

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Consenting to the proposed Development Agreement Relating to the Construction and Reconstruction of Healthcare Facilities in Furtherance of the California Pacific Medical Center Long Range Development Plan by and between the City and County of San Francisco and Sutter West Bay Hospitals and approving additional transportation-related changes around St. Luke's Hospital.

SUMMARY:

- To comply with State seismic safety requirements and improve healthcare facilities, the California Pacific Medical Center is planning to upgrade and/or construct new facilities at its existing St. Luke's and Davies Campuses and its proposed, new Cathedral Hill Campus.
- On May 1, 2012, the SFMTA Board authorized the Director of Transportation to approve (i) a consent to the previous Development Agreement with CPMC and (ii) various transportation related approvals in the vicinity of the St. Luke's and Cathedral Hill Campuses.
- Subsequent to the approval, CPMC proposed changes to reduce the size of the Cathedral Hill Campus hospital, and increase the size of the St. Luke's Campus hospital.
- The new Cathedral Hill Campus (hospital and medical office building) will offer a high level of transit accessibility and include 990 parking spaces. Increased transit ridership and hospital-generated traffic congestion will have significant transportation impacts.
- To help address these impacts, the proposed revised Development Agreement contains payments from CPMC to the SFMTA totaling at least \$14.5 million.
- To accommodate the long-term buildout of St. Luke's Hospital, the Board is also being asked to approve additional streetscape, traffic and parking changes.

ENCLOSURES:

1. SFMTA Resolution
2. Revised Development Agreement and Exhibit K, Transportation Program
3. St. Luke's Hospital Site Plan

APPROVALS:

DATE

DIRECTOR _____

May 28, 2013

SECRETARY _____

May 28, 2013

ASSIGNED SFMTAB CALENDAR DATE: June 4, 2013

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PURPOSE

On May 1, 2012, the SFMTA Board authorized the Director of Transportation to execute the “Consent to the Development Agreement Relating to the Construction and Reconstruction of HealthCare Facilities in Furtherance of the California Pacific Medical Center (“CPMC”) Long Range Development Plan (“LRDP”) by and between the City and County of San Francisco and Sutter West Bay Hospitals (dba CPMC)”.

Subsequently, CPMC has amended its LRDP and has proposed to reduce the size of the hospital at the Cathedral Hill Campus, and increase the size of the replacement hospital at the St. Luke’s Campus. As a result of these changes, the parties have proposed an update to the transportation component of the Development Agreement.

Also on May 1, 2012, in Resolution 12-064, the SFMTA Board approved transportation-related changes in the vicinity of the St. Luke’s Campus and the proposed Cathedral Hill Campus. Those changes are not altered by the revised CPMC LRDP, but this calendar item includes additional transportation related changes at the St. Luke’s Campus as described in the staff report.

GOAL

This proposed ordinance shall assist the SFMTA in achieving the following of its strategic goals:

Goal 2: Make transit, walking, cycling, taxi, ridesharing and carsharing the preferred means of travel.

Objective 2.2 – Improve transit performance

Objective 2.3 – Increase use of all non-private auto modes

Goal 3: Improve the environment and quality of life in San Francisco

Objective 3.2 – Increase the transportation system’s positive impact to the economy

Objective 3.4 – Deliver Services Efficiently

Objective 3.5 – Reduce capital and operating structural deficits

DESCRIPTION

Proposed Project

CPMC currently operates four medical campuses in San Francisco: St. Luke’s (located at Cesar Chávez and Valencia), Davies (Duboce and Noe), Pacific (Clay and Buchanan) and California (California and Maple). With over 6,000 employees, CPMC is San Francisco’s second largest non-public employer, and fourth largest employer overall. In order to comply with State seismic safety requirements and improve its healthcare facilities, CPMC is planning the following major upgrades:

- Construction of a new seven-story, 120-bed acute care hospital at St. Luke’s to replace the existing hospital, and a seven-story medical office building.
- Construction of a new, four-story medical office building housing the Neuroscience Institute at Davies.

- Construction of a new 12-story, 274-bed hospital and a nine-story medical office building at the Cathedral Hill Campus (Geary Boulevard/Street and Van Ness Avenue). CPMC will transfer acute care services from its California and Pacific Campuses to Cathedral Hill once completed. CPMC also has the option to add 30 additional beds at Cathedral Hill if St. Luke’s Hospital reaches 75% bed utilization.

As noted above, CPMC amended its LRDP from that presented to the City for approval in 2012. The following table illustrates the changes to CPMC’s hospital projects since last year:

Modifications to CPMC Hospital Projects

Hospital Characteristics	May 2012	Current Proposal
Cathedral Hill Hospital		
Beds	555	274*
Floors	15	12
Height (feet)	265	226
Size (square feet)	1.2 million	989,000
Parking Spaces	1,227	990**
Cathedral Hill Hospital	513	276
Cathedral Hill Medical Office Building	542	542
1375 Sutter Medical Office Building (existing)	172	172
St. Luke’s Hospital		
Beds	80	120
Floors	5	7
Height (feet)	99	142
Size (square feet)	155,000	235,000
Parking Spaces	450	450

* Option to add 30 additional beds at Cathedral Hill if St. Luke’s reaches 75 bed utilization

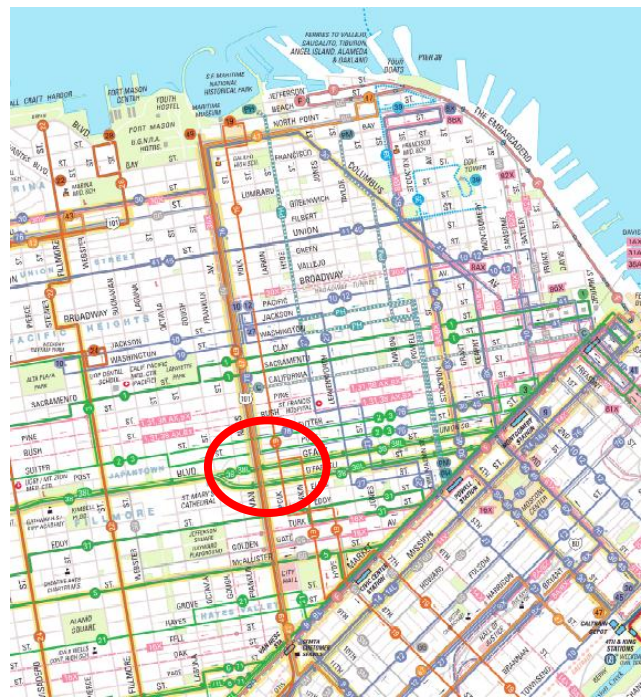
** Includes new parking at Cathedral Hill Hospital and Cathedral Hill Medical Office Building plus the existing 172-space parking garage at the 1375 Sutter Medical Office Building. CPMC is studying the best way to achieve the reduction of 237 spaces on the campus and may ultimately propose to remove some or all of this parking from the proposed MOB instead of/in addition to the hospital.

The proposed Development Agreement (as revised from 2012) is a result of negotiations between CPMC and the Mayor’s Office on behalf of various City departments, including the Planning Department, Department of Building Inspection, Department of Public Health, the Health Service System, Department of Public Works, the Controller’s Office, and the SFMTA.

Transportation Impacts

In terms of transportation, the most significant feature of the LRDP is the proposed Cathedral Hill Campus, consisting of a new hospital and medical office building, and the conversion of the existing 1375 Sutter Medical Office Building from mixed office to all medical office. Located at Geary Boulevard and Van Ness Avenue, the campus will provide a high level of transit accessibility to patients, employees and visitors. Currently, the 38 Geary, 38L Geary Limited, 47 Van Ness and 49 Van Ness-Mission lines stop at that intersection and Geary and Van Ness have been identified as future Bus Rapid Transit (BRT) corridors. The 2 Clement, 3 Jackson, 19 Polk and 31 Balboa lines and Golden Gate Transit regional buses also serve the facility directly, or are within walking distance. Over 120,000 SFMTA customers, or 15% of total Muni ridership, ride one of the routes listed above on a typical weekday. In addition, Polk Street has a dedicated bicycle lane and Sutter and Post Streets are designated bicycle routes.

To accommodate expected travel demand arriving by private vehicles, CPMC is proposing to add 818 new parking spaces, in addition to the existing 172-space parking garage at the 1375 Sutter Medical Office Building. Current plans call for the construction of a 276-space parking garage for the Cathedral Hill Hospital and a 542-space parking garage for the Cathedral Hill Medical Office Building, although CPMC is studying the best way to distribute the new spaces between these two facilities. The reduction in the size of the hospital would increase the amount of parking in the vicinity of Geary and Van Ness, although not to the level as previously proposed (990 v. 1227 spaces).



Map showing location of the proposed Cathedral Hill Campus at Geary and Van Ness in relation to existing transit lines

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In April 2012, the Planning Commission certified the Final Environmental Impact Report for the LRDP (for all CMPC campuses), which included an assessment of transportation impacts. Major transportation-related impacts for the Cathedral Hill Campus included:

- The Campus would generate an estimated 19,947 daily net new person trips, including 593 vehicle and 586 transit trips during the AM peak hour and 609 vehicle and 551 transit trips during the PM peak hour
- By 2030, the Campus would generate significant and unavoidable traffic impacts at the intersections of Polk and Geary, Van Ness and Market, and Van Ness and Pine during the morning and/or evening peak hour
- By 2030, the Campus would result in significant and unavoidable transit delay impacts to the 3 Jackson (during the PM peak hour), 19 Polk (during the PM peak hour), 38 Geary/38L Geary Limited (during both AM and PM peak periods), 47 Van Ness (during the PM peak hour) and 49 Van Ness-Mission (during both peak periods)

In partnership with CPMC, the SFMTA developed a cost and schedule model to assess the transit resource implications of CPMC's Cathedral Hill Campus on a route-by-route basis. The model focused on the following areas:

- **Transit Delay:** Vehicle trips generated by CPMC's Cathedral Hill Campus will increase congestion in the area, thereby slowing Muni vehicles and lengthening travel times for Muni customers passing by the facility. Additional vehicles and operators are required to maintain service headways and reliability.
- **Transit Capacity:** CPMC's Cathedral Hill Campus will generate additional transit ridership, which may require additional resources given existing ridership patterns on Van Ness and Geary.

In order to help mitigate the significant transportation impacts, the EIR proposed that CPMC contribute funds to purchase and operate additional Muni vehicles on the impacted lines. CPMC negotiated with the Mayor's Office and the SFMTA to determine a mutually-acceptable transportation program funding package consistent with the EIR findings and SFMTA's cost and schedule model. Although the transportation funding program will help mitigate the significant impacts described above, the impacts will remain significant and unavoidable.

Modified Development Agreement: Transportation Program

Following an extensive analysis of the transportation impacts, the SFMTA and the Mayor's Office entered into negotiations with CPMC to determine how to best address transportation impacts both at the Cathedral Hill Campus and other CPMC campuses. The parties arrived at an initial Development Agreement which was presented to the SFMTA Board on May 1, 2012.

After the SFMTA Board consented to previously proposed Development Agreement, CPMC amended its LRDP to increase the size of the replacement hospital at the St. Luke's Campus, and reduce the size of the proposed Cathedral Hill Campus Hospital. The reduction in the size of the Cathedral Hill Hospital will result in a reduction of the magnitude of transportation impacts of the facility analyzed in

the EIR, although those impacts will remain significant and unavoidable. As such, CPMC and the City have agreed to the following provisions, some of which have been modified from or added to the original proposal (please see Exhibit K in the attached Enclosure):

- **Bus Rapid Transit (same)**
CPMC will provide \$5 million in funding for the proposed Van Ness and Geary BRT projects. This payment would be used for hard or soft costs of planning, administration and, if approved, construction associated with BRT adjacent to the Cathedral Hill Campus.
- **SFMTA Fee (same)**
To encourage people traveling to or from the Cathedral Hill Campus to use non-private automobile modes, CPMC will pay a fee to SFMTA of \$0.50 off-peak and \$0.75 peak for each entry and exit at the Cathedral Hill Hospital and Medical Office Building garages to support transit operations. Peak hours shall be weekdays between 7:00 am and 9:00 am and between 4:00 pm and 6:00 pm. This fee shall be in effect for ten years following the opening of each garage and increase by six percent every two years. Total estimated revenue is approximately \$300,000 annually, less than the original proposal due to the decrease in the number of parking spaces.
- **Transit Fee (revised)**
In lieu of the Transit Impact Development Fee (which does not apply to non-profits), CPMC shall pay \$6,500,000 to help address transit delay impacts on Muni vehicles associated with traffic generated from new CPMC facilities. This amount is approximately equivalent to applying the updated TIDF rates to the net new square footage of these buildings after subtracting out prior uses at the facility sites. This Transit Fee represents a decrease of \$3,954,198.54 from the transit fee proposed in the previous Development Agreement due to the reduced size of the Cathedral Hill Campus Hospital.
- **Bicycle Studies (same)**
In order to encourage increased bicycle use, CPMC shall pay the SFMTA \$400,000 to study improvements to bicycle facilities in several key locations:
 - a. Develop preferred bicycle routes and recommend improvements to existing facilities between the CPMC campuses;
 - b. Develop design alternatives for improved bicycle facilities on Polk Street near the new Cathedral Hill Campus;
 - c. Develop traffic calming proposals along the 'Wiggle' (i.e., the approximately one-mile zig-zagging bicycle route from Market Street to Golden Gate Park), near the Davies Campus; and
 - d. Design traffic calming improvements along 26th Street between Valencia Street and Potrero Avenue to discourage spillover traffic from Cesar Chávez Street around the St. Luke's Campus.
- **Annual Transportation Surveys (new)**
CPMC shall implement the March 24, 2011 Transportation Demand Management Plans (TDMPs) (amended April 1, 2013) for St. Luke's, Cathedral Hill, Pacific and Davies Campuses.

At no cost to the City, CPMC shall also conduct annual employee surveys and tri-annual surveys for employees/patients/visitors to assess the implementation of each TDMP. The respective surveys for each location shall begin within one year following the opening of the St. Luke's Hospital for the St. Luke's Campus, the opening of the Cathedral Hill Hospital for the Cathedral Hill and Pacific Campus, and the opening of the Neurosciences Institute Building for the Davies Campus. Once started, the surveys shall continue for ten years. Upon completion, CPMC will share the results of these surveys with the City's Planning Department and the SFMTA.

As described in the TDMP, there is an aggregate system-wide 15 percent target for reducing single occupancy vehicle trips from the current baseline mode split by 2024. If any two consecutive surveys show non-attainment of the applicable percentage, CPMC shall consult with Planning Director and the Director of Transportation to identify feasible measures that CPMC can reasonably implement to reduce the single occupancy vehicle percentage.

- **Additional Transportation Studies for Cathedral Hill (new)**
To help monitor future congestion and the effects of Cathedral Hill projects on the transportation network, CPMC shall fund additional transportation studies up to \$40,000 (in inflation-adjusted dollars) for the Cathedral Hill Campus and its immediate vicinity. The SFMTA may request such funding up to 3 times beginning at least three years after the opening of the new hospital at Cathedral Hill and occurring no more frequently than every three years thereafter. If the studies determine that area congestion exceeds currently projected levels or that the transportation-related operational characteristics (e.g., freight loading, parking garage access, passenger loading, etc.) of the Cathedral Hill Campus adversely affect the SFMTA transportation network, CPMC will consult with the SFMTA to determine if there are additional feasible transportation demand management measures or other measures that might reasonably be implemented by CPMC, at no cost to the City, to reduce its contribution to transportation congestion in the area.
- **Additional Funds for Transportation Demand Management at Cathedral Hill (new)**
If any of the scheduled transportation surveys for Cathedral Hill employees, patients and visitors show in the aggregate that the Drive Alone mode split percentages exceed those indicated in the June 2010 CPMC Long Range Development Plan Transportation Impact Study, CPMC shall pay to SFMTA \$75,000 (adjusted for inflation) within 60 days. The SFMTA will use these funds solely for transportation demand management or transportation improvements related to the Cathedral Hill Campus traffic area as determined by the SFMTA.
- **Clipper Cards/Fare Subsidy (new)**
CPMC shall establish a master account for all employees with the Clipper Card Program or similar/successor electronic debit and transfer mechanism. As part of its Transportation Demand Management (TDM) plan, CPMC shall encourage all employees to enroll in the program and purchase a Clipper Card. CPMC shall provide a 50 percent subsidy on the price of the fare product purchased, up to the value of an adult Muni-Only Fast Pass (currently \$64, but subject to future price adjustments).

- Cathedral Hill Campus Garages Parking Restrictions (new)
CPMC's Cathedral Hill Campus garages shall be available only to visitors, employees and staff of the Campus after 7 p.m.

Summary of Major Modifications to Development Agreement Provisions

Category	May 2012 Tentative Development Agreement	May 2013 Revised Development Agreement
Van Ness and Geary BRT Project Contribution	\$5,000,000	No change
SFMTA Fee	\$0.50 per vehicle entry and exit (off-peak) \$0.75 per vehicle entry and exit (peak) 6 percent rate increase every two years	No change (although total estimated revenue would be less due to the lower number of parking spaces)
Transit Impact Fee	\$10,454,198.54	\$6,500,000.00
Bicycle Studies	\$400,000 to study improvements to bicycle safety, facilities and circulation	No change
Annual Transportation Surveys	No requirement	CPMC responsible for annual employee and tri-annual employee/patient/visitor surveys to determine compliance with single occupancy vehicle reduction targets and identify remedies for not reaching these targets
Additional Transportation Studies for Cathedral Hill	No requirement	CPMC shall fund up to three additional transportation studies for the Cathedral Hill Campus, spaced over three-year periods or longer, and identify options should congestion exceed projected levels or transportation-related operational impacts adversely affect the network
Additional Transportation Studies for Cathedral Hill	No requirement	If annual transportation surveys show that the drive alone mode split exceeds what is indicated in the June 2010 CPMC Long Range Development Plan Transportation Impact Study, CPMC shall pay \$75,000 (adjusted for inflation) to the SFMTA for transportation demand management or transportation improvements related to Cathedral Hill

Summary of Major Modifications to Development Agreement Provisions (continued)

Category	May 2012 Tentative Development Agreement	May 2013 Revised Development Agreement
Clipper Cards/Fare Subsidy	No requirement	CPMC shall encourage transit by providing a 50% fare subsidy up to the value of an adult Muni-Only Fast Pass (currently \$64)
Garage Parking Restrictions	No requirement	CPMC's Cathedral Hill Campus garages shall be available only to visitors, employees and staff of the Campus after 7 p.m.
Clipper Cards/Fare Subsidy	No requirement	CPMC shall encourage transit by providing a 50% fare subsidy up to the value of an adult Muni-Only Fast Pass (currently \$64)

Transportation Changes – St. Luke’s Campus

On May 1, 2012, the SFMTA Board also approved various streetscape, traffic and parking changes related to the reconstruction of St. Luke’s Hospital and development of the Cathedral Hill Medical Center.

Since that time, one additional traffic change has been proposed and approved by SFMTA’s Transportation Advisory Committee (TASC) (please see the site diagram in the Enclosure):

- Widen the sidewalk on the west side of Valencia Street from Cesar Chavez Street to Duncan Street (previously, the widening of only the first 19 feet of Valencia Street south of Cesar Chavez Street had been authorized).
- Establish a mid-block bulbout on Valencia Street
- Establish a bus zone on Valencia Street.

The other traffic and sidewalk improvements approved in Resolution 12-064 on May 1, 2012 remain as approved.

The specific traffic modifications requiring approval for St. Luke’s Hospital areas, which were reviewed in the project’s Environmental Impact Report, are as follows:.

ESTABLISH – TOW-AWAY, NO STOPPING ANYTIME

Valencia Street, west side, from Cesar Chavez Street to 354 feet southerly

ESTABLISH – SIDEWALK WIDENING

Valencia Street, west side, from Cesar Chavez Street to 175 feet southerly and from Duncan Street to 117 feet northerly (sidewalk to be widened from ten feet to 18 feet).

Valencia Street, west side, from 275 feet to 354 feet south of Cesar Chavez Street (widens sidewalk from ten feet to 26 feet for a 79 foot long bulb)

ESTABLISH – BUS ZONE

Valencia Street, west side, from 175 feet to 275 feet south of Cesar Chavez Street

FUNDING IMPACT

Over the lifetime of the proposed Development Agreement, CPMC would pay the SFMTA at least \$14.5 million in current dollars. In addition, CPMC would be responsible for funding and constructing the streetscape changes associated with the traffic and parking changes listed above.

ALTERNATIVES CONSIDERED

The alternative to not executing the Consent to the proposed Development Agreement would be to renegotiate the terms of the Development Agreement. Renegotiating terms of the Agreement would delay project construction and may not necessarily result in provisions that would benefit the SFMTA more than the current proposal. Not moving forward with the Cathedral Hill or St. Luke's projects would mean that the projects' transportation-related impact would not materialize; however, CPMC would also not be able to comply with State seismic regulations or improve healthcare facilities.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed the item. The Development Agreement must be approved by the Board of Supervisors. The CMPC Project must also be approved by the Department of Public Works, and the Department of Building Inspection.

