and such aggrieved party shall be entitled to injunctive relief and specific performance in addition to all other remedies. If a court of competent jurisdiction shall finally determine that the restraints provided for in this ARTICLE XV are too broad as to the activity, geographic area or time covered, said

activity, geographic area or time covered will be reduced to whatever extent the court deems necessary, and such covenant shall be enforced as to such reduced activity, geographic area or time period.

ARTICLE XVI **GENERAL PROVISIONS**

16.1. **Regulatory Compliance.** The Parties agree that no part of this Agreement shall be construed to induce or encourage the referral of patients or the purchase of health care services or supplies. The Parties acknowledge that there is no requirement under this Agreement or any other agreement between ECRMC and the UCSD that either party refer any patients to any healthcare provider or purchase any healthcare goods or services from any source. No payment made under this Agreement shall be in return for such referral or purchase. In particular, while UCSD may develop and recommend marketing/community outreach strategies and implement marketing/community outreach strategies on behalf of ECRMC, UCSD shall not actively and directly market the Facilities to actual or potential patients or referral sources and shall not bring patients or induce referrals to the Facilities. All direct marketing of the Facilities and community liaison activities shall be performed by Facility employees or contractors.

(a) **Representations and Warranties.** ECRMC and UCSD each represents and warrants that it is and shall remain throughout the Term in compliance, in all material respects, with all applicable federal and state laws and regulations related to this Agreement and the services to be provided hereunder, including without limitation, statutes and regulations related to fraud, abuse, false claims/statements, referrals, prohibition of kickbacks and the Health Insurance Portability and Accountability Act. The Parties further represent, warrant and covenant to each other that as of the date of this Agreement, and for the Term, with respect to any applicable federal health care program as defined in Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b(f)) or any State health care program as defined in Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b(h)) (collectively, the “Programs”): neither (i) the representing party; (ii) any individual with a direct or indirect ownership of five percent (5%) or more of the representing party; nor (iii) any director, officer, or, to the knowledge of such Party, employee of the representing party; has ever been debarred, suspended or excluded from any Program. Each Party covenants to immediately notify the other in writing if this representation is no longer true, or if such Party is sanctioned or has a civil monetary penalty levied under any program.

(b) **Severability.** In the event that any clause or provision of this Agreement is determined to be illegal, that provision or clause shall be deemed unenforceable and invalidated. Upon invalidation of a provision or clause of the Agreement pursuant to this Section, the Parties shall exercise their best efforts to renegotiate the Agreement to comply with the requirements of law, amending the Agreement, if necessary, in accordance with the provisions contained in this Agreement. If the Parties fail to reach such an accommodation after ninety (90) days following a written request by either of the Parties to discuss such an accommodation, then either Party may terminate this Agreement upon thirty (30) days written notice, with no further obligations, financial or otherwise, to the other Party.

16.2. **Access to Records.** Until the expiration of four (4) years after furnishing of services pursuant to this Agreement or other time period required by applicable law, UCSD shall upon written request, make available to the Secretary of the Department of Health and Human Services (“HHS”), the Comptroller General, or any of their duly authorized representatives, this Agreement, and any books, documents and records that are necessary to certify the nature and extent of the costs incurred by ECRMC under this Agreement. This provision will apply if the amount paid under this Agreement is \$10,000 or more over a twelve (12) months period. The availability of UCSD’s books, documents and records will at all times be subject to such criteria and procedures for seeking access as may be promulgated by the Secretary of HHS in regulations, and other

applicable laws. UCSD's disclosure under this provision will not be construed as a waiver of any legal rights to which UCSD or ECRMC may be entitled under statute or regulation.

16.3. HIPAA. As required by law, the Parties shall execute a Business Associate Agreement in order to comply with the requirements of the Health Insurance Portability and Accountability Act ("HIPAA") Privacy and Security Rules.

16.4. Notices. The Parties agree as follows:

(a) Any notice, demand, letter or other communication required, permitted, or desired to be given hereunder shall be deemed effectively given when either personally delivered, or when received by electronic means (including email) or overnight courier, or five (5) calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to ECRMC:	El Centro Regional Medical Center 1415 Ross Ave. El Centro, CA 92243 Attention: Pablo Velez, Chief Executive Officer Email: Pablo.Velez@ecrmc.org
With a copy to:	ECRMC, Legal Counsel 1415 Ross Ave. El Centro, CA 92243 Attn: Douglas Habig Email: Douglas.Habig@ecrmc.org
If to the City	City of El Centro Attn: City Manager Cedric Cesena 1275 Main St. El Centro, CA Email: ccesena@cityofelcentro.org
With a copy to:	Elizabeth Martyn, City Attorney Cole Huber 2855 East Guasti Road, Ste. 402 Ontario, CA 91761 Email: emartyn@colehuber.com
If to UCSD:	UC San Diego Health 6363 Greenwich Drive, 0891 Suite 100 San Diego, California 92122 Attention: Patricia S. Maysent, Chief Executive Officer E-Mail: pmaysent@ucsd.edu
With a copy to:	UC Legal-UC San Diego Office of Campus counsel Office of Legal Affairs 9500 Gilman Drive, MC 0933 San Diego, California 920923

