

***Marin General Hospital ("MGHC") v. Marin Healthcare District ("District")***  
**Marin County Superior Court Case No. CV 052764**

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**PROPOSED SETTLEMENT TERM SHEET**

1. **Summary Of Proposed Settlement.**

- A. MCH/Sutter will agree to an early transfer of control of the Marin General Hospital Corporation, interim operational covenants, new capital obligations and agree to transfer to the District its operation at Marin General Hospital in accordance with the terms contained herein ("Hospital Transfer") in exchange for the District's agreement to assume all liability for SB 1953 seismic compliance and to assume the responsibility of obtaining an extension of the 2008 interim seismic compliance deadline.
- B. The Hospital Transfer shall occur no later than July 1, 2010 ("Transfer Date"). MGHC shall have the option to cause an earlier transfer by issuance of twelve (12) months' written notice to the District, provided that notice cannot be served earlier than January 1, 2008.
- C. Prior to the Transfer Date, MGHC will continue to operate at the Leased Premises in accordance with the existing Lease, except as expressly modified by the settlement agreement.

2. **Structure.** On the Transfer Date, the District will replace Marin Community Health (“MCH”) as the sole member of MGHC and will assume control of the corporation and the hospital.
  
3. **Transition Funding.** MGHC will provide the District with funding for the District’s use solely in connection with the expenses of establishing a transition team and implementing the settlement commencing upon entry of the judgment by the Superior Court as contemplated in paragraph 14, below, and continuing through the Transfer Date, paid as follows: upon entry of the judgment, \$250,000; on January 1, 2007, \$500,000; on July 1, 2007, \$500,000; and on January 1 and July 1 of each year thereafter (but not including July 1, 2010), \$500,000; but provided, however, that in the event the Transfer Date occurs in advance of July 1, 2010, the transition funding payment will be pro-rated for the year in which the transfer occurs. On the Transfer Date, the District shall execute an interest bearing promissory note for repayment of one-half (1/2) of all amounts provided to the District for interim funding in accordance with this paragraph, which shall be payable in full in two (2) years in equal quarterly payments and which shall be secured by the hospital receivables and shall be assumed by any successor lessee or operator.
  
4. **Cooperation.** MGHC, pre-transfer, will agree to cooperate to allow the District to seek an extension of the January 1, 2008 initial seismic compliance date under SB 1953.

5. **Service Covenants.** During the remaining term of the Lease and prior to the Hospital Transfer (and only during such term) ("Transition Period"), MGHC shall maintain and make available to patients all of those general acute care, ancillary, clinic and outpatient services which MGH is providing at 250 Bon Air Road and 1350 South Eliseo at the time a transition/settlement agreement is signed by both parties, provided that in the event that MGHC desires to terminate a material licensed service, MGHC shall continue to follow the procedure described in Section 19.1 of the Lease. MGHC further agrees that it shall not take any action to reduce materially the level of those general acute care services, except in accordance with Section 19.1 of the Lease, provided that nothing contained herein shall restrict Sutter/MCH's right to undertake those actions permitted by paragraph 10 of this Proposed Settlement Term Sheet. Notwithstanding the foregoing, MGHC agrees that it shall not invoke the procedure under Section 19.1 of the Lease during the twelve (12) months immediately preceding the Transfer Date.
  
6. **Maintenance, Repairs and Capital Expenditures.** Commencing in 2007, MGHC will agree to expend certain amounts for capital expenditures, as that term is defined in paragraph 3.2(c)(1) of the Lease Agreement. Specifically, MGHC agrees to the following amounts: \$2.5MM in 2007, \$2.64MM in 2008, \$2.77MM in 2009, and \$2.90MM in 2010, or a prorated portion of the specified amount for part of any year. In the event it is reasonable for MGHC to expend any amount in addition to the agreed upon capital expenditure level for repairs,

