

MEMORANDUM OF UNDERSTANDING # _____
Proposed CPMC Project

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") dated as of May ____ 2011, is made by and between the San Francisco Office of Economic and Workforce Development ("OEWD"), the San Francisco Planning Department (the "Planning Department"), and the San Francisco Department of Public Works ("DPW") (collectively, the "City Agencies" and each a "City Agency"), and Sutter West Bay Hospitals, a California nonprofit public benefit corporation, doing business as California Pacific Medical Center ("CPMC") in connection with CPMC's proposed long range development plan described in Recital A below.

RECITALS

This MOU is made with regard to the following facts, intentions and understandings:

- A. CPMC currently operates four medical campuses in San Francisco. In 2005 CPMC filed an environmental evaluation application (Case No. 2005.0555E) for its long-term development program to meet the State's seismic safety requirements for hospitals and to create a framework for the Long-Range Development Plan (LRDP) reflected in the CPMC Institution Master Plan ("IMP") accepted by the Planning Commission on November 19, 2009. The IMP includes the existing Pacific Campus, California Campus, Davies Campus and St. Luke's Campus and the proposed Cathedral Hill Campus, all of which are more particularly described in the CPMC LRDP Draft EIR ("DEIR") published July 21, 2010. The proposed project, as described in the DEIR, is referred to herein as the "CPMC Project."
- B. The final scope of the CPMC Project is not fixed at this stage in the public process. Accordingly, the parties understand and agree that the CPMC Project may be refined and modified through the community and stakeholder review, environmental review and planning processes.
- C. CPMC intends to apply for the approval of a development agreement (the "Development Agreement") for the CPMC Project, which will require, at a minimum, review by the City's Planning Commission and the approval of the Board of Supervisors. The parties anticipate that the Development Agreement will include descriptions of certain public benefits to be provided by the CPMC Project in exchange for development rights to construct the CPMC Project.
- E. CPMC has not yet filed an application for a Development Agreement, as contemplated by San Francisco Administrative Code Chapter 56, because OEWD and the Planning Department are working in conjunction with CPMC to determine the appropriate scope of the Development Agreement application, including the initial package of proposed public benefits, and to estimate the reimbursable costs to be incurred by the City Agencies in connection with the drafting of the Development Agreement and

the associated tasks. Therefore, this MOU is intended to provide a temporary mechanism by which CPMC will reimburse the City Agencies for staff time and materials expended on any component of the Development Agreement prior to CPMC filing an application for the Development Agreement under Chapter 56 of the Administrative Code.

F. OEWD and the Planning Department agree that the success of this effort is predicated on careful coordination between the traditional real estate economic analysis and negotiation functions of OEWD and the traditional land use and urban design functions of the Planning Department. Accordingly, each agency will appoint a Project Manager to oversee their respective roles in the Development Agreement formation process.

G. It is also understood by the parties that OEWD, in cooperation with the Planning Department, may propose a series of procedural amendments to the existing Development Agreement ordinance as set forth in Chapter 56 of the Administrative Code, including potential changes to the Development Agreement application and processing fee approval provisions. Nevertheless, it is the intention of the parties to this MOU to conform to the existing application and approval procedure set forth in Chapter 56 unless and until such time that the Development Agreement process is modified through legislative action.

AGREEMENT

OEWD and the Planning Department, as applicable, and CPMC agree to the following:

1. Negotiations. OEWD, working in close consultation with the Planning Director, shall act as the lead representative of the City Agencies in negotiating the substance of the Development Agreement with CPMC, and shall consult with the City Agencies in negotiations with CPMC, each of which shall contribute personnel as selected by its director.
2. Drafting. OEWD, in conjunction with the Office of the City Attorney and CPMC, shall draft the Development Agreement, consulting with the Planning Director and City Agencies with respect to the items that affect each City Agency. CPMC's consultants and architects shall prepare any required exhibits and appendices in consultation with OEWD.
3. Planning Department. The Planning Director shall appoint a Planning project manager who shall coordinate all Planning Department efforts related to the preparation of the contents of the Development Agreement and required exhibits and appendices. The Planning Department Division of Major Environmental Analysis ("MEA") shall prepare the Environmental Impact Report for the CPMC Project, and may consult from time to time with the City Agencies regarding the environmental review. The costs of staff time and materials for all of the Planning Department's tasks associated with the CPMC Project shall not be reimbursed by this MOU or the Development Agreement fee described below, but shall instead be reimbursed by the application fees paid by CPMC to the Planning Department.

