

1 [Settlement of Lawsuit - U.S. Department of Health and Human Services and Xavier Becerra -
2 City to Pay \$203,885 - Sole Source Contract for Quality Improvement Expert - Not to Exceed
3 \$3,000,000 - Waiver of Certain Administrative Code Provisions]

4 **Ordinance authorizing settlement of the lawsuit filed by the City and County of San**
5 **Francisco against U.S. Department of Health and Human Services and Xavier Becerra,**
6 **Secretary of Health and Human Services for \$203,885; and in connection with the**
7 **settlement agreement, authorizing the Department of Public Health to enter into a**
8 **contract with a Quality Improvement Expert without engaging in a competitive**
9 **procurement process, and without adhering to specified contract requirements in the**
10 **Administrative Code; the lawsuit was filed on August 3, 2022, in the United States**
11 **District Court for the Northern District of California, Case No. 3:22-cv-4500-WHA;**
12 **entitled City and County of San Francisco v. U.S. Department of Health and Human**
13 **Services; Xavier Becerra, Secretary of the Department of Health and Human Services;**
14 **the lawsuit involves allegations that defendants violated the Administrative Procedure**
15 **Act and the City's due process rights by deciding to terminate federal funding for**
16 **Laguna Honda Hospital and Rehabilitation Center before residents could safely be**
17 **transferred to other facilities and before the City's administrative appeal could be**
18 **heard.**

19
20 Be it ordained by the People of the City and County of San Francisco:

21 Section 1. Pursuant to Charter Section 6.102(5), the Board of Supervisors hereby
22 authorizes the City Attorney to settle the action entitled City and County of San Francisco v.
23 U.S. Department of Health and Human Services; Xavier Becerra, Secretary of the Department
24 of Health and Human Services, filed in the United States District Court for the Northern District
25 of California, Case No. 3:22-cv-4500-WHA by the payment of \$203,885 by the City for

1 previously assessed civil monetary penalties required to be paid as a condition of the
2 settlement and by the continuation of federal funding by the Centers for Medicare and
3 Medicaid Services (CMS) through November 13, 2023. The lawsuit involves allegations that
4 defendants violated the Administrative Procedure Act and the City's due process rights by
5 deciding to terminate federal funding for Laguna Honda Hospital and Rehabilitation Center
6 before residents could safely be transferred to other facilities and before the City's
7 administrative appeal could be heard.

8 Section 2. The above-named action was filed in the United States District Court for the
9 Northern District of California on August 3, 2022, and the following parties were named in the
10 lawsuit: plaintiff: the City and County of San Francisco; defendants: the U.S. Department of
11 Health and Human Services, and Xavier Becerra, Secretary of the Department of Health and
12 Human Services.

13 Section 3. The settlement between the parties requires the City to enter into an
14 agreement with a contractor to serve as a quality improvement expert (QIE). Under the terms
15 of the settlement agreement, CMS must approve the QIE and the QIE must deliver a written
16 report to CMS no later than December 1, 2022. The settlement agreement requires the City
17 to retain a QIE for the duration of the settlement agreement, which is at least through
18 November 13, 2023.

19 Section 4. The Board of Supervisors hereby authorizes the Department of Public
20 Health to enter into a contract with a QIE selected by CMS in an amount not to exceed
21 \$3,000,000, for a term not to exceed one year and 3 months (through December 31, 2023), to
22 provide skilled nursing quality improvement services approved by CMS, as required by the
23 settlement between the parties, without adhering to the requirements of Administrative Code
24 Section 21.1, or any other competitive procurement requirements, Administrative Code
25 Chapter 12B, or Administrative Code Chapter 14B.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPROVED AS TO FORM AND
RECOMMENDED:

DAVID CHIU
City Attorney

/s/
JULIE VAN NOSTERN
Chief Attorney, Health & Human Services

FUNDS AVAILABLE:

/s/ Michelle Allersma for
BEN ROSENFELD
Controller

RECOMMENDED:

DEPARTMENT OF PUBLIC HEALTH

/s/
GRANT COLFAX
Director of Health

RECOMMENDED:

/s/
MARK MOREWITZ
Secretary, Health Commission

n:\govlit\li2022\230028\01634938.docx