Attention: Veronica Marsich, Chief Health Counsel
Email: vmarsich@ucsd.edu

or at such other address as one Party may designate by notice hereunder to the other Parties.

(b) Each Party shall have the right to change its address, the Person to whose attention copies of notices and other communications are to be given to it, and the Person to whom copies of notices and other communications to it are to be given by written notice to all of the other notice recipients in the manner provided in this Section 16.4.

16.5. Immunity of Individuals. Except with regard to claims for fraud, intentional misrepresentation, or willful misconduct, no recourse or liability for any matter or obligation pertaining to this Agreement or the Parties hereto, or for any claim based thereon or upon any obligation, covenant, or agreement herein shall be had or suffered by any present, or future officer, member, trustee, director, employee, or agent of City, UCSD or ECRMC, whether directly or indirectly, and all such liability of any such individual as such is hereby expressly waived and released as a condition of and in consideration for the execution hereof and the Closing hereunder.

16.6. Fees and Expenses. UCSD, ECRMC and the City shall each bear their respective legal, accounting and other expenses in connection with the Transaction. The fees and expenses allocable to ECRMC will be paid by ECRMC and not paid by or charged to UCSD. The fees and expenses allocable to UCSD will be paid by UCSD and not charged after Closing to ECRMC. If any action is brought by any Party to enforce any provision of this Agreement, the prevailing Party shall be entitled to recover its court costs and reasonable attorneys' fees. As used herein, the term "reasonable attorneys' fees" means reasonable attorneys' fees actually incurred at standard hourly rates.

16.7. Third-Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of City, UCSD, ECRMC and each of their respective successors in interest, and it is not the intention of the Parties to confer, and this Agreement shall not confer, third-party beneficiary rights upon any other Person.

16.8. Further Assurances. Each of the Parties agrees, to sign and deliver such other documents and instruments, and take such other action, as reasonably may be requested by or on behalf of another Party further to implement, evidence and perfect the transactions encompassed by this Agreement, in each instance with reasonable promptness after such a request is made. Notwithstanding the foregoing, no Party to which or whom such a request is made, including but not limited to (a) furnishing documents; (b) filing reports, returns, applications, filings and other documents and instruments; (c) assisting in good faith in any litigation, threatened litigation or claim and cooperating therein with other parties and their advisors and representatives, including providing relevant documents and evidence and maintaining confidentiality in connection with such litigation or threatened litigation or claims against the Party from whom such cooperation is requested; (d) cooperating with each other in exercising any right or pursuing any claim related to this Agreement, whether by litigation or otherwise, other than rights and claims running against the Party from which such cooperation is requested; and (e) cooperating with each other to finalize and file payor reports and reconciliations, and to comply with any payor audit requests. Notwithstanding the foregoing, no Party to which or whom such a request is made shall, in satisfying the request, be obligated to assume any liability or undertake any obligation not specifically provided for herein.

16.9. Severability; Invalid Provisions. If any provision of this Agreement finally is determined to be invalid or otherwise unenforceable, such partial invalidity shall not cause the remaining provisions of this Agreement to be invalid or otherwise unenforceable; provided, however, that (a) if such invalidity or unenforceability frustrates any material expectancy of any Party and/or Parties, the Parties agree to negotiate

in good faith for a period of sixty (60) days and reach an equitable solution as to the fair compensation to be received by the Party and/or Parties whose material expectancy has been frustrated, which compensation shall be provided by the Party and/or Parties benefitting from the invalidity or unenforceability, and (b) if, for any reason, the agreements of the Parties constituting the equitable solution are not duly performed or an equitable solution acceptable to all Parties is not reached within such sixty (60) day period, such dispute shall be resolved by appropriate judicial proceedings.