The Planning Commission certified an EIR on the CPMC LRDP on April 26, 2012, in Motion No. 18588 pursuant to the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) ("CEQA"), the CEQA Guidelines (14 Cal. Code Reg. Sections 15000 et seq.) and Chapter 31 of the Administrative Code. Certification of the EIR was upheld on appeal by the Board of Supervisors in Motion No. M13-042. The Planning Department reviewed the revised CPMC LRDP and prepared an Addendum to the FEIR on May 9, 2013. On May 23, 2013, the Planning Commission approved the revised CPMC LRDP, and adopted findings under CEQA, including a statement of overriding considerations and a mitigation monitoring and reporting program. Also on May 23, 2013, the Planning Commission found that the CPMC LRDP was consistent with the General Plan and with the Eight Priority Policies of City Planning Code Section 101.1. Staff recommends that the SFMTA Board adopt the CEQA findings as well as the General Plan consistency findings adopted by the Planning Commission.

RECOMMENDATION

Staff recommends that the SFMTA Board consent to the proposed Development Agreement Relating to the Construction and Reconstruction of Healthcare Facilities in Furtherance of the California Pacific Medical Center Long Range Development Plan by and between the City and County of San Francisco and Sutter West Bay Hospitals, and approve the traffic and sidewalk modifications around the St. Luke's Campus.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, In order to comply with State seismic safety requirements and improve healthcare facilities, Sutter West Bay Hospitals (dba California Pacific Medical Center (CPMC)) is planning to upgrade and/or construct new facilities at its existing St. Luke's and Davies Campuses and its proposed Cathedral Hill Campus; and,

WHEREAS, These facilities would have significant transportation impacts, especially the new Cathedral Hill Campus, which will provide 818 new parking spaces for a total of 990 parking spaces, and is located at Geary Boulevard and Van Ness Avenue, two major transit corridors; and,

WHEREAS, The Cathedral Hill Campus in particular would afford a high level of transit accessibility to patients, employees and visitors consistent with the City's Transit First Policy and SFMTA's Strategic Plan; and,

WHEREAS, To help address resulting traffic, transit delay and ridership impacts, the City and SFMTA have negotiated a proposed Development Agreement with CPMC that contains payments from CPMC to the SFMTA as follows: (a) \$5 million for the proposed Van Ness and Geary Bus Rapid Transit projects; (b) a Transit Fee in the total amount of \$6.5 million; (c) a \$0.50 off-peak and \$0.75 peak entry and exit fee per vehicle at CPMC Cathedral Hill parking garages; (d) \$400,000 to fund studies for improvements to bicycle facilities around and between the proposed new CPMC facilities; (e) up to \$40,000 each for up to three additional transportation studies monitoring of the operation of the intersections as well as operational characteristics of the Cathedral Hill Campus; and (f) \$75,000 each time any of the scheduled transportation surveys show in the aggregate that the drive alone mode split percentages for daily use exceed those shown in the CPMC Transportation Impact Study for additional or modified transportation demand management or transportation improvements related to the Cathedral Hill Campus traffic area; and,

WHEREAS, Over the lifetime of the proposed ten-year Development Agreement, CPMC would pay the SFMTA approximately \$14.5 million in current dollars; and,

WHEREAS, In order to accommodate the long-term buildout of St. Luke's Hospital, the SFMTA is recommending approval of the following transportation changes adjacent to CPMC facilities, in addition to the transportation changes approved by the SFMTA Board on May 1, 2012 in Resolution 12-064, as follows:

A. ESTABLISH – TOW-AWAY, NO STOPPING ANYTIME

Valencia Street, west side, from Cesar Chavez Street to 354 feet southerly

B. ESTABLISH – SIDEWALK WIDENING

Valencia Street, west side, from Cesar Chavez Street to 175 feet southerly and from Duncan Street to 117 feet northerly (sidewalk to be

widened from ten feet to 18 feet).

Valencia Street, west side, from 275 feet to 354 feet south of Cesar Chavez Street (widens sidewalk from ten feet to 26 feet for a 79 foot long bulb)

C. ESTABLISH – BUS ZONE

Valencia Street, west side, from 175 feet to 275 feet south of Cesar Chavez Street; and,

WHEREAS, At its hearing on April 26, 2012, the Planning Commission certified by Motion No. 18588 a Final Environmental Impact Report ("FEIR") for the CPMC Long Range Development Plan (LRDP) pursuant to the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.) ("CEQA"), the CEQA Guidelines (14 Cal. Code Reg. Sections 15000 et seq.) and Chapter 31 of the Administrative Code; and,

WHEREAS, On May 1, 2012, the SFMTA Board of Directors adopted Resolution 12-064 and made and adopted findings pursuant to CEQA, and found that the measures included in Resolution 12-064 were consistent the San Francisco General Plan and the Priority Policies in Planning Code Section 101.1, which Resolution is hereby incorporated by reference; and,

WHEREAS, On March 12, 2013, by adoption of Motion No. M13-042, the Board of Supervisors rejected the FEIR appeal and affirmed the decision of the Planning Commission to certify the FEIR and found the FEIR to be complete, adequate, and objective, and reflecting the independent judgment of the City in compliance with CEQA, the CEQA Guidelines and Chapter 31 of the Administrative Code. Copies of Planning Commission Motion No. 18588, and Board of Supervisors Motion No. M13-042 are on file with the Clerk of the Board of Supervisors in File Nos. 120549 and 120550; and,

WHEREAS, On May 9, 2013, Planning Department staff made available the Addendum to the FEIR for the revised CPMC LRDP project ("Addendum") and the revised approval documents for the revised CPMC LRDP Project; and,

WHEREAS, On May 23, 2013, the Planning Commission adopted findings, including a statement of overriding considerations and a mitigation monitoring and reporting program pursuant to CEQA, a copy of which is on file with the Planning Department and is incorporated in this Resolution by reference; and,

WHEREAS, On May 23, 2013, the Planning Commission determined that the Project, and the various actions being taken by the City and the Agency to approve and implement the Project, are consistent with the General Plan and with the Eight Priority Policies of City Planning Code Section 101.1, and made findings in connection therewith (the "General Plan Consistency Determination"), a copy of which is on file with the Planning Department and is incorporated into this Resolution by reference; and,

WHEREAS, The public has been notified about the proposed modifications and has been given the opportunity to comment on those modifications through the public hearing process; now, therefore, be it

RESOLVED, That in accordance with the actions contemplated herein, the SFMTA Board has reviewed the FEIR and the FEIR Addendum, and adopts and incorporates by reference as though fully set forth herein the findings, including the statement of overriding considerations and mitigation monitoring and reporting program, adopted by the Planning Commission on May 23, 2013, pursuant to CEQA; and, be it

FURTHER RESOLVED, That the SFMTA Board finds that the actions contemplated herein are consistent with the General Plan and with the Eight Priority Policies of City Planning Code Section 101.1, and adopts and incorporates by reference as though fully set forth therein the findings adopted by the Planning Commission on May 23, 2013; and, be it

FURTHER RESOLVED, That the SFMTA Board of Directors does hereby consent to the proposed Development Agreement between the City and County of San Francisco and Sutter West Bay Hospitals substantially in the form and on the terms on file with this Board and authorizes the Director of Transportation to execute the Consent to the Development Agreement on behalf of this Board, which supersedes in its entirety the consent authorized in Resolution 12-064 on May 1, 2012; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors, does hereby approve the traffic and sidewalk modifications around St. Luke's Campus.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 4, 2013.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

DRAFT
4/24/2013

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo
Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DEVELOPMENT AGREEMENT
RELATING TO THE CONSTRUCTION AND RECONSTRUCTION
OF HEALTHCARE FACILITIES IN FURTHERANCE OF THE CALIFORNIA
PACIFIC MEDICAL CENTER LONG RANGE DEVELOPMENT PLAN
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND SUTTER WEST BAY HOSPITALS

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10.6	Extension Due to Legal Action or Referendum; Excusable Delay.....	Error! Bookm
11.	TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE	Error! Bookm
11.1	Permitted Transfer of this Agreement.....	Error! Bookm
11.2	Notice of Transfer	Error! Bookm
11.3	Release of Liability	Error! Bookm
11.4	CPMC's Responsibility for Performance	Error! Bookm
11.5	Constructive Notice	Error! Bookm
11.6	Rights of CPMC.....	Error! Bookm
11.7	Transfer and the St. Luke's Campus Hospital Opening Deadline.....	Error! Bookm
12.	CPMC REPRESENTATIONS AND WARRANTIES.....	Error! Bookm
12.1	Interest of CPMC; Due Organization and Standing.....	Error! Bookm
12.2	No Inability to Perform; Valid Execution.....	Error! Bookm
12.3	Conflict of Interest	Error! Bookm
12.4	Notification of Limitations on Contributions	Error! Bookm
12.5	Other Documents	Error! Bookm
12.6	No Bankruptcy	Error! Bookm
13.	MISCELLANEOUS PROVISIONS	Error! Bookm

13.1	Entire Agreement	Error! Bookm
13.2	Incorporation of Exhibits	Error! Bookm
13.3	Binding Covenants; Run With the Land	Error! Bookm
13.4	Applicable Law and Venue	Error! Bookm
13.5	Construction of Agreement	Error! Bookm
13.6	Project Is a Private Undertaking; No Joint Venture or Partnership	Error! Bookm
13.7	Recordation	Error! Bookm
13.8	Obligations Not Dischargeable in Bankruptcy.....	Error! Bookm
13.9	Survival	Error! Bookm
13.10	Signature in Counterparts	Error! Bookm
13.11	Notices	Error! Bookm
13.12	Limitations on Actions.....	Error! Bookm
13.13	Severability	Error! Bookm
13.14	MacBride Principles.....	Error! Bookm
13.15	Tropical Hardwood and Virgin Redwood.....	Error! Bookm
13.16	Sunshine.....	Error! Bookm
13.17	Waiver of Personal Liability	Error! Bookm

EXHIBITS

- A Project Sites Legal Descriptions
- A-1 St. Luke's Campus Legal Description
- A-2 Cathedral Hill Campus Legal Description
- A-3 Davies Campus Legal Description
- A-4 Pacific Campus Legal Description
- A-5 California Campus Legal Description
- B Project Descriptions
- B-1 St. Luke's Campus Project Description
- B-2 Cathedral Hill Campus Project Description
- B-3 Davies Project Description
- B-4 Pacific Project Description
- B-5 California Project Description
- C Schedule and Phasing Plan
- D Mitigation Measures and MMRP
- E Workforce Agreement
- F Community Healthcare Program
- G Housing Program
- H Public Improvements
- I Community Visioning Plans for Long-Term Projects
- I-1 Davies Campus Community Visioning Plan
- I-2 Pacific Campus Community Visioning Plan
- I-3 California Campus Community Visioning Plan
- J List of Approvals [List of Approvals attached hereto for convenience and ease of reference only]
- K Transportation Program
- L Notice of Completion of Public Benefits
- M Form of Assignment and Assumption Agreement
- N Payment Schedule

**DEVELOPMENT AGREEMENT
RELATING TO THE CONSTRUCTION AND RECONSTRUCTION
OF HEALTHCARE FACILITIES IN FURTHERANCE OF THE CALIFORNIA
PACIFIC MEDICAL CENTER LONG RANGE DEVELOPMENT PLAN
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND SUTTER WEST BAY HOSPITALS**

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this ____ day of _____, 2013, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "**City**"), acting by and through its Planning Department, and SUTTER WEST BAY HOSPITALS, a California nonprofit public benefit corporation doing business as California Pacific Medical Center ("**CPMC**"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code and Chapter 56 of the San Francisco Administrative Code. The City and CPMC are also sometimes referred to individually as a "**Party**" and together as the "**Parties**". Capitalized terms not defined when introduced shall have the meanings given in Section 1 below.

RECITALS

This Agreement is made with reference to the following facts:

A. CPMC presently operates medical facilities in San Francisco. The four existing CPMC medical campuses are known as the St. Luke's Campus, the Davies Campus, the Pacific Campus, and the California Campus.

B. Through its operation of its medical facilities, CPMC provides substantial direct and indirect economic benefits to the City. It provides essential health services to people of all ages from diverse ethnic, cultural, geographic, educational and socioeconomic backgrounds. Approximately two-thirds of CPMC's patients live in San Francisco, and CPMC provides healthcare service in connection with approximately 30% of the hospitalizations in San Francisco. CPMC is San Francisco's second largest non-public employer, and fourth largest employer overall, with over 6,000 employees.

C. CPMC must meet certain State seismic safety requirements for hospitals (the "Hospital Seismic Safety Laws", as defined in Section 1 below) in order to continue providing acute-care services in certain of its facilities.

D. CPMC has developed a plan to provide an integrated, modern system of healthcare with medical facilities that would comply with Hospital Seismic Safety Laws on five campuses, including a new campus on Van Ness Avenue known as the Cathedral Hill Campus. CPMC's proposed city-wide system of care would include three state-of-the-art acute care hospitals, increase the number of earthquake safe hospital beds in San Francisco, create 1,500 construction jobs, require expenditures of over \$2 billion in total development costs (including construction costs), retain the over 6,000 existing CPMC jobs and improve healthcare access for San Franciscans.

E. CPMC's 2008 Institutional Master Plan ("**IMP**") describes CPMC's long-range development plan ("**LRDP**"). In 2009, the San Francisco Planning Commission and the Department of Public Health held hearings on the IMP. On November 19, 2009, the Planning Commission accepted the IMP as in compliance with San Francisco Planning Code Section 304.5. In November 2011, and April 2013, CPMC filed IMP Updates as required by San Francisco Planning Code Section 304.5. The Project described in this Agreement is consistent with the IMP, as updated.

F. The Project proposed by CPMC includes Near-Term Projects (as described in Exhibit B-1 through Exhibit B-3), which generally include the following: (i) on the St. Luke's Campus, a new replacement hospital, renovation and reuse of the 1957 Building, demolition of the existing hospital tower, construction of a new medical office building, and construction of an entry plaza, courtyard and public pedestrian pathway; (ii) on the new Cathedral Hill Campus, a new hospital and medical office building and the renovation and reuse of an existing office/medical office building to full medical office use; and (iii) on the Davies Campus, a new Neuroscience Institute building. The Project also proposes that a portion of the San Jose Avenue right-of-way between Cesar Chavez Street and 27th Street will be vacated by the City and transferred to CPMC for incorporation into the St. Luke's Campus, and that a pedestrian tunnel will be constructed beneath Van Ness Avenue connecting the eastern portion of Cathedral Hill Hospital Site [(at Level P3) to the western portion of the Cathedral Hill MOB Site at Level G2)].

G. The Project proposed by CPMC also includes Long-Term Projects (as described in Exhibit B-3 and Exhibit B-4), which generally include the following: (i) on the Davies Campus, a new medical office building; and (ii) on the Pacific Campus, an ambulatory care center addition and underground and above-ground parking facilities.

H. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City adopted Chapter 56 of the San Francisco Administrative Code ("**Chapter 56**") establishing procedures and requirements for entering into a development agreement pursuant to the Development Agreement Statute. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

I. As described in the IMP (as updated) and this Agreement, the Project, if implemented, would enable CPMC to continue to provide high-quality patient care using ground-breaking technology in seismically safe, state-of-the-art acute care hospitals, increasing the number of highest rated earthquake safe hospital beds, retaining and increasing emergency room capacity in San Francisco, and providing critical resources for San Francisco's disaster preparedness. In addition to the significant benefits which the City will realize due to CPMC's proposed Project, the City has determined that as a result of the development of the Project in accordance with this Agreement additional clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. Some of the major additional public benefits accruing to the City from the CPMC Project are:

- Rebuild the St. Luke's Campus Hospital as an 120 bed General Acute Care Hospital with comprehensive emergency medical services at a cost of over \$250 million;
- A community healthcare program including the rebuilt hospital at the St. Luke's Campus and a broad array of contributions and commitments for healthcare services for the poor and underserved;
- A transportation demand management program and other funding for related transportation studies and a clipper card / wage works program;
- A workforce development program that includes a first source hiring program for construction and applicable operational activities and a local business enterprise hiring program;
- A public improvement program for specific improvements in and around the St. Luke's Campus and the Davies Campus;
- Cash payments from CPMC totaling \$70 million, including:
 - (i) \$8.6 million endowment of a health care innovation fund;
 - (ii) \$36.5 million for affordable housing;
 - (iii) \$4 million for workforce training;
 - (iv) \$6.5 million for transportation (in lieu of other transportation impact fees) and \$5 million for Van Ness / Geary bus rapid transit; and
 - (v) \$9 million for public improvements and work, including streetscape and pedestrian safety improvements near the Cathedral Hill Campus.

J. The real property subject to this Agreement is the St. Luke's Campus, the Cathedral Hill Campus, the Davies Campus, the Pacific Campus and the California Campus, all as more particularly described on Exhibit A-1 through Exhibit A-5 (individually, a "**Project Site**" and collectively the "**Project Sites**"). CPMC is the beneficial owner of the Project Sites.

K. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*; "**CEQA**"), the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 *et seq.*), the Development Agreement Statute, Chapter 56, the Planning Code, the Enacting Ordinance and all other applicable Laws in effect as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental Laws, including CEQA, before taking any discretionary action regarding the Project, or CPMC's obligation to comply with all applicable Laws in connection with the development of the Project.

L. The Final Environmental Impact Report ("**FEIR**") prepared for the Project and certified by the Planning Commission on April 26, 2012 together with the CEQA findings adopted

concurrently therewith (the "**CEQA Findings**"), comply with CEQA, the CEQA Guidelines, and Chapter 31 of the Administrative Code. As noted in Recital N, the FEIR thoroughly analyzes the Project and Project alternatives, and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to feasible mitigation. The information in the FEIR and the CEQA Findings has been considered by the City in connection with approval of this Agreement.

M. On April 26, 2012 the Planning Commission held a public hearing on a prior version of this agreement and the project described therein and made certain CEQA and other findings and determinations that the prior agreement was, as a whole and taken in its entirety, consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the planning principles set forth in Section 101.1 of the Planning Code.

N. On May 16, 2012, an appeal of the Planning Commission Motion No. 18588 certifying the FEIR was filed with the Board and the Board held duly noticed public hearings June 12, 2012, July 17, 2012 and March 12, 2013 to consider the appeal of the FEIR certification and on March 12, 2013, by adoption of Motion No. _____ the Board rejected the appeal and affirmed the decision of the Planning Commission to certify the FEIR and found the FEIR to be complete, adequate, and objective and reflecting the independent judgment of the City in compliance with the CEQA, the State Guidelines and Chapter 31 of the Administrative Code.

O. On June 15, June 25, July 9 and July 16, 2012, having received the Planning Commission's recommendations, a Land Use Committee of the Board held public hearings on the prior version of this agreement and other draft approvals and thereafter, CPMC, working with City staff, proposed revisions to the draft agreements, approvals and documents, including the prior project.

P. On March 12, 2013, the Board adopted Resolution No. 0077-13 adopting a term sheet with certain material modifications to the prior agreement and, in accordance with Chapter 56, referred same to the Planning Commission for its report and recommendation.

Q. On _____, 2013, the Planning Commission held a public hearing on this Agreement, duly noticed and conducted under the Development Agreement Statute and Chapter 56 to review and consider modifications as proposed in Resolution No. _____ (as so modified, this "**Agreement**" and the "**Project**"). Following the public hearing, the Planning Commission made the CEQA Findings and adopted the Mitigation Measures, and determined that the Project and this Agreement, will, as a whole, and taken in their entirety, continue to be consistent with the objectives, policies, general land uses and programs specified in the General Plan, as amended, and the Planning Principles set forth in Section 101.1 of the Planning Code (together the "**General Plan Consistency Findings**"). In connection with the Project, the Planning Commission adopted "**CEQA Findings**" and determined that the FEIR thoroughly analyzes the Project, and the Mitigation Measures were designed to mitigate significant impacts to the extent they are susceptible to a feasible mitigation. The information in the FEIR and the CEQA Findings has been considered by the City in connection with this Agreement.

R. On _____, 2013 the Board, having received the Planning Commission's recommendations, held a public hearing on this Agreement pursuant to the Development Agreement

Statute and Chapter 56. Following the public hearing, the Board made the CEQA Findings required by CEQA and approved this Agreement, incorporating by reference the General Plan Consistency Findings.

S. On _____, 2013, the Board adopted Ordinance No. _____, approving this Agreement, [Ordinance No. _____, **modifying Chapter 56,**] Ordinance Nos. _____ [**placeholder for zoning ordinance, general plan, street vacations, etc.**], and Ordinance No. _____ authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on _____, 2013.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 "**Administrative Code**" means the San Francisco Administrative Code.

