

February 6, 2015

GIFT AGREEMENT

SAN FRANCISCO GENERAL HOSPITAL

This GIFT AGREEMENT (“Gift Agreement”), dated for convenience of reference as of March 13, 2015, is between SAN FRANCISCO GENERAL HOSPITAL FOUNDATION, a 501(c)(3) non-profit public benefit corporation (the “Foundation”), and the CITY AND COUNTY OF SAN FRANCISCO, a charter city and county, acting by and through its DEPARTMENT of PUBLIC HEALTH (the “City”).

THIS GIFT AGREEMENT is made with reference to the following facts and circumstances:

A. The City owns, maintains, operates and manages through the San Francisco Health Commission (the “Commission”) and the Department of Public Health (the “Department”), the San Francisco General Hospital and Trauma Center located at 1001 Potrero Avenue, San Francisco, CA 94110 (“SFGH”). For purposes of this Gift Agreement, the “Campus” shall mean the collection of buildings now or later owned by the City at site of SFGH.

B. The Foundation was established to raise and accept gifts on behalf of the City for projects and programs designed to improve the care and comfort for patients at SFGH, and is recognized for such purposes by the City by and through the Commission. All fund-raising activities that the Foundation undertakes will support such projects and activities.

C. In November 2008, San Francisco electors voted overwhelmingly to approve issuing general obligation bonds known as the San Francisco General and Trauma Center Earthquake Safety Bonds (the “Bonds”), for the San Francisco General Rebuild Project (the “Project”). While the proceeds from the Bonds will pay for the construction of a new Acute Care and Trauma Building (the “New Building”), the furniture, fixtures and equipment (“FF&E”), including information technology, needed to equip the New Building to deliver the very best care must be raised through a combination of additional public funds and private philanthropy. Attached as Attachment A to this Gift Agreement is a map showing the Campus and the planned location of the New Building.

D. The FF&E costs require approximately \$170 million that the Bonds are not eligible to finance. The City has committed \$105 million from its capital improvement fund to support the FF&E budget. Through its *Heart of Our City* Capital Campaign, the Foundation has sought charitable contributions to help fund at least the difference of \$65 million.

E. As part of the Project, the City is funding significant improvements and additions to the Campus, including construction of the New Building.

F. To date, the Foundation has received \$25 million in pledged payments from various donors toward the fundraising goal for the *Heart of Our City* Capital Campaign to supplement the City’s FF&E commitment.

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G. Mark Zuckerberg and Dr. Priscilla Chan (collectively, the “Donors”) have recommended to the Silicon Valley Community Foundation (“SVCF”) that SVCF distribute, in installments, from an advised fund, to the Foundation a grant in the total amount of \$75 million for the benefit of SFGH for the *Heart of Our City Capital* Campaign to supplement the City’s FF&E commitment and related programs described in this Gift Agreement.

H. In connection with the Project, the Foundation wishes to make the gifts to the City, and the City wishes to accept the gifts, on the terms and conditions, including naming arrangements, set forth in this Gift Agreement below.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which the parties acknowledge, the Foundation and the City agree as follows:

SECTION 1. Gift. As set forth below, the Foundation shall provide to the City a gift consisting of the following (collectively the “Gift”):

a. Initial Gift. A total of at least \$25 million dollars, received from various donors, for the procurement of FF&E for the New Building (the “Initial Gift”).

b. Donors’ Gift. A total of \$68.375 million from the \$75 million dollars received by the Foundation from SVCF, upon the recommendation of the Donors, for the *Heart of Our City Capital* Campaign to supplement the City’s FF&E commitment and other programs that support SFGH and its mission (the “Donors’ Gift”).

c. Of the Donors’ Gift (totaling \$75 million), the Foundation shall retain a one-time overhead charge determined by multiplying the rate of 7.5% and the \$35 million of the Donors’ Gift allocated to the *Heart of Our City* FF&E Campaign (\$2.625 million) to offset operations and campaign expenses. The Foundation shall also retain \$4 million of the Donors’ Gift to establish an endowment to support the Foundation’s continued efforts to raise funds for the benefit of the patients at SFGH. The Foundation will provide the remaining portion of the Donors’ Gift (\$68.375 million) to or for the benefit of the City as set forth below.

d. The City’s expenditures of funds received through this Gift Agreement are subject to certification by the Controller and authorization to expend by the Board of Supervisors.

e. The parties intend that this Gift be used to supplement and not supplant City commitments to furnish the New Building. Funds received through this Gift Agreement shall not be expended until the City’s Controller first certifies that the City has appropriated or otherwise entered into commitments to spend \$105 million on FF&E for the New Building.

f. The Gift shall be paid to, or used for the benefit of, the City according to the following schedule and will be used by the City only for the following designated purposes:

i. The Initial Gift of \$25 million received from various donors, shall be used to acquire or reimburse the costs for FF&E for the New Building. The Foundation shall pay this sum to the City within 10 business days after the Effective Date (as defined in Section 2 below).

