

35214

GRANT AGREEMENT

This Grant Agreement ("Grant Agreement") is made as of April 2, 2019, by and between **THE COMMUNITY HOSPITAL LONG BEACH FOUNDATION**, a nonprofit corporation ("Foundation"), and the **CITY OF LONG BEACH**, a municipal corporation ("City").

RECITALS

A. This Agreement is made in connection with a grant in the amount of up to \$1,000,000 ("Grant Commitment Amount") made by Foundation to City (the "Grant"), as part of City's ongoing efforts to maintain an acute care hospital (the "Hospital") at the site commonly known as "Community Hospital" and more particularly described and depicted on Exhibit "A" attached hereto (the "Property").

B. Pursuant to that certain Exclusive Negotiating Agreement dated July 3, 2018 (the "ENA") by and between City and MWN Community Hospital, LLC ("MWN"), City is currently in negotiations to convey the Property to MWN for the purposes of operating an acute care hospital, and otherwise as described in the ENA.

C. The Grant is being made by Foundation to City to reimburse City for actual out-of-pocket predevelopment and planning costs incurred by City ("Work") to determine what improvements are necessary to retrofit and/or replace the buildings currently located at the Property, to meet seismic requirements for the continued operation of an acute care hospital at the Property ("Improvements").

AGREEMENT

1. City's Representations and Warranties. To induce Foundation to enter into this Agreement and to make the Grant, City makes the following representations and warranties:

1.1 Capacity. City has the full power, authority, and legal right to execute and deliver, and to perform and observe the provisions of this Agreement, and any other document, agreement, certificate, or instrument which may be executed in connection with the Grant (collectively, the "Grant Documents"), and to carry out the contemplated transactions.

1.2 Authority and Enforceability. City's execution, delivery, and performance of this Agreement and the other Grant Documents, and any other document, agreement, certificate, or instrument executed in connection with the Grant have been duly authorized by all necessary corporate or other business entity action and do not and shall not require any registration with, consent, or approval of, notice to, or any action by any person, entity or Government Authority. This Agreement and the other Grant Documents, when executed and delivered by City, shall constitute the legal, valid, binding, and joint and several obligations of City enforceable in accordance with their respective terms.

1.3 Compliance with Other Instruments. The execution and delivery of this Agreement and the other Grant Documents, and compliance with their respective terms, shall not result in a breach of any of the terms or conditions of, or result in an occurrence of an event for which any holder or holders of indebtedness may declare the same due and payable under, any indenture, agreement, order, judgment, or instrument to which City is a party or by which City or its properties may be bound or affected.

1.4 Compliance with Law. The execution and delivery of this Agreement and the other Grant Documents, do not conflict with, result in a breach or default under, or create any lien or charge under any provision of any Governmental Regulation to which it is subject.

1.5 No Untrue Statements. All statements, representations, and warranties made by City in this Agreement or any other Grant Document and any other agreement, document, certificate, or instrument previously furnished or to be furnished by City to Foundation under the Grant Documents (a)

are and shall be true, correct, and complete in all material respects at the time they were made and on and as of the date of this Agreement; (b) do not and shall not contain any untrue statement of a material fact; and (c) do not and shall not omit to state a material fact necessary to make the information in them neither misleading nor incomplete. City understands that all such statements, representations, and warranties shall be deemed to have been relied on by Foundation as a material inducement to make the Grant.

2. City's Covenants.

2.1 The Work. Foundation shall reimburse City only for out-of-pocket costs actually incurred by City for direct professional services in connection with the Work, it being understood that Foundation shall not reimburse City for general management, overhead or non-direct administrative expenses. City will deliver to Foundation a request for payment, properly completed and signed by City with a copy of the original invoice(s) paid by City in an amount equal to or greater than City's request for payment. City shall submit requests for payment no more frequently than bimonthly (once every two months), and such requests for payment shall be payable by Foundation within thirty (30) days of receipt by Foundation of the request and acceptable invoices. Foundation shall in no event be obligated to process requests for payment which (i) would exceed \$250,000 in aggregate over any 90-day period, or (ii) would exceed in aggregate the Grant Commitment Amount.