1.2 "**Affiliate**" means an entity or person that directly or indirectly controls, is controlled by or is under common control with, a Party (or a managing partner or managing member of a Party, as the case may be). For purposes of the foregoing, "control" means the ownership of more than fifty percent (50%) of the equity interest in such entity, the right to dictate major decisions of the entity, or the right to appoint fifty percent (50%) or more of the managers or directors of such entity.

1.3 "**Agreement**" means this Development Agreement, the Exhibits which have been expressly incorporated herein and any amendments thereto.

1.4 "**Applicable Laws**" has the meaning set forth in Section 5.2.

1.5 "**Approvals**" means the City approvals, entitlements, and permits listed on Exhibit J.

1.6 "**Assignment and Assumption Agreement**" has the meaning set forth in Section 11.2.

1.7 "**Board of Supervisors**" means the Board of Supervisors of the City and County of San Francisco.

1.8 "**Cal-DPH**" means the California Department of Public Health.

1.9 "California Campus" means that certain real property more particularly described in Exhibit A-5, together with all buildings, structures, fixtures and other improvements located thereon.

1.10 "Caltrans" means the California State Department of Transportation.

1.11 "Cathedral Hill Campus" means that certain real property more particularly described in Exhibit A-2 (which includes the Cathedral Hill Hospital Site, the Cathedral Hill MOB Site and 1375 Sutter Street), together with all buildings, structures, fixtures and other improvements located thereon.

1.12 "Cathedral Hill Campus Hospital" means the new hospital on the Cathedral Hill Campus, as more particularly described in Section 1 of Exhibit B-2.

1.13 "Cathedral Hill Hospital Site" means that portion of the Cathedral Hill Campus identified as the Cathedral Hill Hospital Site in Exhibit A-2, together with all buildings, structures, fixtures and other improvements located thereon.

1.14 "Cathedral Hill MOB" means the new Medical Office Building on the Cathedral Hill Campus, as more particularly described in Section 3 of Exhibit B-2.

1.15 "Cathedral Hill MOB Site" means that portion of the Cathedral Hill Campus identified as the Cathedral Hill MOB Site in Exhibit A-2, together with all buildings, structures, fixtures and other improvements located thereon.

1.16 "CEQA" has the meaning set forth in Recital K.

1.17 "CEQA Findings" has the meaning set forth in Recital L.

1.18 "CEQA Guidelines" means Title 14 of the California Code of Regulations Section 15000 *et seq.*

1.19 "Chapter 56" has the meaning set forth in Recital H.

1.20 "City" means the City as defined in the opening paragraph of this Agreement. Unless the context or text specifically provides otherwise, references to the City means the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors.

1.21 "City Agency" or "City Agencies" means the City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement, or are controlled by persons or commissions that have executed or consented to this Agreement, that have subdivision or other permit, entitlement or approval authority or jurisdiction over development of the Project, or any improvement located on or off the Project Sites, including, without limitation, the City Administrator, Department of Public Health, Planning Department, DBI, MOH, OEWD, SFMTA, DPW, and SFFD, together with any successor City agency, department, board, or commission.

1.22 "**City Attorney's Office**" means the Office of the City Attorney of the City and County of San Francisco.

1.23 "**City Costs**" means the actual and reasonable costs incurred by a City Agency in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by Processing Fees; provided, however, City Costs shall not include any costs incurred by a City Agency in connection with a City Default or which are payable by the City under Section 9.6 when CPMC is the prevailing party.

1.24 "**City Parties**" has the meaning set forth in Section 4.9.

1.25 "**City-Wide**" means all real property within the territorial limits of the City and County of San Francisco, not including any property owned or controlled by the United States or by the State of California and therefore not subject to City regulation.

1.26 "**Commence Construction**" means, with respect to the Cathedral Hill Campus Hospital, the Cathedral Hill Campus MOB, the Davies Neuroscience Institute building, the St. Luke's Campus Hospital or the St. Luke's Campus MOB, as applicable, groundbreaking in connection with the commencement of physical construction of the applicable building foundation, but specifically excluding the demolition of existing structures.

1.27 "**Commencement of Exterior Work for the Cathedral Hill Campus Hospital**" means the date on which the first of the exterior panels or the curtain wall are attached to the structure for the Cathedral Hill Campus Hospital.]

1.28 "**Commencement of Shoring / Excavation Work for the St. Luke's Campus Hospital**" means the date on which excavators and/or backhoes begin excavation of dimensioned trenches in which the spread footings will be placed for the St. Luke's Campus Hospital.

1.29 "**Commitment Increment**" has the meaning set forth in Section 4.2.4.

1.30 "**Community Commitments**" has the meaning set forth in Section 4.2.4.

1.31 "**Community Healthcare Program**" means the Community Healthcare Program attached hereto as Exhibit F.

1.32 "**Community Visioning Plan**" means the Community Visioning Plan for Long-Term Projects for the Davies Campus, the Pacific Campus and the California Campus attached hereto as Exhibit I-1 through Exhibit I-3.

1.33 "**Complete Construction**" or "**Completion of Construction**" means, with respect to the Cathedral Hill Campus Hospital and the St. Luke's Campus Hospital, the issuance of a field acceptance by OSHPD.

1.34 "**Completion Deadline for the St. Luke's Campus Hospital**" has the meaning set forth in Section 4.2.1(c).

1.35 "**Completion of the San Jose Avenue CPMC Project**" means the date on which substantial completion of the San Jose Avenue CPMC Project occurs in a manner sufficient to allow for the operation of the relocated facilities from the Former Street Property.

1.36 "**Completion of Exterior Work**" means the date on which substantial completion of the attachment of the exterior panels for the St. Luke's Campus Hospital occurs.

1.37 "**Compliance Statement**" has the meaning set forth in Section 8.2.1.

1.38 "**CPMC**" has the meaning set forth in the opening paragraph of this Agreement, and shall also include any and all successors and assigns of all or any part of the Project Sites and all Transferees with respect to the portion of the Project Sites owned by each of them.

1.39 "**Davies Campus**" means that certain real property more particularly described in Exhibit A-3, together with all buildings, structures, fixtures and other improvements located thereon.

1.40 "**DBI**" means the San Francisco Department of Building Inspection.

1.41 "**Default**" has the meaning set forth in Section 9.3.

1.42 "**Development Agreement Statute**" has the meaning set forth in Recital H, as in effect as of the Effective Date.

1.43 "**DPW**" means the San Francisco Department of Public Works.

1.44 "**Effective Date**" has the meaning set forth in Section 2.1.

1.45 "**Election Period**" has the meaning set forth in Section 9.4.5(b).

1.46 "**Enacting Ordinance**" has the meaning set forth in Recital S.

1.47 "**Excusable Delay**" has the meaning set forth in Section 10.6.2.

1.48 "**Existing Standards**" has the meaning set forth in Section 5.2.

1.49 "**Existing Uses**," with respect to each Project Site, means the existing uses of the existing buildings and improvements permitted by Law (and including, without limitation, pre-existing, non-conforming uses under the Planning Code) on such Project Site as of the Effective Date, as the same are modified by the Approvals and any Subsequent Approvals.

1.50 "**Federal or State Law Exception**" has the meaning set forth in Section 5.6.1.

1.51 "**FEIR**" has the meaning set forth in Recital L.

1.52 **"Finally Granted"** means (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Approvals, this Agreement or the FEIR shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Approvals, this Agreement or the FEIR, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Approval, this Agreement or the FEIR and the entry of a final judgment, order or ruling upholding the applicable Approval, this Agreement or the FEIR and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the Board of Supervisors in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.

1.53 **"Former Street Property"** means that portion of the San Jose Avenue right-of-way between 27th Street and Cesar Chavez Avenue, as more particularly described in the San Jose Avenue Transfer Agreement, vacated in accordance with and subject to the provisions of the Vacation Ordinance and to be transferred to CPMC in accordance with and subject to the provisions of the San Jose Avenue Transfer Agreement.

1.54 **"Future Changes to Existing Standards"** has the meaning set forth in Section 5.3.

1.55 **"GACH Licensing Requirements"** means the requirements for obtaining a license from Cal-DPH for the operation of a General Acute Care Hospital.

1.56 **"GACH Licensure"** means the issuance by Cal-DPH of a license for the operation of a General Acute Care Hospital.

1.57 **"General Acute Care Hospital"** has the meaning set forth in California Health and Safety Code Section 1250(a).

1.58 **"General Plan Consistency Findings"** has the meaning set forth in Recital Q.

1.59 **"Hospital Commitment"** has the meaning set forth in Section 4.2.1.

1.60 **"Hospital Seismic Safety Laws"** refers collectively to (i) Senate Bill 1953, (ii) Senate Bill 1661, (iii) Senate Bill 608, and (iv) Senate Bill 90, as may be amended.

1.61 **"Housing Program"** means the Housing Program attached hereto as Exhibit G.

1.62 **"IMP"** has the meaning set forth in Recital E.

1.63 **"Impact Fees and Exactions"** means any fees, contributions, special taxes, exactions, impositions and dedications charged by the City in connection with the development of projects, including but not limited to transportation improvement fees, transit fees, child care requirements or in-lieu fees, housing (including affordable housing) requirements or fees, residential hotel and residential unit replacement requirements or in lieu fees, dedication or reservation

requirements, water and sewer capacity charges, and obligations for on-or off-site improvements. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, and any fees, taxes, assessments impositions imposed by Non-City Agencies, all of which shall be due and payable by CPMC as and when due in accordance with applicable Laws.

1.64 **"Increment 1"** means the OSHPD structural review permit package, containing drawings and associated calculations and details, describing the structure (including foundation, and frame) for the St. Luke's Campus Hospital.

1.65 **"Losses"** has the meaning set forth in Section 4.9.

1.66 **"Law(s)"** means the Constitution and laws of the United States, the Constitution and laws of the State of California, the laws of the City and County of San Francisco, and any codes, statutes, rules, regulations, or executive mandates thereunder, and any State or Federal court decision (including any order, injunction or writ) thereunder. The term "Laws" shall refer to any or all Laws as the context may require.

1.67 **"Long-Term Projects"** means those Project elements generally described in Exhibit B-3 and Exhibit B-4 as the Long-Term Projects and generally described in Recital G.

1.68 **"Material Change"** means any modification that would materially alter the rights, benefits or obligations of the City or CPMC under this Agreement or which relate to (i) the Term; (ii) permitted uses of the Project Sites; (iii) the Public Benefits; (iv) an increase in density or intensity of uses of the Project Sites; (v) an increase in the maximum height, bulk or size of the Project; (vi) parking ratios; or (vii) provisions for Impact Fees and Exactions.

1.69 **"Medical Care Services"** or **"MCS"** has the meaning set forth in the definition of Medical Rate of Inflation contained in Exhibit F.

1.70 **"Medical Rate of Inflation"** has the meaning set forth in Exhibit F.

1.71 **"Milestone"** has the meaning set forth in Section 4.2.3.

1.72 **"Milestone Completion Notice"** has the meaning set forth in Section 4.2.3.

1.73 **"Mitigation Measures"** means the mitigation measures (as defined by CEQA) applicable to the Project as set forth in the MMRP or that are necessary to mitigate adverse environmental impacts identified through the CEQA process as part of a Subsequent Approval.

1.74 **"MMRP"** means that certain mitigation monitoring and reporting program attached as Exhibit D.

1.75 **"Municipal Code"** means the San Francisco Municipal Code.

1.76 **"Near-Term Projects"** means those Project elements described in Exhibit B-1 through Exhibit B-3 as the Near-Term Projects and generally described in Recital F.

1.77 "**Non-City Agency**" or "**Non-City Responsible Agencies**" has the meaning set forth in Section 7.3.1.

1.78 "**Non-City Approval**" has the meaning set forth in Section 7.3.1.

1.79 "**OEWD**" means the San Francisco Office of Economic and Workforce Development.

1.80 "**Official Records**" means the official real estate records of the City and County of San Francisco, as maintained by the City's Assessor-Recorder's Office.

1.81 "**Open**" or "**Opening**" means the date on which the first patients are admitted or treated in, or accepted or transferred to, the Cathedral Hill Campus Hospital or the St. Luke's Campus Hospital, as the context may require.

1.82 "**OSHPD**" means the California Office of Statewide Health Planning and Development.

1.83 "**Pacific Campus**" means that certain real property more particularly described in Exhibit A-4, together with all buildings, structures, fixtures and other improvements located thereon.

1.84 "**Party**" and "**Parties**" has the meaning set forth in the opening paragraph of this Agreement.

1.85 "**Planning Code**" means the San Francisco Planning Code.

1.86 "**Planning Commission**" means the Planning Commission of the City and County of San Francisco.

1.87 "**Planning Department**" means the Planning Department of the City and County of San Francisco.

1.88 "**Planning Director**" means the Director of Planning of the City and County of San Francisco.

1.89 "**Processing Fees**" means the standard fee imposed by the City upon the submission of an application for a permit or approval, which is not an Impact Fee or Exaction, in accordance with the City practice on a City-Wide basis.

1.90 "**Project**" means the CPMC project contemplated by the LRDP as generally described in Exhibit B-1 through Exhibit B-5, which includes the Near-Term Projects and the Long-Term Projects together with CPMC's rights and obligations under this Agreement.

1.91 "**Project Sites**" has the meaning set forth in Recital J.

1.92 "**Public Benefits**" has the meaning set forth in Section 4.1.

1.93 "**Public Health and Safety Exception**" has the meaning set forth in Section 5.6.1.

1.94 "**Public Improvements**" means those improvements more particularly described in Exhibit H.

1.95 "**Revised Work Plan**" has the meaning set forth in Section 4.2.3.

1.96 "**St. Luke's Campus**" means that certain real property more particularly described in Exhibit A-1, together with all buildings, structures, fixtures and other improvements located thereon.

1.97 "**St. Luke's Campus Hospital**" means the 120-bed General Acute Care Hospital with comprehensive emergency medical services (pursuant to Sections 70451-70459 of Title 22 of the California Code of Regulations) to be constructed on the St. Luke's Campus, as more particularly described in Section 1 of Exhibit B-1.

1.98 "**St. Luke's Campus Hospital Opening Deadline**" has the meaning set forth in Section 4.2.1(d).

1.99 "**St. Luke's Campus Hospital Opening Obligation**" has the meaning set forth in Section 4.2.1(d).

1.100 "**St. Luke's Liquidated Payment**" has the meaning set forth in Section 9.4.4(b).

1.101 "**St. Luke's Trigger Date**" has the meaning set forth in Section 9.4.4(b).

1.102 "**San Jose Avenue City Project**" means the completion of the new storm/sewer line installation work as described in the San Jose Avenue Utility Relocation Contract so as to allow the abandonment of the existing sewer lines in the Former Street Property.

1.103 "**San Jose Avenue CPMC Project**" means (i) the installation of all new utility facilities by CPMC's contractors, other than the San Jose Avenue City Project and (ii) the installation of a fire alarm signal system in the existing St. Luke's hospital, so as to allow the abandonment of the existing utility facilities and fire alarm signal system in the Former Street Property.

1.104 "**San Jose Avenue Transfer Agreement**" means that certain Agreement for Transfer of Real Estate between the Parties dated on or about the date hereof governing the transfer of the Former Street Property to CPMC.

1.105 "**San Jose Avenue Utility Operators**" means those parties that own or operate utility equipment or installations located in the Former Street Property, including: Pacific Gas and Electric Company, with respect to gas and electrical lines; Pacific Bell Telephone Company, dba AT&T California, with respect to telephone lines; Astound Broadband, NextG Networks, and ExteNet Systems with respect to broadband, wireless and cable lines; the San Francisco Public

Utilities Commission, Hydraulics Section, with respect to a storm-sewer line; the San Francisco Public Utilities Commission, Water Department, with respect to a water line; and the Department of Technology of the City and County of San Francisco, with respect to fire alarm signal box wires.

1.106 "**San Jose Avenue Utility Relocation Contract**" means that certain work described in Contract Modification No. 1 to the Wastewater Enterprise Contract No. WW-410 Cesar Chavez Street Sewer Improvement Project by and between the City, acting by and through its Public Utilities Commission, and JMP Construction.

1.107 "**Schedule and Phasing Plan**" means the Schedule and Phasing Plan attached hereto as Exhibit C, as may be modified pursuant to Section 4.2.3.

1.108 "**SFFD**" means the San Francisco Fire Department.

1.109 "**SFMTA**" means the San Francisco Municipal Transportation Agency.

1.110 "**SFPUC**" means the San Francisco Public Utilities Commission.

1.111 "**SFPUC Capacity Charges**" means all water and sewer capacity and connection fees and charges payable to the SFPUC, as and when due in accordance with then-applicable City requirements.

1.112 "**Subdivision Code**" means the San Francisco Subdivision Code.

1.113 "**Subsequent Approval**" means any other land use approvals, entitlements, or permits from the City other than the Approvals, that are consistent with the Approvals and that are necessary or advisable for the implementation of the Near-Term Projects, including without limitation, demolition permits, grading permits, site permits, building permits, residential hotel permits to convert, lot line adjustments, sewer and water connection permits, encroachment permits, street improvement permits, certificates of occupancy, transit stop relocation permits, subdivision maps, lot mergers and re-subdivisions. A Subsequent Approval shall also include any amendment to the foregoing land use approvals, entitlements, or permits, or any amendment to the Approvals that are sought by CPMC and approved by the City in accordance with the standards set forth in this Agreement. No Approvals or Subsequent Approvals for the Long-Term Projects have been granted as part of this Agreement.

1.114 "**Term**" has the meaning set forth in Section 2.2.

1.115 "**Third-Party Challenge**" has the meaning set forth in Section 7.4.1.

1.116 "**Transferee**" has the meaning set forth in Section 11.1.

1.117 "**Transit Fee**" has the meaning set forth in Exhibit K.

1.118 "**Transportation Program**" has the meaning set forth in Exhibit K. The Transportation Program includes the payments and fees as further described in Exhibit K.

1.119 "**Vacation Ordinance**" has the meaning set forth in Exhibit J.

1.120 "**Vested Elements**" has the meaning set forth in Section 5.1.

1.121 "**Workforce Agreement**" means the Workforce Agreement attached hereto as Exhibit E.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. This Agreement shall take effect upon the later of (i) the full execution and delivery of this Agreement by the Parties and (ii) the date the Enacting Ordinance is effective and operative ("**Effective Date**").

2.2 Term. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for ten (10) years thereafter unless extended or earlier terminated as provided herein ("**Term**"); provided, however, if a lawsuit challenging this Agreement or the Approvals is initiated the Term shall be extended for the number of days equal to the period from the initiation of the lawsuit to the date that this Agreement and the Approvals are Finally Granted.

3. GENERAL REGULATION OF THE DEVELOPMENT OF THE PROJECT

3.1 Development of the Near-Term Projects. CPMC shall have the right to develop the Near-Term Projects in accordance with and subject to the provisions of this Agreement and the City shall consider and process all Subsequent Approvals for development of the Near-Term Projects in accordance with and subject to the provisions of this Agreement. The Parties acknowledge that CPMC has obtained all Approvals from the City required to commence construction of the Near-Term Projects, other than any required Subsequent Approvals or Non-City Approvals, and that CPMC may proceed in accordance with this Agreement with the construction and, upon completion, use and occupancy of the Near-Term Projects as a matter of right, subject to the attainment of any required Subsequent Approvals or Non-City Approvals. CPMC currently anticipates that the Near-Term Projects will be constructed in phases and that the St. Luke's Campus Hospital and the Cathedral Hill Campus Hospital will be constructed generally in accordance with the Schedule and Phasing Plan. Development of the Long-Term Projects is not included as a part of this Agreement, provided any such development during the Term shall be subject to the provisions of Sections 4.5, 5.3 and 5.4.

3.2 Transfer of Former Street Property. In connection with the Project, the City shall vacate and abandon all public rights in the Former Street Property (other than temporary utility easements in favor of the San Jose Avenue Utility Operators, if needed), each in connection with the completion of the San Jose Avenue CPMC Project and the San Jose Avenue City Project. The City shall transfer the Former Street Property to CPMC in accordance with the San Jose Avenue Transfer Agreement, subject to all of the terms and conditions set forth therein. If for any reason, other than a CPMC default, the City is unable or unwilling to transfer the Former Street Property to CPMC as and when required under the San Jose Avenue Transfer Agreement, CPMC may elect to terminate this Agreement following the meet and confer period in Section 9.2 and the notice and cure period in

Section 9.3. CPMC shall commence the San Jose Avenue CPMC Project and will prosecute the San Jose Avenue CPMC Project diligently to completion generally in accordance with the Schedule and Phasing Plan.