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- ii. \$32.375 million, of the Donors' Gift of \$75 million, shall be used to acquire or reimburse the costs for FF&E for the New Building. The Foundation shall pay this sum to the City within 10 business days after the Effective Date (as defined in Section 2 below).
 - iii. \$28 million, of the Donors' Gift of \$75 million, shall be used to establish a Patient Care and Quality Improvement Fund (the "Fund") held and managed by the Foundation to pay for future FF&E and capital needs throughout the entire Campus. This Fund shall be used in part, to help modernize and retrofit the existing hospital when it transitions from an inpatient/acute care building to an outpatient building. The Foundation shall review and make a funding decision in a reasonably and timely manner on any request for funds from the City for expenditures from the Fund. Throughout the review process, the Foundation shall keep the City reasonably informed of the progress of each funding request. This \$28 million shall be provided from the Fund to SFGH within eight years of receipt of this \$28 million by the Foundation from SVCF, or within a period otherwise agreed to by the City and the Foundation.
 - iv. \$8 million, of the Donors' Gift of \$75 million, shall be paid to the City, or expended by the Foundation on behalf of the City and with the City's and the Foundation's joint approval, to help achieve the goals of the Foundation's public health/community outreach campaign, which will feature the high quality and caliber of patient care SFGH provides to attract new patients to the San Francisco Health Network ("SFHN") while continuing to serve as the only trauma care provider and primary safety net care provider for San Francisco's most vulnerable, to position SFGH as a leader in training, research and education for the next generation of health care leaders, and to emphasize the importance of private philanthropic support for the future of SFGH. Within 10 business days of a written request from the City, any portion of the \$8 million not yet expended by the Foundation on behalf of the City will be transferred to the City and will be used by the City to support the SFHN public health/community outreach campaign.
- g. All funds paid to the City by the Foundation from the Donors' Gift shall include any interest income earned on such principal amounts while held by the Foundation. Such income shall be paid to the City on the same schedule as the principal and shall be used by the City for the same designated purposes as the principal, unless otherwise agreed to by the Foundation and the City.
- h. All sums paid to the City shall be by wire transfer. Instructions for wiring shall be provided by the Chief Financial Officer of the Department to the Foundation.

SECTION 2. City Obligations.

a. Approval and Acceptance; Effective Date. The City shall seek in a reasonable and timely manner all approvals required for the City to accept this gift, abide by its conditions, and enter into this Gift Agreement. Those approvals include approval of this Gift Agreement by the Commission and the City's Board of Supervisors and Mayor. This Gift Agreement becomes effective upon approval by the Commission, the Board of Supervisors and Mayor, and the signing and delivery of this Agreement by both parties (the "Effective Date").

b. Acknowledgement. In recognition of the Donors' generosity, the City will acknowledge the Donors' gift by adding their names to that of SFGH as described in Section 4 below. The City's obligation is conditioned upon payment by the Foundation of Donors' Gift in accordance with the payment schedule in Section 1(f) (ii), (iii) and (iv) above, and in any event upon the Donors transferring to the Foundation the entire \$75 million gift by March 1, 2016 (the "Outside Donation Date").

The City will allow the Foundation and its designated significant supporters reasonable periodic site visits and in-person meetings at SFGH to support the Foundation's fundraising and support mission. The City shall provide to the Foundation written financial reports that coincide with SFGH's and the Foundation's fiscal year (July 1 – June 30), as follows: a September 1st report to the Foundation shall serve as the "annual" progress reporting covering the previous fiscal year and a March 1st report shall serve as the "interim" progress report for that fiscal year. These progress reports will cover the use of the funds transferred by the Foundation to the City. The Foundation, at its own expense, may conduct, on no more frequently than an annual basis, its own evaluation of the use of the funds transferred by the Foundation to the City, including a formal audit of SFGH conducted by an independent accounting firm solely chosen by the Foundation. The City shall provide to the Foundation accurate and complete records of expenditures relating to the funds transferred by the Foundation to the City under this Gift Agreement.

