

AGREEMENT BETWEEN

The County of Santa Barbara Public Health Department

AND

Marian Regional Medical Center

THIS AGREEMENT is made this 19th day of May, 2020 by and between the County of Santa Barbara Public Health Department (“Government Entity”) and Marian Regional Medical Center, a California non-profit acute care, public benefit corporation located at 1400 E Church Street, Santa Maria, Ca, 93454 (“Agreement”). Marian Regional Medical Center is duly organized and validly existing in good standing under the laws of the State of California.

RECITALS:

WHEREAS, Marian Regional Medical Center operates as a not-for-profit hospital that provides a disproportionate share of healthcare services with a disproportionate share adjustment percentage in excess of 11.75 percent, to Medicare and Medicaid participants in addition to supporting many programs that benefit the indigent, uninsured or underinsured population;

WHEREAS, Marian Regional Medical Center desires to participate in the drug discount program established under Section 340B of Public Health Services Act (the “340B program”); **WHEREAS**, in order to participate in the 340B Program, Marian Regional Medical Center must enter into an agreement with a unit of the state or local government pursuant to which Marian Regional Medical Center commits to provide health care services to low income individuals who are not entitled to benefits under Title XVIII of the Social Security Act or eligible for assistance under the State Plan of Title XIX of the Social Security Act (42 USC § 256b(a)(4)(L));

WHEREAS, Marian Regional Medical Center desires to make such a contractual commitment to the Government Entity; and Marian Regional Medical Center;

WHEREAS, the “Government Entity” agrees to accept such a commitment on behalf of its citizens.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained therein and for other good valuable consideration, the receipt and sufficiency of which hereby acknowledged, it is mutually agreed and covenanted, under seal, by and between the parties to this Agreement, as follows:

1. The above Recitals are true and correct and incorporated herein.

2. **Commitment of Marian Regional Medical Center to Provide Indigent Care.** During the term of this Agreement, Marian Regional Medical Center shall provide healthcare services to low income individuals who are not entitled to benefits under Title XVIII of the Social Security Act or eligible for assistance under the State Plan of Title XIX of the Social Security Act. Marian Regional Medical Center will assure that all patients will receive necessary care, as required by law, in its Emergency Departments, regardless of ability to pay.
3. **Commitment of Marian Regional Medical Center to Submit Required Reports.** During the term of this Agreement, Marian Regional Medical Center agrees to timely submit all reports that are required to participate in the 340B Program to HRSA, Office of Pharmacy Affairs, with copies to the Government Entity.
4. **Acceptance and Acknowledgements of the Government Entity**
 - (a) The Government Entity accepts the commitment of Marian Regional Medical Center set forth above;
 - (b) The Government Entity hereby acknowledges that the healthcare services provided by Marian Regional Medical Center hereunder are in the public interest and are shall be provided to individuals who are not entitled to benefits under Title VII or eligible for assistance under any State plan pursuant to Title XIX of the Social Security Act; and
 - (c) The Government Entity acknowledges that Marian Regional Medical Center is providing these services at no reimbursement or considerable less than full reimbursement from the patients.
5. **Representations of Hospital:** Marian Regional Medical Center represents that as of the hereof:
 - (a) Marian Regional Medical Center is a non-profit public benefit corporation duly organized and validly existing in good standing under the laws of the State of California with the corporate power and authority to enter into and perform its obligations under this Agreement;
 - (b) Marian Regional Medical Center is a tax-exempt corporation under Section 501 (c)(3) of the Internal Revenue Code of the United States, as amended, and under applicable laws of the State of California; And
 - (c) For the most recent cost reporting period that ended before the calendar quarter involved, Marian Regional Medical Center had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act [42 USCS § 1395ww(d)(5)(F)]) greater than 11.75 percent; and
 - (d) Marian Regional Medical Center does not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement.

6. **Term and Termination.** This Agreement shall be effective June 1, 2020 and shall remain in full force and effect for one (1) year thereafter and shall automatically renew for one (1) year intervals until May 31, 2025 unless otherwise agreed or terminated earlier.