3.3 Completion of San Jose Avenue City Project. The failure to complete the San Jose Avenue City Project in accordance with the timing set forth in the Schedule and Phasing Plan may entitle CPMC to a period of Excusable Delay in connection with the Hospital Commitment as set forth in Section 10.6.2. Any abandonment of the San Jose Avenue City Project shall, following the meet and confer process in Section 9.2 and the notice and cure provisions in Section 9.3 (modified so as to give City ninety (90) days to commence to cure), be a City Default.

4. PUBLIC BENEFITS; CPMC OBLIGATIONS AND CONDITIONS TO CPMC'S PERFORMANCE

4.1 Public Benefits Exceed Those Required by Existing Ordinances and Regulations. The Parties acknowledge and agree that the development of the Project in accordance with this Agreement provides a number of public benefits to the City beyond those achievable through existing Laws, as more particularly articulated in Recital I, including, but not limited to, the Hospital Commitment and the Community Commitments. The Hospital Commitment and the Community Commitments are collectively referred to as the "**Public Benefits**". The City acknowledges and agrees that a number of the Public Benefits would not be otherwise achievable without the express agreement of CPMC under this Agreement. CPMC acknowledges and agrees that, as a result of the benefits to CPMC under this Agreement, CPMC has received good and valuable consideration for its provision of the Public Benefits, and that the City would not be willing to enter into this Agreement without the Public Benefits. Furthermore, CPMC acknowledges and agrees that CPMC's obligation to perform and complete, and the City's right to enforce in accordance with Section 9, an applicable Public Benefit under this Agreement shall survive the expiration or termination of this Agreement as and to the extent provided in Section 10.4, subject to any conditions expressly set forth in this Agreement for the benefit of CPMC.

4.2 Public Benefits.

4.2.1 Construction and Licensure of Hospital at the St. Luke's Campus and Hospital at the Cathedral Hill Campus. CPMC shall provide the following public benefits (collectively, the "**Hospital Commitment**"):

(a) If CPMC Commences Construction of the Cathedral Hill Campus Hospital, then CPMC shall Commence Construction of the St. Luke's Campus Hospital as and to the extent necessary to meet the Milestones and the Completion Deadline for the St. Luke's Campus Hospital.

(b) If CPMC Commences Construction of the St. Luke's Campus Hospital, then for so long as CPMC is pursuing the Completion of Construction of the Cathedral Hill Campus Hospital, CPMC shall diligently pursue the Completion of Construction of the St. Luke's Campus Hospital as and to the extent necessary to meet the Milestones and the Completion Deadline for the St. Luke's Campus Hospital.

(c) If CPMC Completes Construction of the Cathedral Hill Campus Hospital, then CPMC shall Complete Construction of the St. Luke's Campus Hospital. The Completion of Construction of the St. Luke's Campus Hospital shall occur as and when required to meet the St. Luke's Campus Hospital Opening Deadline (the "**Completion Deadline for the St. Luke's Campus Hospital**").

(d) If CPMC completes and satisfies the GACH Licensing Requirements for the Cathedral Hill Campus Hospital, then CPMC shall complete and satisfy the GACH Licensing Requirements for the St. Luke's Campus Hospital. As and when required to meet the St. Luke's Opening Deadline, CPMC shall promptly file all necessary applications required for GACH Licensure of the St. Luke's Campus Hospital, and thereafter diligently pursue GACH Licensure of the St. Luke's Campus Hospital. If CPMC Opens the Cathedral Hill Campus Hospital, it shall Open the St. Luke's Campus Hospital (the "**St. Luke's Campus Hospital Opening Obligation**") on or before the date that is twenty-four (24) months from the day CPMC opens the Cathedral Hill Campus Hospital (the "**St. Luke's Campus Hospital Opening Deadline**").

4.2.2 Time of Essence. The Parties understand and agree that time is of the essence and that satisfaction of the Completion Deadline for the St. Luke's Campus Hospital, the St. Luke's Campus Hospital Opening Deadline and the demolition/construction work described in Section 4.2.1 are a material part of this Agreement, of the utmost importance to the both the City and CPMC, and that the City would not be willing to enter into this Agreement without the commitments as set forth in this Section 4.2. The Parties also understand and agree that CPMC will incur substantial additional costs in connection with delays in the commencement and completion of construction of the St. Luke's Campus Hospital and Hospital at the Cathedral Hill Campus, and that CPMC would not be willing to enter into this Agreement without the assurances and commitments given by the City in this Agreement.

4.2.3 Milestones for Completion. In order to keep the City reasonably informed of CPMC's progress in satisfying the Hospital Commitment, CPMC shall periodically report to the City on the timing and progress of the construction of the St. Luke's Campus Hospital and the Cathedral Hill Campus Hospital and promptly provide to the City such information as may be reasonably requested by the City from time to time. In connection with this reporting obligation, CPMC shall provide the City with reasonably detailed project schedules for the St. Luke's Campus Hospital and the Cathedral Hill Campus Hospital before the start of construction, including any change to the Schedule and Phasing Plan, and shall update such project schedules on not less than a quarterly basis. Within thirty (30) days following the completion of each milestone listed in the Schedule and Phasing Plan (each, a "**Milestone**"), CPMC shall provide notice to the City (the "**Milestone Completion Notice**") from CPMC's project manager(s) for the construction of the St. Luke's Campus Hospital and the Cathedral Hill Campus Hospital, which shall, to the best of such individual's knowledge following reasonable due diligence: (i) confirm the completion of the Milestone, (ii) update the construction schedule for each and describe any material changes to the schedule and the reasons therefor, (iii) describe any existing or anticipated material delays in meeting the Milestones that follow, and (iv) confirm CPMC's expectation to satisfy the St. Luke's Campus Hospital Opening Deadline. If a Milestone Completion Notice describes an existing or anticipated delay in meeting the Milestones that follow, CPMC shall provide a reasonably detailed work program and schedule to show how CPMC intends to meet the Milestones that follow as required to

satisfy the Completion Deadline for the St. Luke's Campus Hospital and the St. Luke's Campus Hospital Opening Deadline (the "**Revised Work Plan**"). In any Revised Work Plan, CPMC may extend the dates for completion of any Milestone, but shall not have the right to revise the definition of a Milestone. After receipt of a Milestone Completion Notice, CPMC shall meet with the City, promptly after a City request, to discuss any material delays from the Milestone timing set forth in the Schedule and Phasing Plan, and, if applicable, the Revised Work Plan. CPMC's failure solely to meet the Milestone timing set forth in the Schedule and Phasing Plan, in and of itself, shall not be a Default, though failure to comply with the commitments in Section 4.2.1 or the reporting provisions of this Section 4.2.3 shall, following the meet and confer process in Section 9.2 (as applicable) and the notice and cure provisions in Section 9.3, be a Default by CPMC. CPMC shall send a Milestone Completion Notice for each milestone and upon the Opening of the St. Luke's Campus Hospital and the Cathedral Hill Campus Hospital.

4.2.4 Performance of Community Commitments. In addition to the significant public benefits arising from the Hospital Commitment, CPMC shall provide the following additional public benefits (collectively, the "**Community Commitments**"), each of which, to the extent such obligation has arisen, shall be paid and/or performed in increments when and as set forth in the applicable Exhibit referenced below (each such partial payment or partial performance, a "**Commitment Increment**"):

(a) the Community Healthcare Program attached as Exhibit F, which provides for a broad array of contributions and commitments for healthcare community benefits and includes the St. Luke's Campus Hospital Opening Obligation;

(b) the Housing Program attached as Exhibit G, which provides substantial funding to replace residential and hotel units and for affordable housing, as further described in Exhibit G;

(c) the Workforce Agreement attached as Exhibit E, which includes a first source hiring program covering both construction and applicable operational activities, a local business enterprise hiring agreement for construction activities, and a local hiring program for applicable operational activities, as further described in Exhibit E;

(d) the funding of certain Public Improvements which may be constructed by the City, the completion of certain Public Improvements to be constructed by CPMC and other Community Commitments as further described in Exhibit H; and

(e) the Transportation Program attached as Exhibit K, which provides for CPMC contributions toward the cost of construction of the transit improvements, addressing transit delay impacts on MUNI from the Cathedral Hill Campus and other measures, as further described in Exhibit K.

CPMC's obligation to complete the Community Commitments shall survive the termination or expiration of this Agreement until the applicable Community Commitment has been completed as and to the extent set forth in Section 10.4, subject to any conditions expressly set forth in this Agreement for the benefit of CPMC.

4.3 Conditions to Performance of Public Benefits.

4.3.1 Conditions to Hospital Commitment. CPMC's obligation to perform the Hospital Commitment is expressly conditioned upon each and all of the following conditions precedent:

- (a) All Approvals shall have been Finally Granted;
- (b) The City and any applicable Non-City Agency shall have performed or granted any and all of their respective actions, approvals or authorizations and/or issued such permits or licenses required in order to permit CPMC to: (i) Commence (and, as and when required, to Complete) Construction of the St. Luke's Campus Hospital and the Cathedral Hill Campus Hospital and (ii) Commence Construction (and, as and when required, to complete construction) of the Cathedral Hill Campus MOB, except to the extent that such actions, approvals or authorizations, or permits or licenses, have not been performed or granted due to the failure of CPMC to timely initiate and then diligently and in good faith pursue such actions, approvals, authorizations or issuances; and
- (c) CPMC shall have obtained all Subsequent Approvals necessary to: (i) Commence (and, as and when required, to Complete) Construction of the St. Luke's Campus Hospital and the Cathedral Hill Campus Hospital and (ii) Commence Construction (and, as and when required, to complete construction) of the Cathedral Hill Campus MOB, and same shall have been Finally Granted, except to the extent that such Subsequent Approvals have not been obtained or Finally Granted due to the failure of CPMC to timely initiate and then diligently and in good faith pursue such Subsequent Approvals.

Recognizing CPMC's right pursuant to Section 6 not to initiate or complete the Project (other than as and to the extent required pursuant to the Hospital Commitment), CPMC shall take all such actions as are reasonably required of CPMC to satisfy the foregoing conditions including, without limitation, the filing of requests for approvals, permits and authorizations for the St. Luke's Campus Hospital, and the Cathedral Hill Campus Hospital and the Cathedral Hill Campus MOB in a manner as and when needed to satisfy the Hospital Commitment.

4.3.2 Conditions to Community Commitments. CPMC's obligation to perform each of the applicable Community Commitments is expressly conditioned upon each and all of the following conditions precedent:

- (a) All of the conditions precedent set forth in the applicable Exhibit describing such individual Community Commitment shall have been satisfied; and
- (b) The City and any applicable Non-City Agency shall have performed or granted any and all of their respective actions, approvals or authorizations and/or issued such permits or licenses required in order to permit CPMC to undertake the applicable Community Commitment, except to the extent that such actions, approvals or authorizations, or permits or licenses, have not been performed or granted due to the failure of CPMC to timely initiate and then diligently and in good faith pursue such actions, approvals, authorizations or issuances.

Recognizing CPMC's right pursuant to Section 6 not to initiate or complete the Project (other than as and to the extent required pursuant to the Hospital Commitment), CPMC shall take such actions as are reasonably required of CPMC to satisfy the foregoing conditions including, without limitation, filing of requests for approvals, permits and authorizations as and when needed to perform the Community Commitments.

4.4 Community Visioning Plans. CPMC shall undertake the actions described in Exhibit I-1 through Exhibit I-3 (Community Visioning Plans) regarding the Long-Term Projects at the Davies Campus and Pacific Campus, and the future reuse of the California Campus, as applicable.

4.5 Compliance with CEQA.

4.5.1 No Additional Review Required for Near-Term Projects; Reliance on FEIR for Future Discretionary Approvals. The Parties acknowledge that the FEIR prepared for the Project complies with CEQA. The Parties further acknowledge that (a) the FEIR contains a thorough analysis of the Near-Term Projects and possible alternatives to the Near-Term Projects, (b) the Mitigation Measures have been adopted to eliminate or reduce to an acceptable level certain adverse environmental impacts of the Near-Term Projects, and (c) the Board of Supervisors adopted CEQA Findings, including a statement of overriding considerations in connection with the Approvals, pursuant to CEQA Guidelines Section 15093, for those significant impacts that could not be mitigated to a less than significant level. For these reasons, (i) the City does not intend to conduct any further environmental review or mitigation under CEQA for any aspect of the Near-Term Projects vested under this Agreement, and (ii) the City shall rely on the FEIR, to the greatest extent possible in accordance with applicable Laws, in all future discretionary actions related to the Project; provided, however, that nothing shall prevent or limit the discretion of the City to conduct additional environmental review in connection with any Subsequent Approvals or a Long-Term Project to the extent that such additional environmental review is required by applicable Laws, including CEQA.

4.5.2 Compliance with CEQA Mitigation Measures. CPMC shall comply with all Mitigation Measures imposed as applicable to each Project component, except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity. Without limiting the foregoing, CPMC shall be responsible for the completion of all Mitigation Measures identified as the responsibility of CPMC or the "project sponsor". The Parties expressly acknowledge that the FEIR and the associated MMRP are intended to be used in connection with each of the Approvals and any Subsequent Approvals to the extent appropriate and permitted under applicable Law. Nothing in this Agreement shall limit the ability of the City to impose conditions on any new, discretionary permit resulting from Material Changes to the Near-Term Projects from that described by the Approvals or any Subsequent Approvals as such conditions are determined by the City to be necessary to mitigate adverse environmental impacts identified through the CEQA process and associated with the granting of such permit or otherwise to address significant environmental impacts as defined by CEQA created by the approval of such permit; provided, however, any such conditions must be in accordance with applicable Law.

4.6 Nondiscrimination. In the performance of this Agreement, CPMC agrees not to discriminate against any employee, City employee working with CPMC's contractor or

subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

4.7 City Cost Recovery.

4.7.1 CPMC shall timely pay to the City all Impact Fees and Exactions applicable to the Project or the Project Sites as set forth in Section 5.4 of this Agreement.

4.7.2 CPMC shall timely pay to the City all Processing Fees applicable to the processing or review of applications for the Approvals and Subsequent Approvals as set forth in Section 5.4 of this Agreement.

4.7.3 CPMC shall pay to the City all City Costs incurred in connection with the drafting and negotiation of this Agreement, defending the Approvals and Subsequent Approvals as set forth in Section 7.4, and in processing and issuing any Subsequent Approvals or administering this Agreement (except for the costs that are covered by Processing Fees), within sixty (60) days following receipt of a written invoice from the City.

4.7.4 CPMC shall pay to the City all other City Costs incurred during the Term within sixty (60) days following receipt of a written invoice from the City. 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 (provided, for the City Attorney's Office, the billing statement will be reviewed and approved by OEWD but the cover invoice forwarded to CPMC will not include a description of the work). 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 sixty (60) days following receipt of the invoice. CPMC's obligation to pay the City Costs shall survive the termination of this Agreement. CPMC shall have no obligation to reimburse the City for any City Cost that is not invoiced to CPMC within forty-eight (48) months from the date the City Cost was incurred. The City will maintain records, in reasonable detail, with respect to any City Costs and upon written request of CPMC, and to the extent not confidential, shall make such records available for inspection by CPMC.

4.7.5 If CPMC in good faith disputes any portion of an invoice, then within sixty (60) days following receipt of the invoice CPMC shall provide 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 ninety (90) days following CPMC's notice to the City of the dispute, CPMC may pursue all remedies at law or in equity to recover the disputed amount.

4.8 Prevailing Wages. CPMC agrees that all persons performing labor in the construction of the Public Improvements shall be paid not less than the highest prevailing rate of wages for the labor so performed as provided under Section 6.22(E) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California, and CPMC shall include this requirement in any contract entered into by CPMC for the construction of the Public Improvements. CPMC and its contractors shall submit payroll records for workers subject to this Section 4.8 on a timely basis into Elation's certified payroll reporting system (or any successor electronic program designated by CityBuild), thereby certifying the payroll records. Upon request, CPMC and its contractors will provide to CityBuild its workforce records relating to the Public Improvements work performed by or on behalf of CPMC.

4.9 Indemnification of City. CPMC shall indemnify, reimburse, and hold harmless the City and its officers, agents and employees (the "**City Parties**") from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims ("**Losses**") arising or resulting directly or indirectly from (i) any third party claim arising from a default by CPMC under this Agreement, (ii) CPMC's failure to comply with any Approval, Subsequent Approval or Non-City Approval, (iii) the failure of any improvements constructed pursuant to the Approvals or Subsequent Approvals to comply with any Federal or State Laws, the Existing Standards or any permitted Future Changes to Existing Standards, (iv) any accident, bodily injury, death, personal injury or loss of or damage to property occurring on a Project Site (or off-site, with regard to the Public Improvements) in connection with the construction by CPMC or its agents or contractors of any improvements pursuant to the Approvals, Subsequent Approvals or this Agreement, (v) a Third-Party Challenge instituted against the City or any of the City Parties, (vi) any dispute between CPMC, its contractors or subcontractors relating to the construction of any part of the Project, and (vii) any dispute between CPMC and any Transferee or any subsequent owner of any of the Project Sites relating to any assignment of this Agreement or the obligations that run with the land, or any dispute between CPMC and any Transferee or other person relating to which party is responsible for performing certain obligations under this Agreement, each regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed on the City or any of the City Parties, except to the extent that such indemnity is void or otherwise unenforceable under applicable Law, and except to the extent such Loss is the result of the negligence or willful misconduct of the City Parties. The foregoing indemnity shall include, without limitation, reasonable attorneys' fees and costs and the City's reasonable cost of investigating any claims against the City or the City Parties. All indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement, to the extent such indemnification obligation arose from an event occurring before the expiration or termination of this Agreement. To the extent the indemnifications relate to CPMC's obligations that survive the expiration or termination of this Agreement, the indemnifications shall survive for the term of the applicable obligation plus four years.

5. VESTING AND CITY OBLIGATIONS

5.1 Vested Rights. CPMC shall have the vested right to develop the Near-Term Projects as set forth in this Agreement, with the following vested elements: the locations and numbers of buildings proposed, the land uses and height and bulk limits, including the maximum density, intensity and gross square footages, the permitted uses, the provisions for vehicular access and parking, the reservation or dedication of land for public purposes or fees in-lieu thereof, and provision for construction of public improvements (including the Public Improvements) (collectively, the "**Vested Elements**"; provided, the Existing Uses of all of the Project Sites shall also be included as Vested Elements). The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or other Approval shall not limit the Vested Elements, and CPMC shall have the right to seek and obtain subsequent building permits or approvals, including Subsequent Approvals at any time during the Term, any of which shall be governed by Applicable Laws. Each Subsequent Approval, once granted, shall be deemed an Approval for purposes of this Section 5. The Parties acknowledge that the Long-Term Projects require separate approvals and findings, and nothing shall prevent or limit the discretion of the City in connection therewith, except for the vesting of Existing Uses and the express limitations in Section 4.5 and on Future Changes to Existing Standards as provided in Section 5.3.

5.2 Existing Standards. The City shall process, consider, and review all Subsequent Approvals in accordance with (i) the Approvals, (ii) the San Francisco General Plan, the San Francisco Municipal Code (including the Subdivision Code) and all other applicable City policies, rules and regulations as each of the foregoing is in effect on the Effective Date ("**Existing Standards**"), as the same may be amended or updated in accordance with permitted Future Changes to Existing Standards as set forth in Section 5.3, and (iii) this Agreement (collectively, "**Applicable Laws**").

5.3 Future Changes to Existing Standards. All future changes to Existing Standards and any other Laws, plans or policies adopted by the City or adopted by voter initiative after the Effective Date ("**Future Changes to Existing Standards**") shall apply to the Project and the Project Sites except to the extent they conflict with this Agreement or the terms and conditions of the Approvals. In the event of such a conflict, the terms of this Agreement and the Approvals shall prevail, subject to the terms of Section 5.6 below.

5.3.1 Future Changes to Existing Standards shall be deemed to conflict with this Agreement and the Approvals if they:

(a) limit or reduce the density or intensity of a Near-Term Project, or any part thereof, or otherwise require any reduction in the square footage or number of proposed buildings or other improvements from that permitted under this Agreement for the Near-Term Projects, the Existing Standards, or the Approvals;

(b) limit or reduce the height or bulk of a Near-Term Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual proposed buildings or other improvements that are part of a Near-Term Project from that permitted under this Agreement, the Existing Standards, or the Approvals;

(c) limit or reduce vehicular access or parking on the Project Sites from that permitted under this Agreement, the Existing Standards, or the Approvals;

(d) change or limit any land uses or height and bulk limits for the Project Sites that are permitted under this Agreement, the Existing Standards, the Approvals or the Existing Uses;

(e) change or limit the Approvals or Existing Uses;

(f) except as required by Section 4.2, materially limit or control the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of a Near-Term Project in any manner, including the demolition of existing buildings at the Project Sites;

(g) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except as otherwise provided in Section 5.4.3;

(h) limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities for a Near-Term Project as contemplated by the Approvals;

(i) materially and adversely limit the processing or procuring of applications and approvals of Subsequent Approvals that are consistent with Approvals; or,

(j) impose or increase any Impact Fees and Exactions, as they apply to the Project, except as permitted under Section 5.4 of this Agreement.