4. Reimbursement of City Costs Prior to Application. Prior to the submittal and approval of the CPMC Development Agreement application as described in Section 5 below, CPMC shall reimburse the City Agencies for the actual costs of the City Agencies in preparing, adopting or negotiating the Development Agreement and any proposed ancillary documents or legislation as determined on a time and materials basis, excluding costs associated with activities covered by other standard City fees for applications, permits or approvals (collectively, the "DA Costs"). DA Costs shall include, without limitation, the (a) fees and expenses of the City Attorney's Office staff and other City staff at the rates set forth in the attached Exhibit A or the standard hourly rates for such City staff member charged to outside developers from time to time, (b) fees and expenses of outside counsel and third-party consultants, advisors and professionals (including, but not limited to, real estate appraisers) reasonably incurred by City Agencies, and (c) costs reasonably incurred by City Agencies related to public outreach and information. OEWD shall be responsible for coordinating the billing as described in this section. OEWD shall provide CPMC on a quarterly basis (or such alternative period as agreed to by the parties) a reasonably detailed statement showing costs incurred by OEWD, the City Agencies and the City Attorney's Office, including the hourly rates for each City staff member at that time, the total number of hours spent by each City staff member during the invoice period, any additional costs incurred by the City Agencies and a brief non-confidential description of the work completed. OEWD will use reasonable efforts to provide an accounting of time and costs from the City Attorney's Office and each City Agency in each invoice; provided, however, if OEWD is unable to provide an accounting from one or more of such parties OEWD may send an invoice to CPMC that does not include the charges of such party or parties without losing any right to include such charges in a future or supplemental invoice. CPMC shall pay the invoiced amount from OEWD within 60 calendar days of receipt of the invoice. If CPMC in good faith disputes any portion of an invoice, then within 60 calendar days of receipt of the invoice CPMC shall provide written notice of the amount disputed and the reason for the dispute, and the parties shall use good faith efforts to reconcile the dispute as soon as practicable. CPMC shall have no right to withhold the disputed amount. If any dispute is not resolved within 90 days of CPMC's notice to City of the dispute, CPMC may pursue all remedies at law or in equity to recover the disputed amount. Notwithstanding anything in this MOU to the contrary, if CPMC fails to fully pay any invoice within 60 calendar days of receipt, City shall have the right to suspend additional work on all tasks until such sum is paid. CPMC's obligation to pay the DA Costs shall survive the termination of this MOU. CPMC shall have no obligation to reimburse City for any DA Cost that is not invoiced to CPMC within forty-eight (48) months from the date the DA Cost was incurred.

5. Reimbursement after Application. Unless San Francisco Administrative Code Chapter 56 is amended to eliminate the requirement of a Development Agreement application and payment of a Development Agreement fee (as described in Chapter 56), as soon as sufficient information and analysis is completed to permit CPMC to submit a detailed Development Agreement application, CPMC will submit such application and the parties will negotiate in good faith to determine the appropriate Development Agreement fee for prospective work to be completed (which shall not include work

already completed and reimbursed by CPMC under this MOU). The Development Agreement fee shall be paid in quarterly installments over the total period required for preparation of a final Development Agreement and companion agreements and ordinances or as otherwise agreed to by the parties, and shall be subject to any necessary governmental approvals. Upon receipt of any installment, the Development Agreement fee will be held by City in an account known as the CPMC DA Fund. OEWD shall be responsible for coordinating billing by the City Agencies. The billing process and procedure set forth in Section 4 above shall continue to apply, subject to any revisions as may be agreed to by the parties or required as part of a governmental approval of the Development Agreement fee; provided, however, amounts due to City shall be deducted from the CPMC DA Fund. In the event that City's costs and expenses exceed the amounts in the CPMC DA Fund, then, notwithstanding anything in this MOU to the contrary, City shall have the right to suspend additional work under the Development Agreement application until the parties reach agreement on any additional payments to be made by CPMC to the CPMC DA Fund.