16.10. Legal Advice and Reliance. Except as expressly provided in any Transaction Document, none of the Parties (nor any of the Parties' respective Representatives) has made or is making any representations to any other Party (or to any other Party's Representatives) concerning the consequences of the Transactions under applicable Law, including Tax-related Laws or under the Laws governing the Government Programs. Except for the representations and warranties made in any Transaction Document, each Party has relied solely upon the Tax, Government Program and other advice of its own Representatives engaged by such Party and not on any such advice provided by any other Party.

16.11. No Interference. Each Party acknowledges and agrees to the following: (a) all of the Parties are sophisticated and represented by experienced healthcare and transactional counsel in the negotiation and preparation of this Agreement; (b) this Agreement is the result of lengthy and extensive negotiations between the Parties and an equal amount of drafting by all Parties; (c) this Agreement embodies the justifiable expectations of sophisticated parties derived from arm's-length negotiations; and (d) no inference in favor of, or against, any Party shall be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such Party.

16.12. Entire Agreement; Amendment. Except for documents and agreements signed and delivered pursuant to this Agreement, this Agreement contains the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the Parties. This Agreement may not be amended or modified unless pursuant to a written instrument which refers specifically to this Agreement and is signed by all of the Parties directly affected thereby.

16.13. Force Majeure. No Party shall be liable or deemed to be in default for any delay or failure to perform under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, strikes or other work interruptions by any Party's employees or any other similar cause beyond the reasonable control of a non-performing Party.

16.14. Binding Agreement.

16.15. Remedies; Waiver. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement shall operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. A waiver shall be applicable only in the specific instance for which it is given. To the maximum extent permitted by Law, (i) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given; and (ii) no notice or demand on one Party shall be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

16.16. Headings; Exhibits; Defined Terms. Headings and titles of articles, sections and exhibits herein are included for convenience only and shall not be considered a part of this Agreement when interpreting or enforcing this Agreement. All exhibits to this Agreement to which reference is made in this Agreement are incorporated in, and shall constitute a part of, this Agreement by reference thereto. All defined terms used in

this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context and/or particular facts may require.

16.17. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which will be deemed one instrument. Acceptance electronic mail or by facsimile will be deemed binding. The execution of this Agreement and all amendments hereto may be effected by portable document format (".pdf") or DocuSign signatures, all of which shall be treated as originals. UCSD, ECRMC and City each intend to be bound by its respective .pdf or DocuSign transmitted signature, and is aware that the other Party(ies) will rely thereon, and each party waives any defenses to the enforcement of this Agreement delivered by facsimile or .pdf or DocuSign transmission.

16.18. The Regents of the University of California. Each Party acknowledges that The Regents has entered into this Agreement solely on behalf of and with respect to UCSD, and any medical center, hospital, clinic, medical group, physician, or health or medical plan or program, business or operating unit, enterprise, or facility, that is or may be owned or controlled by, UCSD. The Regents has not entered into this Agreement on behalf of or with respect to any other division, business or operating unit, enterprise, facility, group, plan or program that is or may be owned, controlled, governed or operated by, or affiliated with, The Regents, including, without limitation, any other university, campus, health system, medical center, hospital, clinic, medical group, physician, or health or medical plan or program (collectively, the "Excluded UC Affiliates"). In light of the foregoing, each Party further acknowledges and agrees that, notwithstanding any other provision contained in this Agreement:

(a) All obligations of UCSD under this Agreement shall be limited to The Regents as and when acting solely on behalf of or with respect to UCSD and shall in no way obligate, be binding on or restrict the business or operating activities of any of the Excluded UC Affiliates or The Regents as and when acting on behalf of or with respect to any of such Excluded UC Affiliates;

(b) None of the Excluded UC Affiliates shall constitute or be deemed to constitute an "Affiliate" of UCSD for any purpose under this Agreement, and none of the Excluded UC Affiliates shall be subject to any limitations set forth herein that may otherwise be applicable to Affiliates; and

(c) UCSD, through The Regents or otherwise, shall have the right to participate in, provide services under, contract as part of, and otherwise be involved in the management or operation of, any health or medical insurance or benefit plan, program, service or product that is sponsored or offered in whole or in part by The Regents on a system-wide basis.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have signed and delivered this Joint Powers Agreement effective as of the Effective Date.

ECRMC:

EL CENTRO REGIONAL MEDICAL CENTER

By: _____
Name: _____
Its: _____

UCSD:

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
ACTING THROUGH AND FOR THE UNIVERSITY OF CALIFORNIA, SAN DIEGO HEALTH**

By: _____
Name: _____
Its: _____

CITY:

THE CITY OF EL CENTRO

By: _____
Name: _____
Its: _____