2.2 Foundation Participation in Long-Term Planning. City shall include a designated Foundation representative in all major discussions and/or meetings related to the overall development of the Hospital campus, the master plan and long-term visioning for the Property.

2.3 Planning Documents. City shall provide predevelopment planning documents to Foundation reasonably necessary for the purpose of marketing and promoting the Improvements project to potential funding sources.

2.4 Property Access. To the extent City has the right to do so and with the express consent of MWN and/or any other lessees of the Property or a portion thereof, City shall provide Foundation volunteer leaders, representatives and/or their invitees reasonable access to the Property for purposes of conducting meetings and marketing and promotional purposes. Foundation, on its own behalf and on behalf of its invitees, hereby releases and holds City harmless from any liability arising from Foundation and its invitees access to the Property.

3. Term. The Term of this Agreement shall immediately expire, and Foundation shall have no further obligation to process any further requests for payment (other than those already being processed by Foundation at the time of termination), upon the suspension by City of further efforts to re-open the Hospital. City shall not be obligated to reimburse Foundation any Grant proceeds already received by City in accordance with this Agreement.

4. Default and Remedies.

4.1 Events of Default. City shall be in default under this Agreement and the other Grant Documents if any of the following events ("Events of Default") occurs (a) the failure of City to perform or comply with any non-monetary obligation hereunder or under the other Grant Documents within thirty (30) days of receiving written notice of such failure from Foundation; or (b) the failure to be true in any material respect when made of any representation or warranty of City contained herein or in the other Grant Documents.

4.2 Foundation's Rights and Remedies. Subject to City's right to notice of default and right to cure the default(s), to the extent required by law, if an Event of Default occurs, Foundation has the following rights and remedies ("Rights and Remedies"):

4.2.1 Declare a Default. Foundation may declare this Agreement in default.

4.2.2 Terminate the Grant. Foundation may terminate the Grant and make no further payments hereunder.

4.2.3 Indemnity. City shall indemnify and shall defend and save harmless, Foundation and Foundation's affiliates, and the officers, directors, employees and agents of Foundation (for the purposes of this Subsection, collectively the "Foundation"), from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses harmless from any liability, claim, loss, cost, legal expenses, incurred by or alleged against Foundation arising from or related to City's default under this Agreement or any of the Grant Documents.

4.2.4 Remedies Cumulative. Foundation may (but is not required to) exercise any or all of the rights under this Agreement. All of Foundation's Rights and Remedies contained in this Agreement are cumulative and are in addition to any other Rights and Remedies created in any other Grant Document or existing at law or in equity.

5. Miscellaneous.

5.1 No Waivers. If Foundation delays in exercising or fails to exercise any of its rights under this Agreement, that delay or failure shall not constitute a waiver of any Foundation rights or of any breach, default, or failure of condition under this Agreement. No waiver by Foundation of any of its rights or of any such breach, default, or failure of condition shall be effective, unless the waiver is expressly stated in a writing signed by Foundation.

5.2 Entire Agreement. This Agreement and the other Grant Documents are the entire understanding between City and Foundation about the Grant, the Improvements, and the Work, and may not be modified, amended, or terminated except by written agreement signed by City and Foundation.

5.3 Assignment. This Agreement inures to and binds the heirs, legal representatives, successors, and assigns of Foundation and City; provided, however, that City may not assign this Agreement, or assign or delegate any of its rights or obligations, without Foundation's prior written consent in each instance, which consent may be withheld in Foundation's sole and absolute discretion.

5.4 Notices. Any notice required to be provided in this Agreement shall be given in writing and shall be sent (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service, marked for next day business delivery. All notices shall be addressed to the party to whom such notice is to be given at the property address stated below in this Section or to such other address as a party may designate by written notice to the other. All notices shall be deemed effective on the earliest of (a) actual receipt; (b) rejection of delivery; or (c) if sent by certified mail, the third day on which regular United States mail delivery service is provided after the day of mailing or, if sent by overnight delivery service, on the next day on which such service makes next-business-day deliveries after the day of sending.