improvements or equipment acquisitions, such amounts shall be financed either through a lease or a loan, which lease or loan shall be on commercially reasonable terms. Any lease or other financing shall be for a term reasonably equivalent to the useful life of any personal property acquisitions according to generally accepted accounting principles. Any loan with respect to any construction or improvement shall be for a period of ten (10) years. Any leases or loans shall remain the obligation of MGHC and shall be expressly assumed by the District after the Hospital Transfer. MGHC further agrees that it shall use its best efforts to complete the CT, Cath Lab and Linear Accelerator projects as soon as possible, consistent with OSHPD approval; that such equipment acquisition shall be financed with a five (5) year term for the CT and Cath Lab projects, and with a seven (7) year term for the Linear Accelerator project, and that payments by MGHC in connection with that financing during the remaining term of the Lease prior to the Hospital Transfer shall not be included within the agreed upon capital expenditures.

7. **Agreement With Respect To Specific Categories.**

- A. **Medical Staff.** Physicians and other medical personnel will be free to choose to practice at MGHC, or with a Sutter affiliate, or both. There will be no pre- or post-transfer limitations on the ability of MCH or any Sutter affiliate or the District to solicit or contract with physicians, physician groups or medical personnel, provided, however, that neither party will

enter into any agreement that would place unreasonable restrictions on the ability of a physician or other medical personnel to provide services at any facility operated by the other party after the Hospital Transfer.

- B. Employees. The Hospital Transfer will not result in the termination of MGHC employees. Following the Hospital Transfer, the District, as MGHC, will assume all rights and responsibilities as the employer of MGHC employees and the then-current collective bargaining agreements between MGHC and the labor organizations representing MGHC employees, subject to applicable legal restrictions. Provided, however, that with respect to pension and other employment benefit issues, it will be necessary to establish that MGHC has met its obligations under such plans as of the date of the Hospital Transfer. Provided further, that the parties will negotiate as part of the definitive settlement such additional arrangements as may be necessary under the law and as otherwise may be appropriate to define their future obligations, if any, with respect to employee pensions or benefits after the Transfer Date. The District as MGHC will offer MGHC employees employed as of the Transfer Date benefits similar to those benefits currently offered by MGHC. There will be no limitation on the ability of MCH or Sutter Health or the District to solicit any MGHC employee for post-transfer employment. Without limiting the foregoing, if requested, MGHC agrees to reasonably assist the District in

the District's efforts to identify and to fill key management positions that the District will likely need to fill for post-transfer hospital operations.

Members of MGHC management that intend to resign from MGHC on or before the Hospital Transfer will be asked to give nine (9) months prior notice to the District to allow the District to seek replacement personnel, and MCH/Sutter will agree that if a management employee does not agree to provide such adequate notice, MCH/Sutter will not hire that employee until at least six (6) months after the Hospital Transfer.

- C. Cash, Accounts Receivable and Inventories. At the time of Hospital Transfer, MGHC agrees that the District will receive cash, accounts receivable and inventories with a total value equal to 10% of one year's annual gross revenues of the hospital calculated as an average of the annual gross revenues for the three (3) full calendar years preceding the Transfer Date. The amount of cash shall be determined by subtracting qualified accounts receivable and inventory values from the total. Qualified accounts receivable shall consist of all accounts receivable (excluding any receivable which has aged in excess of 120 days) subject to the same billing and collection policies and procedures, including but not limited to bad debt, charity and administrative write-offs, currently in effect at MGHC's billing office. The value of inventory shall be the book value on the date of transfer. In the one (1) year period prior to the

Hospital Transfer, the District will make arrangements for an outside vendor to take over collections after the Transfer Date. MGHC and the District will cooperate to make whatever technical arrangements are necessary to convert the billing database to District control, and MGHC will agree that in conducting its interim operations it will ensure that the billing database is maintained in a commercially standard, readable format.

- D. Personal Property. The District, as MGHC, will own or have exclusive possession of all of the personal property leased or owned by MGHC as of the Hospital Transfer.
  
- E. Real Property. After the Hospital Transfer, the District will be free to enter into a new lease with respect to MGHC's rights in the real property, including all improvements at the Leased Premises. MGHC acknowledges the District's right to negotiate modifications of the Lease, to become effective after the Hospital Transfer. The District, as MGHC, will assume any and all unexpired leases pertaining to real property leased in the name of MGHC.
  