SECTION 3. Foundation Obligations

The Foundation shall have the sole responsibility for the cost of placing and maintaining the naming arrangements as described in Section 4 below, including, but not limited to physical costs and signage. The Foundation shall use funds separate from this Gift to pay the costs of its obligations of the naming arrangements described in Section 4 below.

The Foundation shall provide to the City written fundraising progress reports that coincide with The City's and Foundation's fiscal year (July 1 – June 30), as follows: a September 1st report to the City shall serve as the "annual" progress reporting covering the previous fiscal year and a March 1st report shall serve as the "interim" progress report for that fiscal year. These progress reports will cover the progress of the Foundation's *Heart of Our City* Capital Campaign that identify the nature, amount, and disposition of the gifts, donations and contributions received or pledged to the Foundation covering the term of the report.

The Foundation agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement.

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The Foundation will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement. The Foundation shall annually have its books of accounts audited by a Certified Public Accountant and a copy of said audit report and the associated management letter(s) shall be transmitted to the Director of Health or his /her designee within one hundred eighty (180) calendar days following the Foundation's fiscal year end date. The Foundation shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same audit and inspection rights conferred upon City by this Section.

SECTION 4. Donor Recognition. The naming recognition will be two-fold: adding the names of the Donors to SFGH, as an institution, and placement of signage in the New Building in recognition of the Donors.

The institution shall be named:

Priscilla and Mark Zuckerberg San Francisco General Hospital and Trauma Center

and this recognition will be highly visible wherever the hospital's formal name is displayed, including existing and future buildings on the Campus, where SFGH has a significant presence.

In addition, the Donors' names will be added to the Main Lobby Atrium of the New Building, as set forth below, as well as to SFGH's print and online communications, letterheads, business cards, press releases, public health and educational materials, lab coats, and the like. Exact (formal and informal) naming as well as the process for transitioning to use of the new name on letterhead, business cards, lab coats, street signs and the like will be determined by the Foundation in consultation with Dr. Chan and Mr. Zuckerberg, and with the approval of the Director of Health, on behalf of the City, which approval shall not be unreasonably delayed or withheld.

For the naming of the Main Lobby Atrium of the New Building, the City will provide space and signage for recognizing the Donors with the following name:

Priscilla and Mark Zuckerberg Family Atrium

The naming of SFGH as "Priscilla and Mark Zuckerberg San Francisco General Hospital and Trauma Center," shall remain in place for 50 years from the Effective Date of this Gift Agreement. At the Donors' option, which the Donors may exercise by giving written notice to the City and the Foundation at least one hundred and eighty (180) days before the end of this 50-year period, the City, the Foundation, and the Donors, shall negotiate a potential additional grant to SFGH, which will provide the opportunity to extend this naming of SFGH for a period and on terms agreeable to all the parties in their discretion. Only for purposes of this paragraph and exercising this exclusive right to negotiate during this 180-day period, "Donors" shall include the Donors, their heirs, or any charitable foundation or other charitable vehicle primarily funded by one or both of the Donors.

Whenever the hospital's formal name is displayed on any building on the Campus, the name (Priscilla and Mark Zuckerberg San Francisco General Hospital and Trauma Center) shall stay in place and be maintained by the City (with the cost of maintenance borne by the Foundation) until the end of the useful life of such building and shall be the exclusive name of such building for that period. For this purpose, the useful life of a building is estimated to be 50 years from when the building is placed in service provided that the useful life shall end at the earliest of (1) the demolition of the building, (2) the substantial renovation of the building, (3) the conversion or redevelopment of a substantial part or the entire building to a primarily non-healthcare use, or (4) the abandonment or complete cessation of use of the building.