5.3.2 CPMC may elect to have a Future Change to Existing Standards that conflicts with this Agreement and the Approvals applied to the Project or the Project Sites by giving the City notice of its election to have a Future Change to Existing Standards applied, in which case such Future Change to Existing Standards shall be deemed to be an Existing Standard; provided, however, if the application of such Future Change to Existing Standards would be a Material Change to the City's obligations hereunder, the application of such Future Change to Existing Standards shall require the concurrence of any affected City Agencies.

5.3.3 In addition to the foregoing, except as to Laws that are (i) applicable on a City-Wide basis and (ii) applied in an equitable and non-discriminatory manner to the following categories of uses (to each individually): General Acute Care Hospitals, medical office buildings or outpatient facilities, the City shall not apply Future Changes to Existing Standards that change, limit or control healthcare and/or medical services, healthcare and/or medical service lines, healthcare and/or medical uses on the Project Sites, or any other hospital, medical office or outpatient facility requirements, provided the foregoing shall not limit the City's rights and obligations under the Public Health and Safety Exception or Federal and State Law Exception. Nothing in this Agreement shall preclude the City from applying Future Changes to Existing Standards to the Project Sites for any development project not within the definition of the "Project" under this Agreement. In addition, nothing in this Agreement shall preclude CPMC from pursuing any challenge to the application of any Future Changes to Existing Standards to all or part of the Project Sites.

5.3.4 The Parties acknowledge that, for certain parts of the Project, CPMC must submit a variety of applications for Subsequent Approvals before commencement of construction, including building permit applications, a residential hotel permit to convert, street improvement permits, and encroachment permits. CPMC shall be responsible for obtaining all Subsequent Approvals before commencement of construction to the extent required under applicable Law. Notwithstanding anything in this Agreement to the contrary, when considering any such application for a Subsequent Approval, the City shall apply the applicable provisions, requirements, rules, or regulations that are contained in the California Building Standards Code, as amended by the City, including requirements of the San Francisco Building Code, Public Works Code (which includes the Stormwater Management Ordinance), Subdivision Code, Mechanical Code, Electrical Code, Plumbing Code, Fire Code or other uniform construction codes.

5.3.5 CPMC shall have the right, from time to time and at any time, to file subdivision map applications (including phased final map applications) with respect to some or all of the Project Sites, to subdivide, reconfigure or merge the parcels comprising the Project Sites as may be necessary or desirable in order to develop a particular part of the Project. Nothing in this Agreement shall authorize CPMC to subdivide or use any of the Project Sites for purposes of sale, lease or financing in any manner that conflicts with the California Subdivision Map Act (California Government Code § 66410 *et seq.*), or with the Subdivision Code. Nothing in this Agreement shall prevent the City from enacting or adopting changes in the methods and procedures for processing subdivision and parcel maps so long as such changes do not conflict with the provisions of this Agreement or with the Approvals as set forth in Section 5.3.1.

5.4 Fees and Exactions.

5.4.1 Generally. The Project shall only be subject to the Processing Fees and Impact Fees and Exactions as set forth in this Section 5.4, and the City shall not impose any new Processing Fees or Impact Fees and Exactions on the development of the Project or impose new conditions or requirements for the right to develop the Project (including required contributions of land, public amenities or services) except as set forth in this Agreement. The Parties acknowledge that the provisions contained in this Section 5.4 are intended to implement the intent of the Parties that CPMC have the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

5.4.2 Near-Term Projects. No Impact Fees and Exactions shall apply to the Near-Term Projects (or components thereof) except for (i) the SFPUC Capacity Charges in effect at the time of assessment, and (ii) street tree in-lieu fees (San Francisco Planning Code Section 428) in effect as of the Effective Date. For the purposes of this Section 5.4.2, any sums payable as part of the Public Benefits shall not be considered Impact Fees and Exactions. CPMC shall pay transit fees and charges for the Near-Term Projects as set forth in Exhibit K. Accordingly, the City acknowledges and agrees that Near-Term Projects (or components thereof) shall not be subject to the provisions of Planning Code Section 411.1 *et seq.* and any similar or successor ordinances requiring the payment of a fee related to any anticipated financial burden imposed on the San Francisco transportation system, including but not limited to the transportation sustainability fee under

evaluation by the City and described generally in the City's Notice of Preparation dated September 5, 2012.

5.4.3 Long-Term Projects. Impact Fees and Exactions for the Long-Term Projects (or components thereof) shall be limited to those from time to time in effect, on a City-Wide basis, at the time that CPMC applies for or obtains, as applicable, a permit, authorization or approval in connection therewith. After the Effective Date, except as set forth below in this Section 5.4.3, no new categories of Impact Fees and Exactions (nor expansion of the application of same due to changes in exceptions or definitions of covered uses thereto) shall apply to the development of the Long-Term Projects. Any substitute Impact Fees and Exactions that replace the Impact Fees and Exactions in effect on the Effective Date shall apply to the Long-Term Projects, and shall not be considered new categories of Impact Fees and Exactions except to the extent that they expand the scope of the existing Impact Fees and Exactions. In other words, if the City amends Impact Fees and Exactions during the Term to both increase the rates and expand the scope of application (i.e., apply the Impact Fees and Exactions to a use that was not previously subject to that Impact Fees and Exactions), then the increase in rates (including the methodology for calculation of those rates) would apply to the Long-Term Projects but not the expanded scope. Accordingly, if the increase in scope is to impose a particular Impact Fee or Exaction to a medical office use where previously it did not apply to medical office uses, then that Impact Fee or Exaction would not be imposed on a medical office building that is built as part of a Long-Term Project under this Agreement. Notwithstanding anything to the contrary above, CPMC shall be responsible for the payment of the following fees and charges, if and to the extent applicable: (i) all Impact Fees and Exactions for future development on the California Campus, in effect at the time of assessment, (ii) the SFPUC Capacity Charges, in effect at the time of assessment, and (iii) the transit impact fees for a Long-Term Project (as set forth in Planning Code Section 411.1 *et seq.* or any similar or successor ordinances requiring the payment of a fee related to any anticipated financial burden imposed on the San Francisco transportation system), in effect at the time of assessment. The Public Benefits, as imposed on the Near-Term Projects and as described in this Agreement, do not apply to the Long-Term Projects and the City shall not impose the Public Benefits on the Long-Term Projects in connection with any Subsequent Approval; provided the foregoing shall not limit the City's rights and obligations under Section 4.5.

5.4.4 Processing Fees. For three (3) years following the Effective Date, as extended by the number of days in any extension of the Term under Section 10.6.1, Processing Fees for the Near-Term Projects shall be limited to the Processing Fees in effect, on a City-Wide basis, as of the Effective Date (provided that to the extent Processing Fees are based on time and materials costs, such fees may be calculated based on the schedule for time and materials costs in effect on the date the work is performed by the City). Thereafter, Processing Fees for the Near-Term Projects and Long-Term Projects shall be limited to the Processing Fees in effect, on a City-Wide basis, at the time that CPMC applies for the permit or approval for which such Processing Fee is payable in connection with the applicable portion of the Long-Term Project.

5.5 Limitation on City's Future Discretion. By approving the Approvals, the City has made a policy decision that the Near-Term Projects are in the best interests of the City and promote the public health, safety and general welfare. Accordingly, the City in granting the Approvals and, as applicable, vesting the Project through this Agreement is limiting its future

discretion with respect to the Near-Term Projects and Subsequent Approvals to the extent that they are consistent with the Approvals and this Agreement. For elements included in a request for a Subsequent Approval that have not been reviewed or considered by the applicable City Agency previously (including but not limited to additional details or plans for a proposed building), the City Agency shall exercise its discretion consistent with its customary practice but shall not deny issuance of a Subsequent Approval based upon items that are consistent with the Approvals and this Agreement. Consequently, the City shall not use its discretionary authority to change the policy decisions reflected by the Approvals and this Agreement or otherwise to prevent or to delay development of the Near-Term Projects as contemplated in the Approvals and this Agreement. Nothing in the foregoing shall impact or limit the City's discretion with respect to: (i) proposed Subsequent Approvals that seek a Material Change to the Approvals, or (ii) Board of Supervisor approvals of subdivision maps, as required by law, not contemplated by the Approvals.

5.6 Changes in Federal or State Laws.

5.6.1 City's Exceptions. Notwithstanding any provision in this Agreement to the contrary, each City Agency having jurisdiction over the Project shall exercise its discretion under this Agreement in a manner that is consistent with the public health and safety and shall at all times retain its respective authority to take any action that is necessary to protect the physical health and safety of the public (the "**Public Health and Safety Exception**") or reasonably calculated and narrowly drawn to comply with applicable changes in Federal or State Law affecting the physical environment (the "**Federal or State Law Exception**"), including the authority to condition or deny a Subsequent Approval or to adopt a new Law applicable to the Project so long as such condition or denial or new regulation (i) is limited solely to addressing a specific and identifiable issue in each case required to protect the physical health and safety of the public or (ii) is required to comply with a Federal or State Law and in each case not for independent discretionary policy reasons that are inconsistent with the Approvals or this Agreement and (iii) is applicable on a City-Wide basis to the same or similarly situated uses and applied in an equitable and non-discriminatory manner. CPMC retains the right to dispute any City reliance on the Public Health and Safety Exception or the Federal or State Law Exception.

5.6.2 Changes in Federal or State Laws. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of the Approvals or this Agreement, or (ii) materially and adversely affect CPMC's or the City's rights, benefits or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law, subject to the provisions of Section 5.6.4, as applicable.

5.6.3 Changes to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of CPMC hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is

specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

5.6.4 Termination of Agreement. If any of the modifications, amendments or additions described in Sections 5.3.3, 5.6.2 or 5.6.3 or any changes in Federal or State Laws described thereunder would materially and adversely affect the construction, development, use, operation or occupancy of the Near-Term Projects as currently contemplated by the Approvals, or any material portion thereof, such that the Near-Term Projects become economically infeasible (a “**Law Adverse to CPMC**”), then CPMC shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. If any of the modifications, amendments or additions described in Sections 5.6.2 or 5.6.3 or any changes in Federal or State Laws described thereunder would materially and adversely affect or limit the Public Benefits (a “**Law Adverse to the City**”), then the City shall notify CPMC and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties. Upon receipt of a notice under this Section 5.6.4, the Parties agree to meet and confer in good faith for a period of not less than ninety (90) days in an attempt to resolve the issue. If the Parties cannot resolve the issue in ninety (90) days or such longer period as may be agreed to by the Parties, then the Parties shall mutually select a mediator at JAMS in San Francisco for nonbinding mediation for a period of not less than thirty (30) days. If the Parties remain unable to resolve the issue following such mediation, then (i) CPMC shall have the right to terminate this Agreement following a Law Adverse to CPMC upon not less than thirty (30) days prior notice to the City, and (ii) the City shall have the right to terminate this Agreement following a Law Adverse to the City upon not less than thirty (30) days prior notice to CPMC; provided, notwithstanding any such termination, CPMC shall be required to complete the applicable Public Benefits as and to the extent set forth in Section 10.4.

5.7 No Action to Impede Approvals. Except and only as required under Section 5.6, the City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement or the Approvals. An action taken or condition imposed shall be deemed to be in conflict with this Agreement or the Approvals if such actions or conditions result in the occurrence of one or more of the circumstances identified in Section 5.3 of this Agreement.

5.8 Criteria for Approving Subsequent Approvals. The City shall not disapprove applications for Subsequent Approvals based upon any item or element that is consistent with this Agreement and the Approvals, and shall consider all such applications in accordance with its customary practices (subject to the requirements of this Agreement). The City may subject a Subsequent Approval to any condition that is necessary to bring the Subsequent Approval into compliance with Applicable Laws. The City shall in no event be obligated to approve an application for a Subsequent Approval that would effect a Material Change. If the City denies any application for a Subsequent Approval that implements a Near-Term Project as contemplated by the Approvals, the City must specify in writing the reasons for such denial and shall suggest modifications required for approval of the application. Any such specified modifications shall be consistent with Applicable Laws and City staff shall approve the application if it is subsequently resubmitted for City review and corrects or mitigates, to the City's satisfaction, the stated reasons for the earlier denial in a manner that is consistent and compliant with Applicable Laws and does not include new or additional information or materials that give the City a reason to object to the application under the

standards set forth in this Agreement. The City agrees to rely on the FEIR, to the greatest extent possible, as more particularly described in Section 4.5.1. With respect to any Subsequent Approval that includes a proposed change to a Near-Term Project, the City agrees to rely on the General Plan Consistency Findings to the greatest extent possible in accordance with applicable Laws; provided, however, that nothing shall prevent or limit the discretion of the City in connection with any Subsequent Approvals that, as a result of amendments to the Approvals, require new or revised General Plan consistency findings. The Parties acknowledge that the Long-Term Projects require separate approvals and findings, and nothing shall prevent or limit the discretion of the City in connection therewith, except as otherwise provided in Section 4.5.1.

5.9 Construction of Public Improvements. The City's or CPMC's construction of the Public Improvements shall be governed by the provisions of Exhibit H.

5.10 Estoppel Certificates. CPMC may, at any time, and from time to time, deliver notice to the Planning Director requesting that the Planning Director certify to CPMC, a potential Transferee, or a potential lender to CPMC, in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, and if so amended or modified, identifying the amendments or modifications and stating their date and providing a copy or referring to the recording information; (iii) CPMC is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 8 below. The Planning Director, acting on behalf of the City, shall execute and return such certificate within forty-five (45) days following receipt of the request. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

5.11 Existing and Continuing Uses. The Parties acknowledge that the Existing Uses are lawfully authorized uses and will generally continue as such uses are modified by the Near-Term Projects, and that any modification thereof is subject to Planning Code Section 178 and the applicable provisions of Section 5 of this Agreement.

5.12 Taxes. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment, provided (i) the City shall not institute on its own initiative proceedings for any new or increased special tax or special assessment for a land-secured financing district (including the special taxes under the Mello-Roos Community Facilities Act of 1982 (Government Code §§ 53311 *et seq.*) but not including business improvement districts or community benefit districts formed by a vote of the affected property owners) that includes the Project Sites unless the new district is City-Wide or CPMC gives its prior written consent to such proceedings, and (ii) no such tax or assessment shall be targeted or directed at the Project, including, without limitation, any tax or assessment targeted solely at any or all of the Project Sites. Nothing in the foregoing prevents the City from imposing any tax or assessment against the Project Sites, or any portion thereof, that is enacted in accordance with Law and applies to all similarly-situated property on a City-Wide basis.

6. NO DEVELOPMENT OBLIGATION

There is no requirement under this Agreement that CPMC initiate or complete development of the Project, or any portion thereof (including, without limitation, any development on the Cathedral Hill Campus) except for (i) the Hospital Commitment, if and to the extent that such obligation has arisen pursuant Section 4.2.1, and (ii) the Community Commitments, if and to the extent that any such obligation has arisen pursuant Section 4.2.4. There is also no requirement that development be initiated or completed within any period of time or in any particular order except as set forth in Sections 4.2.1 and 4.2.3. The development of the Project is subject to numerous factors that are not within the control of CPMC or the City, such as availability of financing, interest rates, access to capital, healthcare regulatory requirements and other similar factors. Except as expressly required by this Agreement, the City acknowledges that CPMC may develop the Project in such order and at such rate and times as CPMC deems appropriate within the exercise of its sole and subjective business judgment. In *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth herein. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, CPMC's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, Chapter 56 and this Agreement.

7. MUTUAL OBLIGATIONS

7.1 Notice of Completion, Revocation or Termination. Upon the Parties' completion of performance, revocation or termination of this Agreement or any portion thereof limited to or arising as a result of an obligation limited to a particular Project Site, a written statement acknowledging such completion, revocation or termination, signed by the appropriate agents of the City and CPMC, shall be recorded in the Official Records. In addition, upon CPMC's request, when all of the required Public Benefits have been completed as to a Project Site, the City and CPMC shall record a notice of completion in the form attached as Exhibit L as to such Project Site.

7.2 General Cooperation.

7.2.1 Agreement to Cooperate. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with the Approvals, any Subsequent Approvals and this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of this Agreement, the Approvals and any Subsequent Approvals are implemented. Except for ordinary administrative costs of the City, nothing in this Agreement obligates the City to spend any sums of money or incur any costs other than City Costs or costs for Public Improvements which may be constructed by the City (subject to CPMC's payment obligations as set forth in Exhibit H) or costs that CPMC must reimburse through the payment of Processing Fees. The Parties agree that the Planning Department (or such other department to whom the obligation is delegated by the Director of the Planning Department after

notice to CPMC) will act as the City's lead agency to facilitate coordinated City review of applications for the Project. As such, Planning Department (or such other department) staff will: (i) work with CPMC to ensure that all such applications to the City are technically sufficient and constitute complete applications and (ii) interface with City staff responsible for reviewing any application under this Agreement to facilitate an orderly, efficient approval process that avoids delay and redundancies.

7.2.2 Specific Actions by the City. The City actions and proceedings subject to this Agreement shall be through the Planning Department, as well as affected City Agencies (and when required by applicable Law, the Board of Supervisors), and shall include instituting and completing proceedings for closing, vacating, widening, modifying, or changing the grades of streets, alleys, sidewalks, and other public rights-of-way and for other necessary modifications of the streets, the street layout, and other public rights-of-way in or near the Project Sites, including any requirement to abandon, remove, and relocate public utilities (and, when applicable, City utilities) within the public rights-of-way as specifically identified and approved in the Approvals and Subsequent Approvals. Except as set forth in Section 9.4.6, City Agencies shall process with due diligence all submissions and applications by CPMC on all permits, approvals, construction or occupancy permits for the Project subject to the acceptance of the same as complete.

7.3 Non-City Approvals.

7.3.1 Cooperation to Obtain Permits. The Parties acknowledge that certain portions of the Near-Term Projects, including, without limitation, the St. Luke's Campus Hospital, the Cathedral Hill Campus Hospital and the Van Ness pedestrian tunnel, require the approval of Federal, State, and local governmental agencies that are independent of the City and not a Party to this Agreement ("**Non-City Agencies**"), including but not limited to Caltrans and OSHPD. The City will reasonably cooperate with reasonable requests by CPMC in connection with CPMC's efforts to obtain permits, agreements, or entitlements from Non-City Agencies as may be necessary or desirable for the development, operation and use of Near-Term Projects (each, a "**Non-City Approval**"). The City's commitment to CPMC under this Agreement is subject to the following conditions:

(a) Throughout the permit process for any Non-City Approval, CPMC shall consult and coordinate with each affected City Agency in CPMC's efforts to obtain the permits, agreements, or entitlements, and each such City Agency shall cooperate reasonably with CPMC in CPMC's efforts to obtain the same.

(b) CPMC shall not agree to conditions or restrictions in any Non-City Approval that could create: (1) any obligations on the part of any City Agency, unless the City Agency agrees in writing, following the receipt of any necessary governmental approvals, to assume such obligations; or (2) any restrictions on City property, unless in each instance the City, including each affected City Agency, has previously approved in its sole discretion the conditions or restrictions in writing following the receipt of any necessary governmental approvals.

(c) The City shall have no duty to cooperate with public utilities and communication service providers to the extent that the cooperation efforts requested by CPMC

are materially in excess of the City's typical efforts in connection with other major development and construction projects in the City.

7.3.2 Costs. CPMC shall bear all costs associated with applying for and obtaining any necessary Non-City Approval. CPMC, at no cost to the City, shall be solely responsible for complying with any Non-City Approval and any and all conditions or restrictions imposed as part of a Non-City Approval. CPMC shall pay or otherwise discharge any fines, penalties, or corrective actions imposed as a result of CPMC's failure to comply with any Non-City Approval.

7.4 Cooperation in the Event of Third-Party Challenge.

7.4.1 In the event any administrative, legal or equitable action or proceeding is instituted by any party other than the City or CPMC challenging the validity or performance of any provision of this Agreement, the Project, the Approvals or Subsequent Approvals, the adoption or certification of the FEIR or other actions taken pursuant to CEQA, or other approvals under Laws relating to the Project, any action taken by the City or CPMC in furtherance of this Agreement, or any combination thereof relating to the Project or any portion thereof ("**Third-Party Challenge**"), the Parties shall cooperate in defending against such challenge. The City shall promptly notify CPMC of any Third-Party Challenge instituted against the City.

7.4.2 CPMC shall assist and cooperate with the City at CPMC's own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. CPMC shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office (at the non-discounted rates then charged by the City Attorney's Office) and any consultants; provided, however, CPMC shall have the right to monthly invoices for all such costs.