- F. Intangibles. The District, as MGHC, will own all of MGHC's intangibles, including MGHC's provider number, name, goodwill and the hospital license, save and except such Sutter owned intangibles (i.e., materials

that qualify as trade secrets under the California Civil Code) that do not relate directly to the operations of Marin General Hospital.

- G. Patient Records. The District, as MGHC, will retain all patient records. MCH, or its designee, shall, subject to applicable law, be entitled to a copy of all records. In the one (1) year period prior to the Hospital Transfer, it will be the District's responsibility to make arrangements to contract with a replacement Information Technology vendor.
- H. Claims. MGHC's operational liabilities will remain with the corporation. At the time of transfer and thereafter, all insurable liabilities shall be the responsibility of the District, as MGHC, and the District, as MGHC, will carry current and tail insurance coverage at levels reasonably satisfactory to MCH and naming MCH/Sutter as additional named insureds. MCH will agree to indemnify MGHC (and thus the District) against non-insurable claims which are made within two (2) years of the Transfer Date based on acts or omissions which: (i) occurred prior to the Transfer Date; and (ii) which did not occur in the ordinary course of operating the hospital (by way of example, such claims would include antitrust, restraint of trade, tortious interference with contract, libel and slander). With respect to non-insurable claims based upon acts or omissions occurring prior to the Hospital Transfer and occurring in the ordinary course of operating the hospital, a basket account shall be established in the amount of \$2MM

which, pursuant to agreed upon procedures, can be drawn upon by the District to satisfy such claims; Sutter shall have no obligation beyond the account and shall, at the end of two (2) years, be entitled to any balance remaining in the account, plus accrued interest.

- I. Operating Contracts. (Contracts relating to operation of the Leased Premises and hospital operations at the Leased Premises.) MGHC will make commercially reasonable efforts to negotiate operating contracts for the Leased Premises that the District will have the option of terminating after the Hospital Transfer, excluding all contracts pertaining to all services provided to MGHC by Sutter or Sutter-affiliated entities, such as legal, regulatory, legislative liaison, procurement, managed care contracting, information technology, insurance and risk management, finance, internal and external audit, public relations and marketing, strategic planning, real estate, facility planning and construction management, technology assessment, tax reporting, clinical/professional continuing education and support, which shall terminate on the Transfer Date.
- J. Accounts Payable. The District, as MGHC, will assume all accounts payable which have been incurred in the ordinary course of business and any remaining contract liabilities on the Hospital Transfer.
- K. Payor Contracts. In the one (1) year period prior to the Hospital Transfer, the District will negotiate new payor contracts that will become effective

immediately upon transfer. MGHC's pre-transfer payor contracts will terminate on the Transfer Date.

8. **Access During Construction.** The District shall be permitted to commence construction of a new parking facility prior to the Transfer Date, substantially in conformance with specific plans approved in advance by the parties. No other construction by the District shall occur at the Leased Premises prior to October 1, 2009. In no event shall the District perform any retrofitting or construction of seismic upgrades to the existing structures prior to the Transfer Date. In the event the District elects to proceed with permitted construction, MGHC shall, as of the Effective Date, provide the District with reasonable access to the property, provided, however, that the District will agree to use its best efforts (and to impose a similar obligation on its representatives and contractors) to minimize disruption to the continuing operations of MGHC at the Leased Premises. The District shall indemnify and hold MGHC and Sutter/MCH harmless from and against any and all demands, losses, claims, or any liabilities whatsoever arising out of or relating in any way to the District's construction or construction-related activities at the Leased Premises.
  
9. **Foundation.** Marin Community Health Foundation ("MCHF") will be reorganized at an agreed-upon date (prior to the Hospital Transfer) so that all fundraising activities related to Novato Community Hospital or other Sutter related activity will be transferred to a new foundation, and the District will replace MCH as the sole

member of MCHF. The District will thereafter be free to raise funds for Marin General.

