

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE SONOMA VALLEY HEALTH CARE DISTRICT
AND
THE SONOMA VALLEY HOSPITAL FOUNDATION FOR FUND RAISING ACTIVITIES

This Agreement is made and executed in Sonoma, California, on May 5, 2022, by and between the Sonoma Valley Health Care District (hereinafter referred to as "District"), a District duly organized and existing under the Local Health Care District Law of the State of California (California Health and Safety Code, Division 23, Sections 3200-32492), with its principal place of business at Sonoma, California and the Sonoma Valley Hospital Foundation, a hospital foundation organized and operating as a tax-exempt 501(c)(3) corporation with its principal place of business at Sonoma, California (hereinafter referred to as "Foundation"). The District and the Foundation may be referred to herein as "Party" or "Parties." The District and the Foundation desire to enter into this Agreement for fund raising activities with respect to the following:

RECITALS

Whereas, the District and the Foundation agree that significant philanthropic support is needed to continue to provide patient-focused, state-of-the-art health care and health-related programs to residents and visitors in its service area; and

Whereas, the District and the Foundation agree that such support can most effectively be garnered through a hospital foundation operated as a 501(c)(3) corporation, and as such an organization, the Foundation is best suited to provide and develop philanthropic support for the District; and

Whereas, the District and the Foundation agree that in order to provide and develop philanthropic support for the District, the Foundation will develop and implement a fund development program in support of health care for residents and visitors of the District.

Now therefore, in consideration of the promises and the mutual covenants herein contained, and for other good and valuable consideration, it is agreed:

1. Responsibilities and Mutual Expectations

A. Responsibilities of the Foundation

- i. The Foundation will develop, implement and refine a rolling three-year philanthropic strategic plan to maximize community support for the health care of the residents and visitors of the District.
- ii. The Foundation will continue to work with the Hospital and District leadership to determine annual and longer term goals and mission.
- iii. The Foundation agrees to support the capital, program, and other needs of District-owned facilities and District-operated programs.
- iv. The Foundation shall ensure there are two (2) ex-officio directors on the Foundation Board. Ex-officio directors shall be selected as follows: one shall be selected by the Board or Directors of the District; one shall be selected by the CEO of the Hospital.
- v. The Foundation will accept and process all gifts in accordance with all applicable laws and regulations.
- vi. The Foundation shall operate according to fundraising best practices and ethical

- standards.
- vii. The Foundation shall make its books and records available to the District and its agents for review and inspection upon reasonable written notice and at reasonable times.
 - viii. The Foundation shall present annually a report of its activities, funding, and otherwise to the Board of Directors of the District.

B. Responsibilities of the District.

- i. The District will direct all charitable contributions in support of the District to the Foundation for acceptance and gift processing. If unusual circumstance requires a gift to be accepted directly by the District, the District will do so in accordance with the Foundation's Gift Acceptance Policy. (see attachment)
- ii. The District agrees to honor donor instructions by using the restricted funds it receives from the Foundation only for the purposes intended by the donor.
- iii. The District shall select one (1) ex-officio director on the Foundation Board, as described in Section 1.A.iv above.
- iv. The District agrees to make all books and records pertinent to the Foundation available to the Foundation for review and inspection upon reasonable notice and at reasonable times.
- v. The District shall be responsible for funding 50% of the cost for annual independent audits of the Foundation's financial statements.

2. Request for and Transfer of Funds

- A. All grant funding requests for the District from the Foundation will be submitted in writing to the Foundation and have the Hospital CEO's written approval. The Foundation agrees to review grant requests submitted by the CEO within sixty (60) calendar days of receipt.
- B. If a grant is approved by the Foundation Board, the Foundation will notify the primary project contact, as indicated on the grant application, within seven (7) calendar days of approval.
- C. If a grant is denied by the Foundation Board, explanation of the Board's decision will be submitted in writing to the Hospital CEO within seven (7) calendar days of denial.
- D. Grants approved by the Foundation Board will be paid within thirty (30) days of receiving request for payment, which shall be submitted in writing by the Hospital CEO or Accounting Department and shall be accompanied by the corresponding invoice or purchase order.