Either party may give written notice to the other party of their intent not to renew, which notice not to renew must be given at least sixty (60) days before the expiration of the initial term hereof or any extension term.

Notwithstanding the above, Marian Regional Medical Center has the immediate right to terminate this Agreement in the event of a threat or violation of Marian Regional Medical Center's tax exempt status or any event that jeopardizes Marian Regional Medical Center's licensure, accreditation, certification or reimbursement which event(s) are caused by this Agreement or if the provisions of Section 340B are materially modified or eliminated.

Notwithstanding the above, the Government Entity has the immediate right to terminate this Agreement in the event of a threat or violation of the provisions of Section 340B and any event that jeopardizes Government Entity's licensure, accreditation, certification, or reimbursement which event(s) are caused by this Agreement, or if the provisions of Section 340B are materially modified or eliminated.

7. **Notices.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To Government Entity:

Dana Gamble, Assistant Deputy Director
Public Health Department
300 N. San Antonio Road
Santa Barbara, CA 93110

To Marian Regional Medical Center:

Bill Finley
Marian Regional Medical Center
1400 E. Church Street
Santa Maria, CA 93454

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

- 8. Records, Audit, And Review.** Marian Regional Medical Center shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Marian Regional Medical Center's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. Government Entity shall have the right to audit and review all such documents and records at any time during Marian Regional Medical Center's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), Marian Regional Medical Center shall be subject to the examination and audit of the California State Auditor, at the request of the Government Entity or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Marian Regional Medical Center shall participate in any audits and reviews, whether by Government Entity or the State, at no charge to Government Entity.
- 9. Nondiscrimination.** Government Entity hereby notifies Marian Regional Medical Center that Government Entity's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Marian Regional Medical Center agrees to comply with said ordinance.
- 10. Nonexclusive Agreement.** Marian Regional Medical Center understands that this is not an exclusive Agreement and that Government Entity shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Marian Regional Medical Center as the Government Entity desires.
- 11. Non-Assignment.** Marian Regional Medical Center shall not assign, transfer or subcontract this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Government Entity and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.
- 12. Section Headings.** The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.
- 13. Severability.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 14. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to either Party is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent

permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

- 15. No Waiver of Default.** No delay or omission of either Party to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement shall be exercised from time to time and as often as may be deemed expedient.
- 16. Entire Agreement and Amendment.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.
- 17. Successors and Assigns.** All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.
- 18. Compliance with Law.** Each Party shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement.
- 19. California Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.
- 20. Execution of Counterparts.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.
- 21. Authority.** All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Marian Regional Medical Center hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to

which Marian Regional Medical Center is obligated, which breach would have a material effect hereon.

22. Survival. All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

23. Indemnification. Marian Regional Medical Center agrees to indemnify, defend (with counsel reasonably approved by Government Entity) and hold harmless Government Entity and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by Government Entity on account of any claim except where such indemnification is prohibited by law, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Marian Regional Medical Center, its officers, employees or agents. Government Entity shall promptly give Marian Regional Medical Center notice of any such claim.

IN WITNESS WHEREOF, Marian Regional Medical Center and the County of Santa Barbara Public Health Department have executed this Agreement to be effective as of June 1, 2020 by their duly authorized representatives.

COUNTY OF SANTA BARBARA

Gregg Hart

Chair, Board of Supervisors

Date: _____

ATTEST:
MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By: _____

Deputy Clerk

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By: _____

Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:
BETSY M. SCHAFFER, CPA
AUDITOR-CONTROLLER

By: _____

Deputy

APPROVED
VAN DO-REYNOSO, MPH PhD
DIRECTOR
PUBLIC HEALTH DEPARTMENT

By: _____

Director

APPROVED AS TO FORM:
RAY AROMATORIO, ARM, AIC
RISK MANAGER

By: _____

Risk Manager

IN WITNESS WHEREOF, Marian Regional Medical Center and the County of Santa Barbara Public Health Department have executed this Agreement to be effective as of June 1, 2020 by their duly authorized representatives.

Matt Richardson, Division VP/CFO

Marian Regional Medical Center
1400 E Church Street
Santa Maria, California 93454