7.4.3 To the extent that any such action or proceeding challenges or a judgment is entered limiting CPMC's right to proceed with the Project or any material portion thereof under this Agreement (whether the Project commenced or not), including the City's actions taken pursuant to CEQA, CPMC may elect to terminate this Agreement. Upon any such termination (or, upon the entry of a judgment terminating this Agreement, if earlier), the City and CPMC shall jointly seek to have the Third-Party Challenge dismissed and CPMC shall have no obligation to reimburse City defense costs that are incurred after the dismissal.

7.4.4 The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project or the issuance of Subsequent Approvals unless the third party obtains a court order preventing the activity. During the pendency of a Third Party Challenge CPMC's obligations to provide the Community Commitments shall be tolled so long as CPMC has not otherwise Commenced Construction of the Cathedral Hill Campus Hospital as provided in Exhibit N; provided, however, the Commitment Increments arising as of the Effective Date shall not be tolled notwithstanding such Third Party Challenge. For the purposes of the foregoing exclusions from the tolling of the Community Commitments, the Parties agree and acknowledge that the following Commitment Increments arise as of the Effective Date: (i) in

Exhibit F, the 1,500 New Enrollees described in section 2, the first Innovation Fund payment of \$2 million described in section 3, and the commitments described in sections 7 through 10; (ii) in Exhibit G, the payment of the \$2,684,800 Residential Hotel Replacement Fee described in section 1, the payment of the \$1,453,820 Residential Unit Replacement Fee described in section 2, and the \$2.4 million payment described in section 3 as part of the Affordable Housing Payment; (iii) in Exhibit H, a total of \$900,000 in payments described in section 2 as part of the CCHAP Improvement Funds and \$200,000 in Safe Passage payments described in Section 5; and (iv) as well as \$400,000 for Bicycles Studies and \$1 million for work force training described in Exhibit N. If CPMC intends to rely upon this tolling provision, it shall notify the City of same and the tolling period shall end on the dismissal or end of the Third Party Challenge.

7.4.5 The reimbursement obligations under this Section 7.4 shall survive any judgment invalidating all or any part of this Agreement.

7.5 Permits to Enter City Property. Subject to the rights of any third party, the rights of the public and the City's reasonable agreement on the scope of the proposed work and insurance and security requirements, each City Agency with jurisdiction shall grant permits to enter City-owned property on the City's standard form permit, including, without limitation, provisions regarding release, waivers and indemnification in keeping with the City's standard practices, so long as the same is consistent with Applicable Law, and otherwise on commercially reasonable terms, in order to permit CPMC to enter City-owned property as necessary to construct the Project or comply with or implement the Approvals or other requirements in this Agreement.

7.6 Good Faith and Fair Dealing. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement and implementing the Approvals and any Subsequent Approvals. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

7.7 Other Necessary Acts. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, the Approvals and any Subsequent Approvals, in accordance with the terms of this Agreement (and subject to all applicable Laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

8. ANNUAL REVIEW AND COMPLIANCE

8.1 Initiation of Review. Pursuant to Section 65865.1 of the Development Agreement Statute and Section 56.17 of the Administrative Code, on the date which is fifteen (15) days following the City's receipt of each annual Compliance Statement (the "**Annual Review Date**") during the Term, the Planning Director shall commence a review to ascertain whether CPMC has, in good faith, materially complied with this Agreement.

8.2 Review Procedure. In conducting the required initial and annual reviews of CPMC's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section 8.2.

8.2.1 Required Information from CPMC. Within one hundred fifty (150) days following the end of each fiscal year (as defined in Exhibit F), CPMC shall provide a report to the Planning Director showing compliance, if and to the extent required under this Agreement, with (i) the Hospital Commitment, (ii) each of the Community Commitments, including the Healthcare Compliance Report as set forth in Exhibit F and (iii) the provisions of this Agreement regarding reimbursement of City Costs (the "**Compliance Statement**"). CPMC shall concurrently deliver a copy of the Healthcare Compliance Report to the Director of Public Health, and shall continue to send the Healthcare Compliance Report to the Director of Public Health until the expiration or termination of all of the Healthcare Obligations. The Compliance Statement shall satisfy the requirements for and be submitted in lieu of any Update otherwise required pursuant to Planning Code Section 304.5(b); provided, however, that if there are significant revisions (as defined therein) to the information contained in the IMP, then the Zoning Administrator shall be notified to determine whether a new Institutional Master Plan is required. The Compliance Statement and this Agreement shall also satisfy the requirements of Health Commission Resolution No. 02-10.

8.2.2 City Report. Within forty-five (45) days after CPMC submits the Compliance Statement, the Planning Director, in consultation with the Department of Public Health and other City agencies as appropriate, shall review the Compliance Statement and all other substantial evidence regarding CPMC's compliance with this Agreement. All substantial evidence including final staff reports shall, upon receipt by the City, be made available expeditiously to CPMC. Based on the Compliance Statement and such other substantial evidence, the Planning Director shall determine CPMC's compliance with all elements of this Agreement except for the Healthcare Obligations. CPMC's compliance with the Healthcare Obligations shall be determined (including following the expiration of the Term for the surviving Healthcare Obligations) by the Director of DPH. If the Planning Director finds that CPMC is in material compliance with this Agreement other than the Healthcare Obligations, then Planning Director shall issue a Certificate of Compliance to CPMC. If the Planning Director finds CPMC not in material compliance, then the Planning Director shall proceed in the manner provided in Chapter 56 for any proposed termination of this Agreement. If the Director of DPH finds that CPMC is not in compliance with the Healthcare Obligations, then the Director of DPH shall consult with the City Attorney for appropriate action in accordance with this Agreement. The City's failure to initiate or timely complete the annual review shall not be a Default and shall not be a waiver of the City's right to do so at a later date. All costs incurred by the City under this Section 8 shall be included in the City Costs.

9. ENFORCEMENT OF AGREEMENT; DEFAULT; REMEDIES

9.1 Enforcement. The only Parties to this Agreement are the City and CPMC (and any successors and Transferees). This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

9.2 Meet and Confer Process. Before sending a notice of default in accordance with Section 9.3, the Party which may assert that the other Party has failed to perform or fulfill its obligations under this Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party a reasonable period, but not less than ten (10) days, to respond to or cure such alleged failure; provided, however, the meet and confer process shall not be required (i) for any failure to pay amounts due and owing under this Agreement or in

connection with an unresolved dispute pursuant to Section 4.7.5, (ii) for failure to meet the St. Luke's Campus Hospital Opening Deadline, and (iii) if a delay in sending a notice pursuant to Section 9.3 would impair, prejudice or otherwise adversely affect a Party or its rights under this Agreement. The Party asserting such failure shall request that such meeting and conference occur within three (3) business days following the request and if, despite the good faith efforts of the requesting Party, such meeting has not occurred within seven (7) business days of such request, such Party shall be deemed to have satisfied the requirements of this Section 9.2 and may proceed in accordance with the issuance of a notice of default under Section 9.3.

9.3 Default. The following shall constitute a "Default" under this Agreement: (i) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, (A) if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it shall not be considered a Default if a cure is commenced within said 60-day period and diligently prosecuted to completion thereafter, (B) for failure to meet the St. Luke's Campus Hospital Opening Deadline, CPMC's cure period shall be thirty (30) days following City's notice and demand for compliance, and (C) for any obligation that cannot be cured (i.e., the failure to provide services to the required number of Medi-Cal patients in a past year or years as set forth in Exhibit F), CPMC shall have the benefit of the meet and confer process set forth in Section 9.2 to demonstrate or provide evidence to the City that a condition precedent to the obligation did not occur, that CPMC has satisfied the specified obligation, or an event of Excusable Delay has occurred, but there shall be no cure period. Any notice of default given by a Party shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all). Notwithstanding any other provision in this Agreement to the contrary, but subject to the express provisions of the Hospital Commitment and Sections 9.4.4(a) and (b) and Section 11.7, if CPMC conveys or transfers some but not all of the Project Sites in accordance with the requirements of this Agreement and there is more than one Party that assumes obligations of "CPMC" under this Agreement, there shall be no cross-default between the separate Parties that assumed CPMC obligations. Accordingly, if a Transferee Defaults, it shall not be a Default by any other Transferee or Party that owns a different portion of the Project Site. For purposes of this Section 9, a Party shall include all of its Affiliates who have an ownership interest in a portion of the Project Sites, and therefore any termination or other remedy against that Party may include the same remedy against all such Affiliates.

9.4 Remedies.

9.4.1 Specific Performance. Subject to, and as limited by, the provisions of Sections 9.4.3, 9.4.4 and 9.4.5, in the event of a Default the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity. Notwithstanding anything in this Agreement to the contrary, so long as CPMC is actively pursuing the Completion of Construction of the St. Luke's Campus Hospital, the City shall not take any action at law or in equity to prevent CPMC from pursuing the Completion of Construction or Opening of the Cathedral Hill Campus Hospital.

9.4.2 Termination. Subject to the limitation set forth in Section 9.4.4, in the event of a Default the non-defaulting Party may elect to terminate this Agreement by sending a notice of termination to the other Party, which notice of termination shall state the Default. This Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. Following any such termination, CPMC's obligation to perform, complete and/or maintain the Public Benefits shall be governed by the provisions of Section 10.4.

9.4.3 Limited Damages. The Parties have determined that except as set forth in this Section 9.4.3 and Sections 9.4.4 and 10.3, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by a Party as a result of a Default hereunder, and (iii) equitable remedies and remedies at law not including damages but including specific performance and termination are particularly appropriate remedies for enforcement of this Agreement. Consequently, CPMC agrees that the City shall not be liable to CPMC for damages under this Agreement, and the City agrees that CPMC shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) either Party shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for a Party's failure to pay sums to the other Party as and when due under this Agreement, including but not limited to any failure to pay liquidated damages as and when due under Section 9.4.4, (2) the City shall have the right to recover actual damages for CPMC's failure to make any payment due under any indemnity in this Agreement, (3) for any Community Commitment for which specific performance or the other remedy listed in the applicable Exhibit is determined not to be available (and for which there is no liquidation amount listed in Section 9.4.4 or the applicable Exhibit), including any failure to fulfill the Baseline Expenditure Commitment as defined in Exhibit F, the City shall have the right to monetary damages against CPMC equal to the costs that CPMC would have incurred to complete the Community Commitment, and (4) either Party shall have the right to recover reasonable attorneys' fees and costs as set forth in Section 9.6. For purposes of the foregoing, "actual damages" means the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

9.4.4 Liquidated Damages. CPMC understands, has ascertained and agrees that the City will sustain damages in connection with CPMC's Default of certain obligations under this Agreement. The City and CPMC agree that the liquidated damages set forth in this Section 9.4.4 shall be presumed to be the damages actually sustained by the City, and that because of the nature of CPMC's obligations under this Agreement, it would be impracticable or extremely difficult to fix the actual damages. Liquidated damages shall be considered not as a penalty but as agreed monetary damages sustained by the City for increased costs, exposures and expenses related to CPMC's Default in connection with such obligations, including but not limited to the loss of seismically safe medical facilities serving area residents and increased costs at San Francisco General Hospital and the City's other public healthcare facilities. Any capitalized term used in this Section 9.4.4 that is not defined shall have the meaning given to such term in Exhibit F.

AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNTS SET FORTH BELOW FOR EACH SUCH OBLIGATION ARE A REASONABLE ESTIMATE OF THE DAMAGES THAT CITY WOULD INCUR IN SUCH EVENT, TAKING INTO ACCOUNT ALL RELEVANT FACTS AND CIRCUMSTANCES. CPMC FURTHER ACKNOWLEDGES AND AGREES THAT ANY COLLECTION OF LIQUIDATED DAMAGES BY THE CITY FROM CPMC UNDER THIS SECTION 9.4.4 SHALL NOT RELEASE OR OTHERWISE LIMIT THE LIABILITY OF CPMC FOR ANY OTHER DEFAULT UNDER THIS AGREEMENT EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.4.4(a). BY PLACING THEIR RESPECTIVE INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: CITY: _____ CPMC: _____

Therefore, as City's sole and exclusive remedy, a Default in the performance of any of the following obligations shall be subject to liquidated damages in the amount and as specified in this Section 9.4.4:

(a) The St. Luke's Campus Hospital Opening Deadline. If CPMC Defaults as to the St. Luke's Campus Hospital Opening Deadline then, commencing on the date of Default as to the St. Luke's Campus Hospital Opening Deadline and ending on the Opening of the St. Luke's Campus Hospital, CPMC shall pay to the City the following amounts for the following periods: (i) for the first thirty (30) days, Ten Thousand Dollars (\$10,000) per day, (ii) for days thirty-one (31) through one hundred twenty (120), Twenty-Five Thousand Dollars (\$25,000) per day and (iii) thereafter to the date one year from the first day of such Default, Thirty Thousand Dollars (\$30,000) per day. Such payments shall be made monthly, in arrears, commencing on the date that is thirty (30) days after the date of the Default and on the same day each calendar month thereafter until cured. If CPMC fails to Open the St. Luke's Campus Hospital on or before the first anniversary of the date of the Default, CPMC shall pay the amount set forth in Section 9.4.4(b), provided that CPMC's first payment under Section 9.4.4(b) shall be reduced by the amount paid by CPMC under this Section 9.4.4(a).

(b) If CPMC fails to Open the St. Luke's Campus Hospital within one year following the St. Luke's Campus Hospital Opening Deadline (the "**St. Luke's Trigger Date**"), then CPMC shall pay to the City a base amount equal to Thirty Million Dollars (\$30,000,000) (the "**St. Luke's Liquidated Payment**") for each year in which CPMC fails to Open the St. Luke's Campus Hospital. On the St. Luke's Trigger Date (and each applicable anniversary thereafter), the St. Luke's Liquidated Payment shall be adjusted by the Medical Rate of Inflation. The adjusted St. Luke's Liquidated Payment payable on the St. Luke's Trigger Date (and each applicable anniversary thereafter) shall be determined by multiplying the St. Luke's Liquidated Payment by a fraction, the numerator of which is the annual index for Medical Care Services published most recently prior to the St. Luke's Trigger Date (or the applicable anniversary thereafter) and the denominator of which is the annual index for Medical Care Services published most recently prior to the Effective Date. CPMC's obligation to pay the adjusted St. Luke's Liquidated Payment

shall commence on the St. Luke's Trigger Date and shall be due annually thereafter on each applicable anniversary of the St. Luke's Trigger Date. The obligation to pay the adjusted St. Luke's Liquidated Payment shall end on the earlier of (i) the date that CPMC Opens the St. Luke's Campus Hospital or (ii) if CPMC has not Opened the St. Luke's Campus Hospital, twenty (20) years following the date of Default as to the St. Luke's Campus Hospital Opening Deadline. If the last St. Luke's Liquidated Payment is for less than a full year, then the amount due and payable by CPMC shall be prorated on a per diem basis.

(c) Unduplicated Patient Commitment. If CPMC Defaults as to the Unduplicated Patient Commitment, as same is defined in Exhibit F, in a fiscal year, then CPMC shall pay to the City upon delivery of the Healthcare Compliance Report (or, if the Default is discovered or determined later, then within thirty (30) days following the discovery or determination of the Default) an amount equal to one hundred fifty percent (150%) of the average cost of one Unduplicated Patient from the immediately preceding reported year multiplied by the shortfall in number of such Unduplicated Patients.

(d) New Medi-Cal Beneficiaries Commitment. If CPMC Defaults as to the New Medi-Cal Beneficiaries Commitment in a fiscal year (as defined in Exhibit F), then CPMC shall pay to the City upon delivery of the Healthcare Compliance Report (or, if the Default is discovered or determined later, then within thirty (30) days following the discovery or determination of the Default) an amount equal to one hundred fifty percent (150%) of the Average Life Cost times the New Enrollee Shortfall. The Average Life Cost shall mean the average unreimbursed cost per fiscal year to CPMC for providing services to each New Enrollee over the previous two (2) fiscal years. The New Enrollee Shortfall shall be the difference between the number of New Enrollees that CPMC was required to accept under the New Medi-Cal Beneficiaries Commitment for that fiscal year and the number of New Enrollees that CPMC did accept in that fiscal year.

(e) St. Luke's Center for Excellence in Community Health Commitment. For any fiscal year in which CPMC Defaults by failing to maintain the St. Luke's Center for Excellence in Community Health as set forth in Section 6 of Exhibit F, CPMC shall pay to the City within thirty (30) days following the Default an amount equal to Two Million Dollars (\$2,000,000) for the fiscal year in which the Default occurred.

(f) St. Luke's Center for Excellence in Senior Health Commitment. For any fiscal year in which CPMC Defaults by failing to maintain the St. Luke's Center for Excellence in Senior Health as set forth in Section 6 of Exhibit F, CPMC shall pay to the City within thirty (30) days following the Default an amount equal to Seven Hundred Fifty Thousand Dollars (\$750,000) for the fiscal year in which the Default occurred.

9.4.5 Arbitration of Disputes.

(a) Arbitration Generally. Any disputes arising under this Agreement relating to the following provisions of Exhibit F the amount or calculation (or components used in connection therewith) of (i) the Baseline Commitment, (ii) the Maximum Medi-Cal Shortfall as applied in connection with the New Medi-Cal Beneficiaries Commitment, or (iii) the St. Luke's Liquidated Payment (the "**Arbitrable Matters**"); shall be submitted to JAMS in San

Francisco, or its successor, in front of a single disinterested Arbitrator for final and binding arbitration in accordance with this Section 9.4.5 ("**Arbitration**").

(b) Arbitration Demand; Selection of Arbitrator. Either Party may file an arbitration demand with JAMS in San Francisco within: (i) ninety (90) days after the later of the expiration of the meet and confer process in Section 9.2 or date on which a Default has occurred (the "**Election Period**"). Within ten (10) days from the date that a Party makes the arbitration demand, the Parties shall meet and confer to select an Arbitrator. The Arbitrator to be used for an Arbitration must be a "disinterested person," which is someone who is not now, and within the preceding five (5) years has not been, employed or hired by, or had a business relationship with, either Party or any entity owned or controlled in whole or in part by either Party. The Arbitrator shall provide written disclosure of any circumstances regarding the claim or the Parties that he or she believes might affect his or her impartiality. The Parties shall have seven (7) days after receiving a disclosure in which to disqualify the Arbitrator based upon good faith concerns arising from the written statement. An Arbitrator shall not be disqualified simply because he or she has in the past been hired by attorneys for either Party as part of an arbitration or mediation procedure involving an unrelated subject matter, so long as the Arbitrator discloses such relationship and affirms that he or she is able to impartially consider the matters to be presented in the Arbitration. However, a proposed Arbitrator shall disclose any instances in which he or she has served as a neutral for either Party, and the other Party may disqualify the Arbitrator if such Party has concerns that repeated service as a neutral may render the Arbitrator unable to be impartial. In the absence of agreement by the Parties within twenty (20) days from the date that a Party makes the arbitration demand, JAMS shall, within ten (10) days thereafter, designate a disinterested retired judge from Alameda, San Francisco, San Mateo or Santa Clara counties to be the Arbitrator, either through a process of having the Parties strike names from a list of potential Arbitrators, or by otherwise selecting an Arbitrator at JAMS's discretion. If for any reason an Arbitrator is not selected through the foregoing procedures, then the Presiding Judge of the San Francisco Superior Court shall select a retired judge to be the Arbitrator. As part of such selection, each Party shall be entitled to submit the names and a brief (not more than one page per nominee) biography of up to two (2) proposed retired judges from Alameda, San Francisco, San Mateo or Santa Clara counties to serve as Arbitrator, but the Presiding Judge shall not be required to select any of the Parties' proposed arbitrators. If neither Party files an arbitration demand with JAMS within the Election Period, then either Party may pursue available rights and remedies for the Default in the San Francisco Superior Court.

(c) Arbitration Procedures.

(i) The Arbitration will be conducted in San Francisco before one retired judge sitting as the arbitrator (the "**Arbitrator**") who will be instructed to apply the California Rules of Evidence. The JAMS Comprehensive Arbitration Rules and Procedures effective as of October 1, 2010 will apply, except to the extent specifically modified herein (the "**JAMS Rules**"). The cost of the Arbitrator and the JAMS fees shall be split and paid equally by the Parties. The arbitration award shall be final and binding, and is not subject to appeal. Judgment upon the award rendered by the Arbitrator may be entered in any court of competent jurisdiction.

(ii) The Arbitrator shall determine the scope and timing of discovery, which shall include, at a minimum, the following:

(1) In advance of the Parties' exchange of initial lists of percipient witnesses, counsel shall meet and confer about exchanging documents. Either Party may request documents from the opposing Party, and the Arbitrator will resolve any disputes over the scope of documents to be produced.

(2) Counsel shall meet and confer to discuss testimony and depositions. At a time agreed upon by counsel or set by the Arbitrator, the Parties will exchange an initial list of the percipient witnesses each Party reasonably anticipates it will call to testify at the Arbitration. After the exchange of initial lists, a Party may supplement its list of witnesses if the other Party's designations or further discovery or investigation in good faith leads that Party to conclude that the testimony of additional percipient witnesses would be advisable.