10. **Competition.**

- A. Sutter and its affiliates agree that, prior to the Transfer Date, it will not compete in the delivery or provision of any healthcare services licensed under the Health and Safety Code within the geographic boundaries of the District, save and except that Sutter and its affiliates shall be entitled:
- (i) To continue to provide services at the Terra Linda location (provided that Terra Linda shall not add clinical services not currently provided);
  - (ii) To provide Ambulatory Surgery services (“ASC”) (but not within a four (4) mile radius of 250 Bon Air); and
  - (iii) To provide diagnostic imaging services (but not within a four (4) mile radius of 250 Bon Air).
  - (iv) In addition, the District and MGHC agree that nine (9) months prior to the Transfer Date (three (3) months subsequent to notice of early transfer date by MGHC), all restrictions on competition shall be lifted, save and except:

- a. Sutter and its affiliates agree that they will not provide licensed, general acute in-patient services until after the Transfer Date; and
  - b. Provided further that the four (4) mile radius restriction on ASC and Imaging services shall continue.
- B. Sutter or its affiliates may participate in or establish within the political boundaries of the District what is, as of the Effective Date of the Settlement, known as a 1206(l) foundation, provided that such foundation(s) shall not provide within the geographic boundaries of the District services for which a license or permit is currently required under the Health and Safety Code except Ambulatory Surgery and/or Imaging services which may only be provided outside a four mile radius of 250 Bon Air. Sutter will use its best efforts to ensure that Marin General is included in health plan contracts on the same basis as all other Sutter affiliated hospitals.
- C. MGHC further agrees that during the twelve (12) months proceeding the Hospital Transfer Date, its Site Administrator, as that term is defined under Title 22, shall devote his or her time exclusively to the Marin General Hospital operations, and, further, that the District shall have the right, but not the obligation, to appoint a liaison administrator who shall have reasonable access to the day-to-day activities of the MGHC Administrator

for transition planning during the final twelve (12) months prior to the Transfer Date. In addition, during the ninety (90) days prior to the Transfer Date, the District shall have the right, but not the obligation, to appoint additional personnel to observe the day-to-day activities of any manager who intends to resign or depart. The liaison administrator and the other District personnel shall have no authority over hospital operations prior to the Transfer Date.

- D. Nothing herein shall prevent Sutter and its affiliates from preparing to provide licensed or other healthcare services within the political boundaries of the Marin Healthcare District during the Transition Period.
  - E. Nothing herein shall prevent Sutter and its affiliates, at any time, from providing any such licensed or other healthcare services outside of the political boundaries of the Marin Healthcare District in their sole discretion.
11. **Obligated Group.** Not less than six (6) months prior to the Hospital Transfer, MGHC will withdraw from the Sutter Obligated Group.
  12. **Non-Interference.** Each party will agree not to interfere directly or indirectly with the future plans of the other party for the delivery of health care services in Marin County, including but not limited to applications for OSHPD extensions and approvals, and other permits or entitlements.

13. **Limit On Liability.** Except as otherwise provided herein, Sutter and its affiliates will have no liability whatsoever with respect to the District, the Lease, the Leased Premises, Marin General or its operations after the Hospital Transfer.
  
14. **Judgment.** The parties will jointly stipulate that the settlement agreement will be entered as a judgment in the litigation. The parties will agree to mutual releases and waivers of all pending and accrued claims as of the effective date of the settlement agreement, in favor of the other party, and specifically including its officers, directors, agents, employees, member, affiliates, etc. (save and except only certain potential excluded claims, such as defamation claims or the like). The parties will agree to take such other steps as are necessary and appropriate to create a valid, binding and enforceable agreement.
  
15. **Effective Date.** The Effective Date of the transition agreement shall be the date upon which the Marin Superior Court has entered a final judgment approving this agreement as a settlement of all claims and dismissing with prejudice MGHC's Complaint and the District's Cross-Complaint. In the event that the judgment is appealed and later reversed, modified, vacated or otherwise disturbed in a manner that invalidates or materially impacts the terms of the parties' agreement, each party agrees to restore the other to the status quo as it existed prior to the execution of the settlement/transition agreement.