Foundation: Community Hospital Long Beach Foundation
1760 Termino Avenue, Suite 105
Long Beach, CA 90804

City: City of Long Beach
333 W. Ocean Blvd., 3rd Floor
Long Beach, CA 90802
Attn: Economic and Property Development Director

5.5 No Third-Party Beneficiary. This Agreement is for the sole benefit of City and Foundation, and is not for the benefit of anyone else. All conditions to Foundation's obligation to make any payment are solely for City's benefit. No other person or entity shall have standing to require satisfaction of those conditions or be deemed to be the beneficiary of those conditions.

5.6 Governing Law. This Agreement shall be construed and enforceable according to the laws of the State of California for all purposes.

5.7 Time Is of the Essence. Time is of the essence with respect to all obligations of City under this Agreement.

5.8 Severability. If any provision of this Agreement, or the application of it to any party or circumstance, is held void, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision to other parties or circumstances, shall not be affected thereby, the provisions of this Agreement being severable in any such instance.

5.9 Exhibits. The following exhibits are attached to and a part of this Agreement.

Exhibit "A" – the Property

IN WITNESS WHEREOF, Foundation and City have executed and delivered this Grant Agreement as of the date first written above.

"Foundation"

COMMUNITY HOSPITAL LONG BEACH FOUNDATION

By: 

Matthew Faulkner
Executive Director

"City"

CITY OF LONG BEACH, a municipal corporation

By: 

Patrick H. West
City Manager

Approved as to form this 3 day of April, 2019.

CHARLES PARKIN, City Attorney

By: 

Deputy

EXHIBIT A

DESCRIPTION / DEPICTION OF PROPERTY

LEGAL DESCRIPTION:

Real property in the City of Long Beach, County of Los Angeles, State of California,
described as follows:

PARCEL 1:

ALL THAT PORTION OF LOT 39 OF ALAMITOS TRACT, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 36 PAGES 37, ET SEQ. OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE WESTERLY LINE OF THE FORMER 80 FOOT RIGHT-OF-WAY QUITCLAIMED TO ALAMITOS LAND COMPANY AND RECORDED IN BOOK 7292 PAGE 112 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER, AND SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF THAT CERTAIN RIGHT-OF-WAY, 80 FEET WIDE, COMMONLY KNOWN AS THE OUTER TRAFFIC CIRCLE, AS DEDICATED BY ORDINANCE NO. C-1913 ADOPTED MAY 13, 1941 BY THE CITY COUNCIL OF THE CITY OF LONG BEACH, AND SOUTHERLY OF THE SOUTHERLY LINE OF PACIFIC COAST HIGHWAY, 100 FEET WIDE, AS ESTABLISHED BY ORDINANCE NO. C-1323 ADOPTED NOVEMBER 30, 1934 BY SAID CITY COUNCIL.

EXCEPT THEREFROM ALL OIL, GAS, HYDROCARBONS AND MINERALS OF EVERY KIND AND CHARACTER LYING MORE THAN FIVE HUNDRED (500) FEET BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE RIGHT TO DRILL INTO, THROUGH AND TO USE AND OCCUPY PARTS OF SAID LAND LYING MORE THAN FIVE HUNDRED (500) FEET BELOW THE SURFACE FOR ANY AND ALL PURPOSES INCIDENTAL TO THE EXPLORATION FOR AND PRODUCTION OF OIL, GAS, HYDROCARBON SUBSTANCES OR MINERALS FROM SAID LAND OR OTHER LANDS, BUT WITHOUT, HOWEVER, ANY RIGHT TO USE EITHER THE SURFACE OF SAID LAND, OR ANY PORTION OF SAID LAND WITHIN FIVE HUNDRED (500) FEET OF THE SURFACE FOR ANY PURPOSE OR PURPOSES WHATSOEVER, AS RESERVED BY THE CITY OF LONG BEACH, IN DEED RECORDED MAY 6, 1983 AS INSTRUMENT NO. 83-511177.