(3) At a time agreed upon by counsel or set by the Arbitrator, but after documents have been exchanged and the depositions have been completed, the Parties will simultaneously exchange designations of expert witnesses. The designation of expert witnesses, and the designation of any rebuttal or supplemental expert witnesses, shall be governed by the procedures of Code of Civil Procedure Section 2034 *et seq.*, including that each Party shall have an opportunity to depose each expert witness designated by the opposing Party. At least ten (10) business days in advance of the deposition of the first expert, the Parties shall simultaneously exchange any expert reports, and all documents that are in the experts' possession, custody, or control, or the possession, custody, or control of the Party disclosing the experts and that any expert has relied on or reviewed in preparing his or her opinion.

(4) At a time to be arranged by counsel or the Arbitrator, but at least ten (10) days before the Arbitration hearing commences, each Party will provide the opposing Party with copies of a full set of documents that it intends to introduce at the Arbitration.

(d) Alternate Dispute Resolution Providers. In the event that neither JAMS nor its successor exists at the time for resolving a dispute, then the American Arbitration Association ("AAA") or its successor shall be used for arbitration procedures set forth herein; provided, however, the AAA's Commercial Arbitration Rules then in effect (except to the extent specifically modified herein) shall be used instead of the JAMS Rules. If neither JAMS nor AAA nor a successor of either exists, then the arbitration shall be administered by a then-existing alternate dispute resolution provider located in San Francisco county and agreed to by the Parties. If the parties are not able to agree, then the arbitration provisions of this Agreement shall become null and void and the Parties may pursue available remedies in San Francisco Superior Court.

9.4.6 City Processing. The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from CPMC are past due.

9.5 Time Limits; Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a

Party of any condition or failure of performance, including a Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other condition, action or inaction, or cover any other period of time, other than any condition, action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent condition, action or inaction, and the performance of the same or any other term or provision contained in this Agreement. Except as specifically limited in Sections 9.4.4 and 9.4.5, nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

9.6 Attorneys' Fees. Should legal action be brought by either Party against the other for a Default under this Agreement or to enforce any provision herein, the prevailing Party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" means the reasonable fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts and consultants, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such reasonable fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

10. AMENDMENT; TERMINATION; EXTENSION OF TERM

10.1 Amendment or Termination. This Agreement may only be amended with the mutual written consent of the City and CPMC, provided following a Transfer, the City and CPMC or any Transferee may amend this Agreement as it affects CPMC or the Transferee and the portion of the Project Site owned by CPMC or the Transferee without affecting other portions of the Project Site or other Transferees. Other than upon the expiration of the Term and except as provided in Sections 5.6.4, 7.4.3, 9.4.2 and 10.2, this Agreement may only be terminated with the mutual written consent of the Parties. The amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 56, except as provided in Section 10.5.

10.2 Early Termination Rights. In addition to the termination rights set forth in Sections 5.6.4, 7.4.3 and 9.4.2, CPMC shall, upon thirty (30) days prior notice to the City, have the right, in its sole and absolute discretion, to terminate this Agreement at any time before the Completion of the Exterior Work for the Cathedral Hill Campus Hospital. If CPMC does not Commence Construction of the Cathedral Hill Campus Hospital by the date which is five (5) years following the Effective Date, the City shall, upon sixty (60) days prior notice to CPMC, have the right, in its sole and absolute discretion, to terminate this Agreement at any time before CPMC

Commences Construction of the Cathedral Hill Campus Hospital, provided CPMC can prevent any such termination by the City by providing to the City notice, within the above sixty (60) day period, of CPMC's intent to start construction of the Cathedral Hill Campus Hospital if CPMC thereafter Commences Construction within one hundred twenty (120) days following delivery of CPMC's notice to the City. Any termination under this Section 10.2 shall result in the termination of the entirety of this Agreement (except and to the extent that specific Public Benefits survive pursuant to Section 10.4) affecting all of the Project Sites, and any Transferee shall assume the risk of a termination of this Agreement by CPMC or the City under this Section 10.2.

10.3 Termination and Vesting. Any termination under this Agreement shall concurrently effect a termination of the Approvals, except as to each Approval for a Project Site pertaining to a principal building project (e.g., the St. Luke's Campus Hospital, the Cathedral Hill Campus Hospital, the Cathedral Hill Campus MOB or the Davies Neurosciences Building) that has been commenced in reliance thereon. In the event of any termination of this Agreement by CPMC resulting from a Default by the City and except to the extent prevented by such City Default, CPMC's obligation to complete the Public Benefits shall continue as set forth in Section 10.4 but CPMC shall have the right to reduce the Community Commitments in an amount equal to the costs or losses incurred by CPMC as a direct result of the City's Default, including but not limited to reasonable attorneys' fees and costs not paid by the City, as such costs or losses are determined in the award upholding CPMC's termination of this Agreement. The City's and CPMC's rights and obligations under this Section 10.3 shall survive the termination of this Agreement.

10.4 Effect of Expiration or Termination on the Public Benefits. CPMC's obligations and the City's right to enforce CPMC's obligation to perform, complete and/or maintain the Public Benefits, including but not limited to the St. Luke's Campus Hospital Opening Deadline, shall survive the expiration of the Term or termination of this Agreement and remain in effect until completed, subject to the provisions of this Section 10.4. In connection with such survival, the Parties acknowledge and agree that all relevant and applicable provisions of this Agreement shall be deemed to be in effect as such provisions are reasonably necessary in the construction, interpretation or enforcement (including the remedies set forth in this Agreement and the limitations thereon) of this Agreement as to such surviving obligations. CPMC's obligations as to the Public Benefits shall survive the expiration of the Term or termination of this Agreement only as follows:

10.4.1 If this Agreement expires or terminates before CPMC Opens the Cathedral Hill Campus Hospital and CPMC does not continue its construction activities on the Cathedral Hill Campus Hospital or Open the Cathedral Hill Campus Hospital, CPMC shall perform those Commitment Increments which have arisen prior to expiration or termination.

10.4.2 If this Agreement expires or terminates before CPMC Opens the Cathedral Hill Campus Hospital and CPMC is continuing or later resumes construction of the Cathedral Hill Campus Hospital or seeks GACH Licensure of the Cathedral Hill Campus Hospital, CPMC shall perform: (i) those Commitment Increments which have arisen prior to expiration or termination; (ii) each Commitment Increment which arises after expiration or termination, except during any period in which CPMC is not actively performing construction of the Cathedral Hill Campus Hospital or seeking GACH Licensure of the Cathedral Hill Campus Hospital, during which

period the obligation to perform the Commitment Increment shall be tolled; and (iii) the Hospital Commitment, including but not limited to the St. Luke's Campus Hospital Opening Obligation.

10.4.3 If this Agreement expires or terminates on or after CPMC Opens the Cathedral Hill Campus Hospital, CPMC shall perform the Hospital Commitment (to the extent not previously completed), each and every Commitment Increment, including but not limited to the St. Luke's Campus Hospital Opening Obligation; provided, however, if a Commitment Increment cannot be performed because of a Law Adverse to the City, then CPMC shall pay to the City an amount equal to the costs that CPMC would have incurred to perform such Commitment Increment.

10.5 Amendment Exemptions. No issuance of a Subsequent Approval, or amendment of an Approval or Subsequent Approval, shall by itself require an amendment to this Agreement. Upon issuance or approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Subsequent Approval). Notwithstanding the foregoing, if there is any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to an Approval or Subsequent Approval, then the Parties shall concurrently amend this Agreement (subject to all necessary approvals in accordance with this Agreement) in order to ensure the terms of this Agreement are consistent with the proposed Subsequent Approval or the proposed amendment to an Approval or Subsequent Approval. The Planning Department and the Planning Commission, as applicable, shall have the right to approve changes to the Project as described in the Exhibits in keeping with its customary practices, and any such changes shall not be deemed to conflict with or require an amendment to this Agreement or the Approvals so long as they do not constitute a Material Change. If the Parties fail to amend this Agreement as set forth above when required, however, then the terms of this Agreement shall prevail over any Subsequent Approval or any amendment to an Approval or Subsequent Approval that conflicts with this Agreement. Any modification of this Agreement or the Approvals that is not a Material Change, as determined by the Planning Director and the Director of any affected City Agency after consultation with the City Attorney, may be agreed to by the Planning Commission, the affected City Agency (when applicable), and the City Administrator, each in their sole discretion. Any modification to this Agreement that is a Material Change shall be subject to the review and approval of the above parties as well as the Board of Supervisors by ordinance. Any modification shall require compliance with the Development Agreement Statute and Chapter 56, but the provisions of this Section 10.5 shall apply in lieu of the provisions of Section 56.15 of the Administrative Code.

10.6 Extension Due to Legal Action or Referendum; Excusable Delay.

10.6.1 If any litigation is filed challenging this Agreement (including but not limited to any CEQA determinations) or the validity of this Agreement or any of its provisions, or if this Agreement is suspended pending the outcome of an electoral vote on a referendum, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension. The Parties shall document the start and end of this delay in writing within thirty (30) days from the applicable dates.

10.6.2 "**Excusable Delay**" means the occurrence of an event beyond a Party's reasonable control which causes such Party's performance of an obligation hereunder to be delayed, interrupted or prevented, including, but not limited to: changes in Federal or State Laws; strikes or the substantial interruption of work because of labor disputes; inability to obtain materials; freight embargoes; civil commotion, war or acts of terrorism; inclement weather, fire, floods, earthquakes or other acts of God; epidemics or quarantine restrictions; litigation; unforeseen site conditions (including archaeological resources and the presence of hazardous materials); or the failure of any governmental agency, public utility or communication service provider to issue a permit, authorization, consent or approval required to permit construction or as required to satisfy the Hospital Commitment within the standard or customary time period for such issuing authority following CPMC's submittal of a complete application for such permit, authorization, consent or approval, together with any required materials. Excusable Delay shall not include delays resulting from failure to obtain financing or have adequate funds, or the rejection of permit, authorization or approval requests based upon CPMC's failure to satisfy the substantive requirements for the permit, authorization or approval request. In the event of Excusable Delay, the Parties agree that (i) the time periods for performance of the delayed Party's obligations impacted by the Excusable Delay shall be strictly limited to the period of such delay, interruption or prevention and the delayed Party shall, to the extent commercially reasonable, act diligently and in good faith to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, and (ii) following the Excusable Delay and subject to compliance with the terms of Sections 9.2 and 9.3 as applicable, a Party shall have all rights and remedies available under this Agreement, including liquidated damages when applicable, if the obligation is not completed within the time period as extended by the Excusable Delay. If an event which may lead to an Excusable Delay occurs, the delayed Party shall notify the other Party in writing of such occurrence as soon as possible after becoming aware that such event may result in an Excusable Delay, and the manner in which such occurrence is likely to substantially interfere with the ability of the delayed Party to perform under this Agreement. For the purposes of this Agreement, the Parties intend that if an event of Excusable Delay were to impact the timing of the Completion of Construction or Opening of the St. Luke's Campus Hospital such that CPMC, despite commercially reasonable, diligent and good faith efforts to remove the cause of the Excusable Delay or otherwise complete the delayed obligation, would not be able to meet the Completion Deadline or the St. Luke's Campus Hospital Opening Deadline, that (i) CPMC may Complete Construction, achieve GACH Licensure and Open the Cathedral Hill Campus Hospital notwithstanding the Completion Deadline for the St. Luke's Campus Hospital and the St. Luke's Campus Hospital Opening Deadline and (ii) the City would not be entitled to liquidated damages under Section 9.4.4 for the period of the Excusable Delay; provided, however, CPMC may not rely on Excusable Delay to delay the Completion Deadline for the St. Luke's Campus Hospital or the Opening Deadline Hospital at the St. Luke's Campus if the act or thing that is the cause of the Excusable Delay applies to both the Cathedral Hill Campus and the St. Luke's Campus and CPMC devotes efforts or resources disproportionately to the Cathedral Hill Campus in its efforts to resolve the Excusable Delay.

11. TRANSFER OR ASSIGNMENT; RELEASE; CONSTRUCTIVE NOTICE

11.1 Permitted Transfer of this Agreement. At any time, CPMC shall have the right to convey, assign or transfer all or any part of its right, title, and interest in and to the Project Sites without the City's consent, provided that it also transfers any applicable portion of its interest,

rights or obligations under this Agreement (a "**Transfer**") with respect to such portion of the Project Sites to a third party (the "**Transferee**") acquiring an interest in that portion of the Project Sites (the "**Transferred Property**"). For purposes of the foregoing, all of the Public Benefits will apply to, connect and run with the land that is the Cathedral Hill Hospital Site, except for (i) the St. Luke's Campus Hospital Opening Obligation and the St. Luke's MOB Commitment, the St. Luke's Health Care Center, the St. Luke's Center of Excellence in Community Health and the St. Luke's Center of Excellence in Senior Health, all as described in this Agreement (including Exhibit F), which apply to, connect and run with the land that is the St. Luke's Campus, (ii) CPMC's obligations in the Workforce Agreement, which apply to, connect and run with the land on which the applicable Workforce Project (as defined in Exhibit E) is to be constructed, and (iii) the STLD Improvements, as described in Exhibit H, which apply to the land that is the St. Luke's Campus and the Davies Campus, respectively. Accordingly, if CPMC conveys or transfers some but not all of the Project Site such that there are separate owners of one or more of the Project Sites, the obligation to perform and complete the Public Benefits shall be separated in the manner set forth above and described in the applicable Assignment and Assumption Agreement. The obligation to undertake the Community Visioning Plans referenced in Section 4.4 shall be the responsibility of the owner of each applicable campus.

11.2 Notice of Transfer. With regard to any proposed Transfer of its interests, rights and obligations under this Agreement, CPMC shall provide not less than ninety (90) days' notice to the City before any such Transfer. CPMC shall provide, with such notice, a copy of the assignment and assumption agreement that CPMC proposes to enter into, with a detailed description of what obligations are to be assigned to and assumed by the Transferee and what obligations will be retained by CPMC, and a description of the Transferred Property (each, an "**Assignment and Assumption Agreement**"). Each Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as Exhibit M, and shall include, among other terms: (i) an agreement and covenant by the Transferee not to challenge the enforceability of any of the provisions or requirements of this Agreement; (ii) a description of the obligations under this Agreement that will be assigned to and assumed by the Transferee and from which CPMC will be released, except to the extent that Exhibit F, Exhibit H or Section 11.7 provide otherwise; (iii) a covenant not to sue the City for any and all disputes solely between CPMC and the Transferee; and (iv) confirmation of all of the indemnifications and releases set forth in this Agreement. The Assignment and Assumption Agreement shall be subject to the consent of the Planning Director, which consent will not be unreasonably withheld, conditioned or delayed and will be limited to confirming that the Assignment and Assumption Agreement satisfies the requirements of this Agreement. It shall not be unreasonable for the Planning Director to refuse to consent if the description of the obligations that will be assigned and assumed are unclear or inconsistent with this Agreement. If Planning Director refuses consent, he or she shall state the reasons for the refusal and the corrections that must be made in order to obtain his or her approval. Each Assignment and Assumption Agreement shall become effective when it is duly executed by the Parties, the Planning Director has executed the consent, and it is recorded in the Official Records. Failure to enter into an Assignment and Assumption Agreement as set forth above upon any conveyance of all or part of the Project Sites shall be a Default by CPMC under this Agreement.

11.3 Release of Liability. Upon recordation of an approved Assignment and Assumption Agreement, CPMC shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property as specified in the Assignment and Assumption Agreement, and the Transferee shall be deemed to be "CPMC" under this Agreement with all rights and obligations related thereto, with respect to such Transferred Property. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee Defaults under this Agreement, such Default shall not constitute a default by CPMC or a different Transferee with respect to any other portion of the Project Sites and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Project Sites, except as otherwise provided herein. Additionally, the annual review provided by Section 8 shall be conducted separately as to CPMC and each Transferee and only as to those obligations that CPMC or such Transferee has under this Agreement.

11.4 CPMC's Responsibility for Performance. It is the intent of the Parties that as the Project is developed all applicable requirements of this Agreement, the Approvals and any Subsequent Approvals shall be met. If CPMC Transfers all or any portion of the Project Sites, CPMC shall continue to be responsible for performing the obligations under this Agreement until such time as the Assignment and Assumption Agreement is recorded as set forth in Section 11.2. The City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to CPMC's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between CPMC and the Transferee, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to complete a Mitigation Measure may, if not completed, delay or prevent a different party's ability to start or complete a specific building or improvement under this Agreement if and to the extent the completion of the Mitigation Measure is a condition to the other party's right to proceed as specifically described in the Mitigation Measure, and CPMC and all Transferees assume this risk. Accordingly, in some circumstances the City may withhold Subsequent Approvals based upon the acts or omissions of a different party.

11.5 Constructive Notice. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Sites is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Sites. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project Sites and undertakes any development activities at the Project Sites, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project Sites.

11.6 Rights of CPMC. The provisions in this Section 11 shall not be deemed to prohibit or otherwise restrict CPMC from (i) granting easements or licenses to facilitate development of the Project Sites, (ii) encumbering the Project Sites or any portion of the improvements thereon

by any mortgage, deed of trust, or other device securing financing with respect to the Project Sites or Project, (iii) granting a leasehold interest in portions of the Project Sites, (iv) entering into a joint venture agreement or similar partnership agreement to fulfill its obligations under this Agreement, or (v) transferring all or a portion of the Project Site pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a mortgage.

11.7 Transfer and the St. Luke's Campus Hospital Opening Deadline. If CPMC transfers the St. Luke's Campus and the Transferee that owns the St. Luke's Campus Defaults as to the St. Luke's Campus Hospital Opening Deadline for any reason (other than a City Default), including but not limited to bankruptcy, then CPMC as owner of the Cathedral Hill Hospital Site, or any successor owner of the Cathedral Hill Hospital Site, will be responsible for payment of the applicable liquidated damages set forth in Section 9.4.4(a) or (b), if and when such payments become due and owing, or otherwise causing compliance with such obligations. The provisions of this Section 11.7 shall survive the termination or expiration of this Agreement for the period during which the St. Luke's Campus Hospital Opening Obligation remains in effect and shall continue until the date that any required payments that arise before such date are made.

12. CPMC REPRESENTATIONS AND WARRANTIES

12.1 Interest of CPMC; Due Organization and Standing. CPMC represents that it is the legal owner of the Project Sites. CPMC is a California corporation, duly organized and validly existing and in good standing under the laws of the State of California. CPMC has all requisite power to own its property and authority to conduct its business as presently conducted. CPMC represents and warrants that there is no existing lien or encumbrance recorded against the Cathedral Hill Campus or the St. Luke's Campus that, upon foreclosure or the exercise of remedies, would permit the beneficiary of the lien or encumbrance to eliminate or wipe out the obligations set forth in this Agreement that run with applicable land.

12.2 No Inability to Perform; Valid Execution. CPMC represents and warrants that it is not a party to any other agreement that would conflict with CPMC's obligations under this Agreement and it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by CPMC have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of CPMC, enforceable against CPMC in accordance with its terms.

12.3 Conflict of Interest. Through its execution of this Agreement, CPMC acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

12.4 Notification of Limitations on Contributions. Through execution of this Agreement, CPMC acknowledges that it is familiar with Section 1.126 of City's 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 the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

12.5 Other Documents. To the current, actual knowledge of Warren Browner, M.D., after reasonable inquiry, no document furnished by CPMC to the City with its application for this Agreement nor this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein, or herein, not misleading under the circumstances under which any such statement shall have been made.

12.6 No Bankruptcy. CPMC represents and warrants to the City that CPMC has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of CPMC's knowledge, no such filing is threatened.

13. MISCELLANEOUS PROVISIONS

13.1 Entire Agreement. This Agreement, including the preamble paragraph, Recitals and Exhibits, and the agreements specifically referenced in this Agreement, constitutes the entire agreement between the Parties with respect to the subject matter contained herein.

13.2 Incorporation of Exhibits. Except for the Approvals which are listed solely for the convenience of the Parties, each Exhibit to this Agreement is incorporated herein and made a part hereof as if set forth in full. Each reference to an Exhibit in this Agreement shall mean that Exhibit as it may be updated or amended from time to time in accordance with the terms of this Agreement.

13.3 Binding Covenants; Run With the Land. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Section 11, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Sites, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the provisions on Transfers set forth in Section 11, all provisions of this Agreement shall be enforceable during the term hereof as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable Law, including but not limited to California Civil Code Section 1468.

13.4 Applicable Law and Venue. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and the City and County of San Francisco shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

13.5 Construction of Agreement. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and CPMC. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or any of the Approvals shall be deemed to refer to this Agreement or the Approvals as amended from time to time pursuant to the provisions of this Agreement, whether or not the particular reference refers to such possible amendment. In the event of a conflict between the provisions of this Agreement and Chapter 56, the provisions of this Agreement will govern and control.