6. City Limitation. All tasks under this MOU are subject to the City's agreement on a fee or reimbursement mechanism for the proposed work. Nothing in this MOU shall obligate the City Agencies to expend funds or other resources except for funds that have been expressly agreed upon herein, nor shall anything in this MOU be construed as a limitation on any party's authority to contribute staff, funds or other resources to the processing, review and consideration of the CPMC Project.

7. No Liability; Termination. The parties are entering into this MOU in order to cooperate in preparing, negotiating, and seeking the adoption of the Development Agreement and any proposed ancillary documents or legislation with respect to the CPMC Project as described above. The parties understand and agree that the City would not be willing to enter into this MOU if it could result in any liability or cost to the City. Accordingly, in the event that CPMC believes that the City has violated any of the terms of this MOU, CPMC's sole remedy shall be to terminate this MOU. Furthermore, any party shall have the right to terminate this MOU at any time without cost or liability by providing notice of termination to the other parties. If this MOU is terminated CPMC shall be responsible for DA Costs incurred by any of the City Agencies prior to receipt of CPMC's termination notification. If this MOU is terminated following the establishment of the CPMC DA Fund, any unexpended balance in the CPMC DA Fund shall be returned to CPMC after payment of the final DA Costs.

8. City Discretion. CPMC and the City Agencies acknowledge and agree that under this MOU, the City Agencies are not committing themselves or agreeing to approve any land use entitlements or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the City Agencies, the Planning Commission, the Board of Supervisors, the Mayor, or any other agency, commission or department of the City, and that the CPMC Project documents and approvals are subject to the prior approval of City Agencies, the Planning Commission, Board of Supervisors, and the Mayor, each in their sole and absolute discretion. Notwithstanding anything to the contrary herein, the City Agencies, and each of their respective boards, commissions,

departments, and officials, each shall exercise their sole discretion over all matters relating to the CPMC Project over which it has jurisdiction consistent with legal requirements, customary practices, and public health, safety, convenience and welfare, and each shall retain, at all times, their respective authority to take any action under its jurisdiction consistent with the foregoing.

9. Environmental Review. The final project ultimately proposed by the City Agencies and CPMC shall be subject to a process of thorough public review and input and all necessary and appropriate approvals; that process must include environmental review under CEQA before a City Agency, Commission, Board or any other City decision-maker may consider approving the project; and the project will require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this MOU commits, or shall be deemed to commit, the City or the City Agencies to approve or implement any project, and they may not do so until environmental review of the project as required under CEQA has been completed. Accordingly, all references to "CPMC Project" in this MOU shall mean the proposed project subject to future environmental review and consideration by the City. The City and any other public agency with jurisdiction over any part of the project shall have the absolute discretion before approving the project to: (i) make such modifications to the project as may be necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific impacts of the project; (iv) balance the benefits of the project against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the project.

10. Notices. Unless otherwise indicated elsewhere in this MOU, all written communications sent by the parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To OEWD:
Ken Rich
Office of Economic and Workplace Development
City Hall, Room 448
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Phone: 415.554-5194
Email: ken.rich@sfgov.org

To Planning Department:
John Rahaim
Director
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103
Phone: 415.558.6411
Email: john.rahaim@sfgov.org

To CPMC:

Grant Davies
Executive Vice President
California Pacific Medical Center
2351 Clay Street, 7th Floor
San Francisco, CA 94115
Phone: (415) 600-3790
Fax:
Email: daviesg@sutterhealth.org

with a copy to:

Michael A. Duncheon, Esq.
VP & Regional Counsel, West Bay Region
Sutter Health
633 Folsom Street, Seventh Floor
San Francisco, CA 94107
Phone: (415) 600-6796
Fax: (415) 600-6749
Email: dunchem@sutterhealth.org

Any notice of default must be sent by registered mail.

11. California Political Reform Act. The parties acknowledge that payments pursuant to this MOU from CPMC to OEWD are payments to the City, not to any individual employee or officer of the City, and that the payments therefore are not "income" to any City employee or officer under the California Political Reform Act, California Government Code Section 81000, *et seq.*

12. Notification of Limitations on Contributions. CPMC acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a

candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. CPMC acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more.

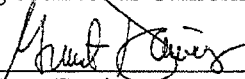
13. No Joint Liability. Nothing in this MOU shall be construed as giving a party the right or ability to bind other parties and nothing in this MOU shall be construed to create any joint liability with regard to, or as a result of, the activities undertaken by any of the parties, their employees, officers and/or agents. All employees, officers and/or agents of a party shall remain employees, officers and/or agents of that party and shall be subject to the laws, procedures, rules and policies governing that party's employees, officers and/or agents.