PORTION OF APN 7253-016-901

PARCEL 2:

LOT 9 OF EASTERN HEIGHTS TRACT, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12 PAGE 27 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM ALL OIL, GAS, ASPHALTUM AND OTHER HYDROCARBONS AND OTHER MINERALS WHETHER SIMILAR TO THOSE HEREIN SPECIFIED OR NOT, WITHIN OR UNDERLYING OR THAT MAY BE PRODUCED FROM SAID LAND, AND ALSO EXCEPTING AND RESERVING THE SOLE AND EXCLUSIVE RIGHT TO DRILL SLANTED WELLS FROM ADJACENT LANDS IN, TO AND THROUGH THE SUBSURFACE OF SAID LAND FOR THE PURPOSE OF RECOVERING SAID RESERVED PRODUCTS FROM SAID

EXHIBIT A CONTINUED

DESCRIPTION / DEPICTION OF PROPERTY

LAND AND FROM OTHER PROPERTIES, PROVIDED, HOWEVER, THAT THE SURFACE OF SAID LAND AND THAT PORTION OF SAID LAND WITHIN 500 FEET OF THE SURFACE SHALL NEVER BE USED FOR THE EXPLORATION, DEVELOPMENT, EXTRACTION OR REMOVAL OF SAID RESERVED PRODUCTS, AS EXCEPTED AND RESERVED BY LONG BEACH UNIFIED SCHOOL DISTRICT OF LOS ANGELES, IN DEED RECORDED JANUARY 2, 1957 AS INSTRUMENT NO. 94.

APN 7253-016-902

PARCEL 3:

A PARCEL OF LAND IN LOT 39 OF ALAMITOS TRACT, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 36 PAGE 37 THROUGH 44 INCLUSIVE OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING A PART OF THE ABANDONED RIGHT-OF-WAY OF THE PACIFIC ELECTRIC RAILWAY COMPANY, AS SAID RIGHT-OF-WAY WAS DESCRIBED IN DEED RECORDED IN BOOK 1786 PAGE 9 OF DEEDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OF INTERSECTION OF THE SOUTHWESTERLY LINE OF SAID ABANDONED RIGHT-OF-WAY WITH THE SOUTH LINE OF SAID LOT 39, SAID POINT BEING NORTH 89 ° 58 ' 45 " EAST 659.41 FEET, MORE OR LESS, FROM THE SOUTHWEST CORNER OF SAID, LOT 39; THENCE ALONG SAID SOUTH LINE, NORTH 89 ° 58 ' 45 " EAST N 84 .32 FEET TO THE NORTHEASTERLY LINE OF SAID ABANDONED RIGHT-OF-WAY; THENCE NORTH 18 N ° 26 '05 " WEST ALONG SAID NORTHEASTERLY LINE 207.22 FEET TO THE SOUTHWESTERLY LINE OF THE OUTER TRAFFIC CIRCLE AS DESCRIBED IN THE DEED TO THE CITY OF LONG BEACH, RECORDED APRIL 25, 1941 AS INSTRUMENT NO. 1145 IN BOOK 18379 PAGE 173, OFFICIAL RECORDS; THENCE ALONG SAID SOUTHWESTERLY LINE NORTHWESTERLY ON THE ARC OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 580 FEET AND A CENTRAL ANGLE OF 15 ° 51 ' 16 ", A DISTANCE OF 160.49 FEET TO THE SOUTHWESTERLY LINE OF SAID ABANDONED RIGHT-OF-WAY; THENCE SOUTH 18 ° 26 ' 05 " EAST THEREON 319.33 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBONS IN AND UNDER SAID LAND BELOW A DEPTH OF 500 FEET FROM THE SURFACE THEREOF, WITHOUT, HOWEVER, ANY RIGHT OF ENTRY TO THE SURFACE OF SAID LAND FOR THE PURPOSE OF DRILLING FOR, MINING OR OTHERWISE EXTRACTING SAID GAS, OIL, MINERALS OR OTHER HYDROCARBON SUBSTANCES, AS RESERVED IN DEED RECORDED MARCH 17, 1971 AS INSTRUMENT NO. 21.

PORTION OF APN 7253-016-901

EXHIBIT A CONTINUED

DESCRIPTION / DEPICTION OF PROPERTY

PARCEL 4:

LOTS 10, 11, 12, 13 AND 14 OF THE EASTERN HEIGHTS TRACT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12, PAGE 27 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN 7253-016-900

DEPICTION:

APN: 7253-016-900, 901, 902, and 7253-017-900