13.6 Project Is a Private Undertaking; No Joint Venture or Partnership.

13.6.1 The development proposed to be undertaken by CPMC on the Project Sites is a private development. The City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. CPMC shall exercise full dominion and control over the Project Sites, subject only to the limitations and obligations of CPMC contained in this Agreement.

13.6.2 Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and CPMC. Neither Party is acting as the agent of the other Party in any respect hereunder. CPMC is not a state or governmental actor with respect to any activity conducted by CPMC hereunder.

13.7 Recordation. Pursuant to the Development Agreement Statute and Chapter 56, the Clerk of the Board of Supervisors shall have a copy of this Agreement recorded in the Official Records within ten (10) days after the Effective Date of this Agreement or any amendment thereto, with costs to be borne by CPMC.

13.8 Obligations Not Dischargeable in Bankruptcy. CPMC's obligations under this Agreement are not dischargeable in bankruptcy.

13.9 Survival. Subject to the provisions of Section 10.4, following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

13.10 Signature in Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

13.11 Notices. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate/Finance

To CPMC:

Warren Browner, M.D.
CEO, San Francisco Hospitals
West Bay Region, Sutter Health
2351 Clay Street, 7th Floor
San Francisco, CA 94115

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

13.12 Limitations on Actions. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board of Supervisors shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

13.13 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

13.14 MacBride Principles. The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. CPMC acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

13.15 Tropical Hardwood and Virgin Redwood. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

13.16 Sunshine. CPMC understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code Section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that CPMC in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other Laws, CPMC shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from CPMC. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify CPMC of that conclusion and that the information will be released by a specified date in order to provide CPMC an opportunity to obtain a court order prohibiting disclosure.

13.17 Waiver of Personal Liability.

13.17.1 Non-Liability of City Officials and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, commissioner, officer, employee, official or agent of City or other City Parties shall be personally liable to CPMC,

its successors and assigns, in the event of any default by City, or for any amount which may become due to CPMC, its successors and assigns, under this Agreement.

13.17.2 Non-Liability of CPMC Officers and Others. Notwithstanding anything to the contrary in this Agreement, no individual board member, director, officer, employee, official, partner, employee or agent of CPMC or any Affiliate of CPMC shall be personally liable to City, its successors and assigns, in the event of any default by CPMC, or for any amount which may become due to City, its successors and assign, under this Agreement.

[signatures follow on next page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY:

Approved as to form:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

DENNIS J. HERRERA, City Attorney

By: _____
John Rahaim
Director of Planning

By: _____
Charles Sullivan, Deputy City Attorney

Approved on _____
Board of Supervisors Ordinance No. _____

Approved and Agreed:

By: _____
Naomi Kelly, City Administrator

By: _____
Mohammad Nuru,
Director of Public Works

By: _____
Barbara A. Garcia, MPA,
Director of Public Health

CPMC:

SUTTER WEST BAY HOSPITALS,
a California non-profit public benefit
corporation

By: _____
Mike Cohill, its President

By: _____
John Gates, its Chief Financial Officer

Approved as to form:

By: _____
Michael Duncheon, its Regional
Counsel, Office of the
General Counsel

**CONSENT TO DEVELOPMENT AGREEMENT
San Francisco Municipal Transportation Agency**

The Municipal Transportation Agency of the City and County of San Francisco ("SFMTA") has reviewed the Development Agreement (the "**Development Agreement**") between the City and SUTTER WEST BAY HOSPITALS, a California non-profit public benefit corporation doing business as California Pacific Medical Center ("CPMC") to which this Consent to Development Agreement (this "**SFMTA Consent**") is attached and incorporated. Except as otherwise defined in this SFMTA Consent, initially capitalized terms have the meanings given in the Development Agreement.

By executing this SFMTA Consent, the undersigned confirms that the SFMTA Board of Directors, after considering at a duly noticed public hearing the CEQA Findings, including the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program contained or referenced therein, consented to and agrees to be bound by the Development Agreement as it relates to matters under SFMTA jurisdiction, including the Transportation Program and the transportation-related Mitigation Measures.

By executing this SFMTA Consent, the SFMTA does not intend to in any way limit, waive or delegate the exclusive authority of the SFMTA as set forth in Article VIIIA of the City's Charter.

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through the
SAN FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY

By: _____
EDWARD D. REISKIN,
Director of Transportation

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

By: _____
Deputy City Attorney

San Francisco Municipal Transportation Agency Board of Directors

Resolution No: _____

Adopted: _____

Attest: _____

Secretary, SFMTA Board of Directors

EXHIBIT K

Transportation Program

The Transportation Program includes payments to the San Francisco Municipal Transportation Agency ("SFMTA") to: (1) contribute to the cost of construction of the Proposed Van Ness and Geary Bus Rapid Transit improvements; (2) to address transit delay impacts on MUNI of the new Cathedral Hill campus; and (3) support SFMTA's bicycle circulation studies, as described below. All initially capitalized terms have the meaning given in the Definitions section of the Agreement unless otherwise defined in this Exhibit K.

1. BRT Contribution

- a. CPMC will pay Five Million Dollars (\$5,000,000) to SFMTA to contribute to the cost of construction of the proposed Van Ness Avenue Bus Rapid Transit and the Geary Corridor Bus Rapid Transit improvements to be located adjacent to the New Cathedral Hill Campus (collectively, the "BRT"). The Five Million Dollar (\$5,000,000) BRT contribution will be paid in accordance with Exhibit N (Payment Schedule).
- b. SFMTA shall use the BRT contributions for hard or soft costs of planning, administration and construction associated with the BRT improvements to be constructed or installed in the Geary/Van Ness public rights of ways adjacent to the Cathedral Hill Campus. CPMC shall have no obligation for BRT costs above the BRT contribution set forth above. The City shall be responsible for all costs associated with the BRT improvements undertaken by the City that exceed this contribution, provided that City shall have no obligation to construct any specific BRT improvements or to spend any City funds thereon beyond the BRT contributions made by CPMC.
- c. SFMTA shall have the right, in its sole discretion, to determine how and where to apply the BRT contribution, with the only restriction being that SFMTA must use the funds for BRT purposes as set forth above. CPMC shall have no right to challenge the appropriateness or the amount of any expenditure, so long as it is used for BRT purposes as set forth above.

2. SFMTA Fee

- a. CPMC will pay a fee to the SFMTA (the "SFMTA Fee") as set forth in this section, in addition to any parking fees, charges, taxes or assessments levied on vehicles or their owners parking in the Cathedral Hill Campus Hospital and Cathedral Hill Campus MOB garages that CPMC will be required to collect on behalf of the City. The SFMTA Fee will be Fifty Cents (\$0.50) for each vehicle entry and each vehicle exit during off-peak hours, and Seventy-Five Cents (\$0.75) for each vehicle entry and each vehicle exit during peak hours. The SFMTA Fee, whether or not passed on by CPMC to vehicle operators, will not be considered "rent" under Section 601 of the

San Francisco Business and Tax Revenue Code, and shall not be subject to tax. Peak hours shall be weekdays between 7:00 am and 9:00 am and between 4:00 pm and 6:00 pm. The SFMTA Fee program shall be effective for each new garage at the Cathedral Hill Campus Hospital and Cathedral Hill Campus MOB on the date of opening of that garage for public use and operations and continue for 10 years thereafter. Accordingly, the 10-year expiration date shall be different for each garage (assuming that they each open on different dates). The SFMTA Fee shall not apply to deliveries and short term drop-offs, turn-arounds and others provided with a short courtesy entry and exit, but it shall apply to any free parking offered to CPMC employees, contractors or agents.

- b. The SFMTA Fee (per vehicle entry and exit) shall increase by six percent (6%) on the second anniversary of the opening of each respective garage for public use and operations, and again by six percent (6%) on each second anniversary thereafter, for so long as the SFMTA Fee is payable.
- c. Within fifteen (15) days following the end of each calendar month in which the SFMTA Fee applies, CPMC shall send to SFMTA a statement (the "**Parking Fee Statement**") of the total number of cars entering and exiting the garages, the times of entry and exit (expressed as a total number of vehicles each day that entered and exited during peak hours and off-peak hours), and the total SFMTA Fee for the preceding calendar month, together with payment of the applicable SFMTA Fee payment. The Parking Fee Statement and SFMTA Fee payments shall go to: Director of Finance, San Francisco Municipal Transportation Agency, One South Van Ness Avenue, 8th Floor, San Francisco, California 94103.
- d. SFMTA shall have the right to use the SFMTA Fee for any purpose consistent with SFMTA's enterprise.
- e. The parties agree to meet and confer, and to cooperate and act in good faith to implement the SFMTA Fee program as described above and to ensure that the appropriate fee amounts are being collected at all times and paid to SFMTA. If necessary, as part of such implementation, SFMTA may require additional reasonable procedures to monitor the collection and payment of the correct fee amounts. CPMC shall require any third party garage operator to maintain appropriate records with respect to the same.
- f. CPMC shall maintain books and records for the SFMTA Fee in an accurate manner according to generally accepted accounting principles consistently applied, to allow a proper determination of SFMTA Fee due from CPMC each month. CPMC shall maintain all such books and records for a period of not less than 4 years from the end of each calendar year.
- g. CPMC agrees to make its parking garage operation books and records available to City, or to any auditor or representative designated by City, upon no less than ten (10) days prior written notice to CPMC, for the purpose of examining the books and

records to determine the accuracy of CPMC's reporting of the SFMTA Fee. CPMC shall cooperate with the City's auditor during the course of any audit. Any such audit may be conducted, at City's cost, by the City Controller or his or her designee or by an independent accounting firm selected by City. During any such audit, the City and its auditor shall not disrupt CPMC's operations in the garages.

3. Transit Fee

For the Near Term Projects, CPMC will pay a transit impact fee to SFMTA in the total amount of Six Million Five Hundred Thousand Dollars (\$6,500,000) ("**Transit Fee**"). The Transit Fee shall be paid in accordance with Exhibit N (Payment Schedule).

For the Long Term Projects, to the extent CPMC is subject to and not otherwise exempt from transit-related Impact Fees and Exactions in effect at the time of assessment, any grandfathering exemption arising because of an earlier filed application for environmental evaluation or preliminary project assessment shall not be considered to apply to a Long Term Project. CPMC shall pay all such transit-related Impact Fees and Exactions.

The Transit Fee is intended to compensate the SFMTA for the cost of providing services needed to mitigate transit delay impacts on MUNI buses associated with the demand generated by the Project as identified in the FEIR. The Transit Fee, and any transit-related Impact Fee and Exaction, are not tied to any particular service or improvement, and CPMC shall have no right to assert or insist upon their use by SFMTA in any particular manner.

4. Bicycle Studies

CPMC shall pay to SFMTA the total sum of Four Hundred Thousand Dollars (\$400,000) within thirty (30) days after the Effective Date (the "**Bicycle Studies Contribution**").

SFMTA shall use the Bicycle Studies Contribution, in its discretion, to:

- a. Develop preferred bicycle routes between the CPMC campuses, recommend improvements, and to the extent possible improve the quality of existing bicycle facilities;
- b. Develop design alternatives for improved bicycle facilities on Polk Street, in the vicinity of the new Cathedral Hill Campus;
- c. Develop traffic calming proposals along the 'Wiggle' (i.e., the approximately one-mile zig-zagging bicycle route from Market Street to Golden Gate Park that minimizes hilly inclines) to encourage the safe co-existence of people walking and riding bicycles; and
- d. Design traffic calming improvements along 26th Street between Valencia Street and Potrero Avenue to discourage spillover traffic from Cesar Chavez Street and to provide an alternative to Cesar Chavez Street for people walking and riding bicycles.

5. **Annual Transportation Surveys.** CPMC shall implement the Transportation Demand Management Plans dated March 24, 2011, as amended dated April 1, 2013 (each a "TDMP") for each of the St. Luke's, Cathedral Hill, Pacific and Davies Campuses, respectively. CPMC shall conduct, or shall have conducted, at no cost to the City, annual employee surveys and tri-annual surveys for employees/patients/visitors, each as described in the TDMP, to assess the implementation of each TDMP. The survey shall commence within one (1) year following: the Opening of the St. Luke's Campus Hospital for the St. Luke's Campus; the Opening of the Cathedral Hill Campus Hospital for the Cathedral Hill and Pacific Campus; and the opening of the Neurosciences Institute Building for the Davies Campus, respectively. Once started, the surveys shall continue for a total of 10 years. As part of the Compliance Statement submitted by CPMC, CPMC shall provide the results of each survey most recently completed prior to the submission of the Compliance Statement. Each survey shall be completed within ninety (90) days following the end of the applicable one (1) year period. CPMC will share the results of these surveys with the Planning Department and SFMTA promptly following completion.

If any two (2) consecutive surveys show that an applicable target single occupancy vehicle percentage (the "**SOV Percentage**") is not being attained, CPMC shall consult with Planning Director and the SFMTA Director of Transportation to identify feasible measures that can reasonably be implemented by CPMC to reduce the SOV Percentage. The applicable target reduction of single occupancy vehicles is 15 percent in the aggregate system-wide as described in the TDMP.

6. **Additional Transportation Studies for Cathedral Hill.** CPMC shall fund the cost of additional transportation studies up to \$40,000 (in FY 2013 dollars adjusted by the Consumer Price Index for Urban Wage Earners for the San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics, "**CPI**") (the "**Cost Cap**"), for the operation of the intersections and for operational characteristics of the Cathedral Hill Campus in its immediate vicinity as determined by the SFMTA to assist the City in monitoring future congestion and effects of CPMC's Cathedral Hill projects on the City's transportation network. The SFMTA may request such funding up to 3 times, each subject to the Cost Cap, provided it shall not first request such funding until at least 3 years after the new hospital at Cathedral Hill is opened and not more frequently than every 3 years thereafter. If it is determined that area congestion exceeds currently projected levels or that the transportation-related operational characteristics (e.g., freight loading, parking garage access, passenger loading, etc.) of the Cathedral Hill Campus adversely affect the network, CPMC will consult with the SFMTA to determine if there are additional feasible transportation demand management measures or other measures that might reasonably be implemented by CPMC, at no cost to the City, to reduce its contribution to transportation congestion in the area.

7. Additional Funds for Transportation Demand Management at Cathedral Hill. If any of the scheduled transportation surveys for Cathedral Hill employees, patients and visitors show in the aggregate that the Drive Alone mode split percentages for daily use exceed those shown in Table 30 of the CPMC LRDP Transportation Impact Study (June 2010), then CPMC shall pay to SFMTA \$75,000 (in FY 2013 dollars adjusted by CPI) within 60 days following the completion of the survey. These funds will be used by SFMTA solely for transportation demand management or transportation improvements related to the Cathedral Hill Campus traffic area as determined by SFMTA, which uses may include, but are not limited to, additional employer and visitor social marketing or any parking management program.

8. Clipper Cards.

- a. CPMC shall set up a master account for all employees with the Clipper Card Program or similar/successor electronic debit and transfer mechanism.
- b. CPMC shall encourage all employees (new and existing) to enroll and purchase a Clipper Card as a part of its Transportation Demand Management (TDM) plan. As part of its normal TDM activities, CPMC shall promote the use of the subsidy described in Section 8.c below by (1) including this subsidy information in new hire packets and orientation, in transportation services newsletters, on a TDM communication board in each Campus cafeteria, and on the TDM page on CPMC's intranet, (2) promoting the subsidy at the annual transportation fairs held at each Campus, and (3) undertaking additional outreach as necessary to drive up adoption and achieve the SOV reduction goals.
- c. CPMC shall share the cost equally between employer and employee of a monthly Fast Pass or Clipper Card (or any successor transit card issued or approved by SFMTA) that an employee buys through CPMC's automatic payroll deduction program, up to the value of an adult Fast Pass (currently \$64), as such amount changes from time to time. CPMC shall have no responsibility to contribute to or to share the costs of a Clipper Card (or other successor transit card) to the extent such costs exceed the value of a Fast Pass.
- d. CPMC shall make good faith efforts to include an "opt-out" provision for Clipper Cards in future labor contracts.

9. Cathedral Hill Campus Garages. CPMC's Cathedral Hill Campus garages shall be available only to visitors, employees and staff of the Campus after 7 p.m.

10. Board Authorization and Appropriation.

By approving the Agreement, including this Exhibit, the Board of Supervisors authorizes SFMTA to accept the funds paid by CPMC as set forth in this Exhibit, to maintain separate interest bearing accounts or subaccounts as contemplated in this Exhibit, and to appropriate the funds, including interest and earnings, for purposes described in this Exhibit for the term

of the Agreement. Any interest earned on the accounts or subaccounts created under the terms of this Exhibit shall remain in the designated accounts or subaccounts for use consistent with the identified purpose and shall not be transferred to the City's General Fund for other purposes.

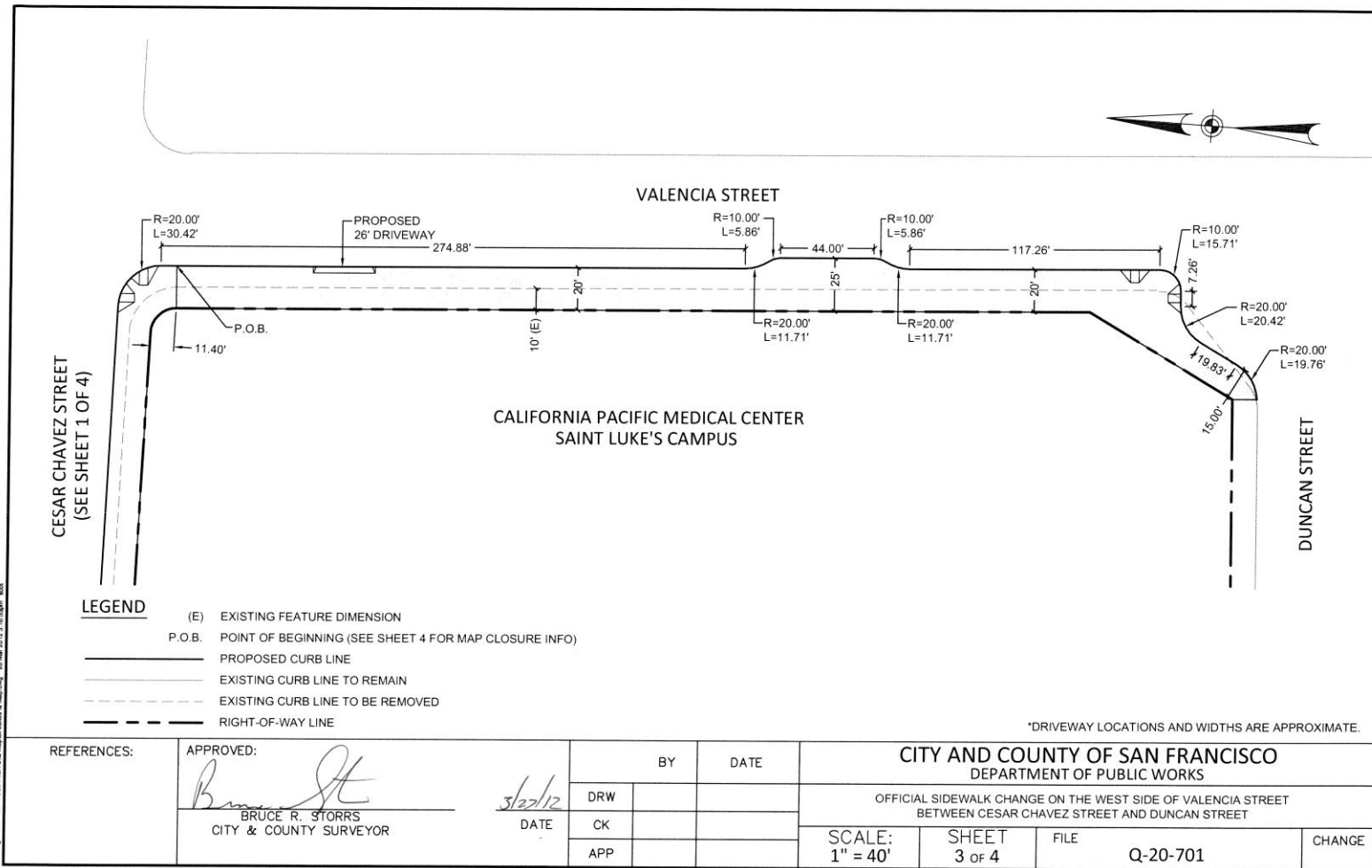


Diagram of the proposed sidewalk widening on the west side of Valencia Street between south side of Cesar Chavez Street and Duncan Street, between Guerrero Street and Valencia St., adjacent to the existing California Pacific Medical Center (CPMC) St. Luke's Campus