Whenever the hospital's formal name is displayed on any building on the Campus, the name (Priscilla and Mark Zuckerberg San Francisco General Hospital and Trauma Center), shall be in place no later than the latest of (a) the date such building is placed in service, (b) the date by which the Foundation cumulatively has transferred at least \$32.375 million to the City to fund the cost of FF&E for the New Building, or (c) except for the New Building, the date the formal name is added to any building on the Campus . The City will authorize the Foundation to commence the naming arrangements described in Section 4, other than the names on any buildings in the Campus, no later than the date by which the Foundation cumulatively has transferred at least \$32.375 million to the City to fund the cost of FF&E for the New Building and will proceed with reasonable diligence until completion. The City may remove the Donors' names from the institution or the New Building if the Foundation does not pay to the City any portion of the Donors' Gift as required in the payment schedule in Section 1(f)(ii), (iii) and (iv) above, or the Donors do not transfer to the Foundation the entire amount of the Donors' Gift (\$75 million) by the Outside Donation Date.

SECTION 5. General Terms

5.1 Remedies

Each party may enforce its rights under this Gift Agreement by way of an action for specific performance or by any other appropriate remedy at law or equity by any court having jurisdiction. Upon a breach of this Gift Agreement by either party, the non-breaching party shall provide the breaching party written notice of any alleged breach and shall give the breaching party reasonable opportunity to cure any such breach. If the breaching party fails to cure any such breach within sixty (60) days, then the non-breaching party shall have the right to seek specific performance by the breaching party of all or any part of this Agreement or other appropriate remedy. Nothing in this Gift Agreement limits the City's right to use in any manner, or not use, the building and the other improvements on the Campus, or any FF&E. Nothing in this Gift Agreement limits the City's right to use in any manner, or not use, the New Building, the other improvements on the Campus, or any FF&E.

5.2 Amendment. Any amendments to this Gift Agreement, including any amendments to any Attachments to this Gift Agreement, shall be in writing and signed by both parties.

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5.3 Notices. Any notice required or wished to be given under this Gift Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when personally delivered or delivered by expedited courier, or 3 business days after mailed by certified mail, return receipt requested, addressed to the appropriate address shown below:

If to the Foundation:

San Francisco General Foundation
2789 25th Street, Suite 2028
San Francisco, California 94110
Attention: Amanda Heier, Chief Executive Officer

If to the City:

City and County of San Francisco Department of Public Health
101 Grove Street
San Francisco, California 94102
Attention: Barbara A. Garcia, Director of Health

A party may change that party's address in the same manner required for giving notice.

5.4 Entire Agreement. This Gift Agreement, including any Attachments, constitutes the entire agreement between the parties with respect to the subject matter of this Gift Agreement, and it supersedes any and all prior agreements with respect to such subject matter, whether oral or written.

5.5 Severability. In the event any provision of this Gift Agreement shall be held by any court of competent jurisdiction to be illegal, invalid or unenforceable for any reason the remaining portion of this Gift Agreement shall nonetheless remain in full force and effect.

5.6 Construction of Agreement. The section and other headings in this Gift Agreement have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

5.7 Governing Law. This Gift Agreement shall be deemed to be made under, and shall be construed in accordance with, the laws of the State of California.

5.8 Further Assurances. The parties shall execute all instruments and documents and take all actions, including the payment of money, as may be required to carry out the transactions contemplated in the Gift Agreement.

5.9 Successors and Assigns. This Gift Agreement may not be assigned by either party without the written consent of the other party. This Gift Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the parties.

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5.10 Survival. Except as expressly stated otherwise, all covenants, and representations, and warranties made in this Gift Agreement.


5.11 Authority. The individual who signs this Gift Agreement on behalf of either party represents and warrants to the other party that such entity, acting through its duly authorized directors or officers, has specifically approved this Gift Agreement and authorized her/him to sign this Gift Agreement on behalf of such entity.

5.12 Execution. This Gift Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same agreement.

IN WITNESS WHEREOF, the Foundation and the City have caused the Gift Agreement to be executed each on its behalf as of the day and year first above written.


SAN FRANCISCO GENERAL HOSPITAL
FOUNDATION

By: _____


Amanda Heier
Chief Executive Officer

CITY AND COUNTY OF SAN FRANCISCO

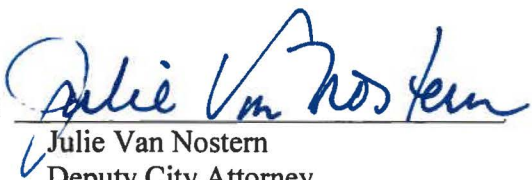
By _____


Barbara A. Garcia
Director of Health

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____


Julie Van Nostern
Deputy City Attorney

Attachment A
Map of SFGH Campus and location of the New Building