14. Sunshine. CPMC understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (California Government Code Section 6250 *et seq.*) apply to this MOU and any and all records and materials submitted to the City in connection with this MOU.

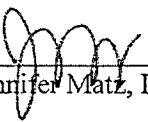
15. Miscellaneous. (a) This MOU may be modified only in writing and by mutual consent of all parties. (b) This MOU shall become effective when signed by the authorized representatives of OEWD and the Planning Department and CPMC. It shall remain in effect for each party until terminated in writing by such party, or for the City Agencies collectively, by OEWD. (c) There are no intended third party beneficiaries of this MOU. The parties acknowledge and agree that this MOU is entered into for their benefit and not for the benefit of any other party. (d) This MOU shall be governed by the applicable laws of California. (e) This MOU contains all of the representations and the entire agreement between the parties with respect to the subject matter of this MOU. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this MOU.

IN WITNESS WHEREOF, The parties have executed this Agreement on the date set forth herein.

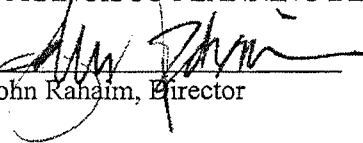
SUTTER WEST BAY HOSPITALS,
a California nonprofit public benefit corporation,
doing business as California Pacific Medical Center

By 
Grant Davies
Executive Vice President

SAN FRANCISCO OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT

By 
Jennifer Matz, Director

SAN FRANCISCO PLANNING DEPARTMENT

By 
John Rahaim, Director

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

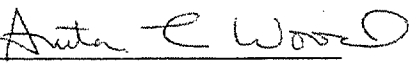
By 
Deputy City Attorney

EXHIBIT A
Rates

City Agency	Title or Position	Rate per hour
City Attorney	Deputy City Attorney	\$ 350.00
City Attorney	Legal Assistant	\$ 165.00
OEWD	Project Manager	\$ 87.16
OEWD	Project Manager	\$97.91
OEWD	Project Assistant	\$ 27.50
DPW	Bureau Manager	\$ 215.00
DPW	Senior Engineer	\$ 180.16
DPW	Administrative Engineer	\$ 167.51
DPW	Engineer	\$ 155.62
DPW	Associate Engineer	\$ 134.46
DPW	Assistant Engineer	\$ 115.50
DPW	Junior Engineer	\$ 102.28
DPW	Engineering Associate II	\$ 110.59
DPW	Engineering Associate I	\$ 95.54
DPW	Engineering Assistant	\$ 86.19
DPW	Landscape Architect	\$ 155.62
DPW	Landscape Architectural Associate 2	\$ 134.46
DPW	Landscape Architectural Associate 1	\$ 115.50
DPW	Sr. Architect	\$ 182.18
DPW	Architect	\$ 157.37
DPW	Arch. Admin	\$ 138.60
DPW	Arch. Associate II	\$ 135.97
DPW	Arch. Associate I	\$ 116.79
DPW	Arch. Assistant II	\$ 101.87
DPW	Arch. Assistant I	\$ 92.39
DPW	Environmental Planning Manager III	\$ 161.83
DPW	Project Manager I	\$ 143.91
DPW	Project Manager II	\$ 166.54
DPW	Project Manager III	\$ 202.12
DPW	Secretary II	\$ 72.87
DPW	Senior Clerk Typist	\$ 66.09

EXHIBIT A
Rates

City Agency	Title or Position	Rate per hour
City Attorney	Deputy City Attorney	\$ 350.00
City Attorney	Legal Assistant	\$ 165.00
OEWD	Project Manager	\$ 87.16
OEWD	Project Manager	\$97.91
OEWD	Project Assistant	\$ 27.50
DPW	Bureau Manager	\$ 215.00
DPW	Senior Engineer	\$ 180.16
DPW	Administrative Engineer	\$ 167.51
DPW	Engineer	\$ 155.62
DPW	Associate Engineer	\$ 134.46
DPW	Assistant Engineer	\$ 115.50
DPW	Junior Engineer	\$ 102.28
DPW	Engineering Associate II	\$ 110.59
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DPW	Landscape Architect	\$ 155.62
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