3. Funding Cost of Foundation Operations

- A. Based on a budget approved by the Foundation Board, the Sonoma Valley Hospital will assist in funding an agreed upon portion of operating expenses of the Foundation.

4. Terms and Termination

- A. *Term.* The term of this Agreement shall automatically renew at midnight on June 30 of

each calendar year unless either Party exercises their right to terminate the Agreement under Section B below.

B. *Termination.* This Agreement may be terminated by either Party, with or without cause, by giving sixty (60) days written notice as provided in Paragraph 11 of this Agreement.

C. *Dissolution and Distribution of Assets.* In the event that this MOU is terminated or the Foundation is dissolved by the Foundation Board, all properties, monies, and assets will be distributed as outlined in section four of the Foundation's Articles of Incorporation.

5. **Negotiation and Mediation Clause.** In the event of a disagreement or dispute between the Parties arising out of or connected with this Agreement, the disputed matter shall be resolved as follows:

A. *Negotiation.*

- i. The parties shall attempt in good faith to promptly resolve any dispute arising out of or relating to this Agreement by negotiation between the District and Foundation Board Chairs. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the chairs of both parties shall meet at a mutually acceptable time and place.
- ii. Unless otherwise agreed in writing by the negotiating parties, the above described negotiation shall end at the close of the first meeting of chairs described above ("First Meeting"). Such closure shall not preclude continuing or later negotiations, if desired.
- iii. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.
- iv. At no time prior to the First Meeting shall either side initiate an arbitration or litigation related to the Agreement except to pursue a provisional remedy that is authorized by law or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of Paragraph i above.
- v. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Paragraphs i and ii above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.

B. Mediation.

- i. If the matter is not resolved by negotiation pursuant to paragraphs i -v above, then the matter will proceed to mediation as set forth below.
 - ii. Either party may commence mediation by providing the other party a written request for mediation, setting forth the subject of the dispute and the relief request.
 - iii. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted for mediation.
 - iv. The parties will cooperate in selecting a mediator and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.
 - v. All offers, promises, conduct and statements, whether written or oral, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
7. **Forum.** Any mediation to enforce or interpret the provisions of this Agreement or the Parties' rights and liabilities arising out of this Agreement or the performance hereunder shall be maintained only in the County of Sonoma, California, or within one or such County's incorporated cities.
8. **Severability.** If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.
9. **Integration.** This Agreement contains the entire agreement among the Parties and supersedes all prior and contemporaneous oral and written agreements, understandings, and representations among the Parties. No amendments to this Agreement shall be binding unless executed in writing by all of the Parties.
10. **Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.
11. **Notices.** Any notice required by this Agreement shall be effective only if sent by certified or registered mail, postage prepaid, as follows:

If to District:

Chair, Board of Directors and President/CEO

Sonoma Valley Hospital, 347 Andrieux St, Sonoma, CA 95476

If to Foundation:

Chair, Board of Directors and Executive Director

Sonoma Valley Hospital Foundation, 347 Andrieux St, Sonoma, CA 95476

For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given on the second business day after mailing, if mailed to the Party to whom notice is to be given in the manner provided in this Section. Either Party may, at any time, change its address designated above by giving to the other Party thirty (30) days' written notice of the new address to be used for the purposes of this Section.

12. **Assignability.** Neither this Agreement nor any duties or obligations hereunder shall be assignable by any Party hereto without the prior written consent of the other Parties.

In witness whereof, the Parties have executed this Agreement as of the date first above written.

Sonoma Valley Health Care District

By: 

Joshua Rymer, Chair, Board of Directors

Date: 5-11-22

Sonoma Valley Hospital Foundation

By: 

Brian Sebastian, Chair, Board of Directors

Date: 5/19/22