

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is made and entered into as of February 15, 2020, between the San Bernardino County Federally Qualified Health Center (“FQHC” or “Institution”) located at 150 E. Holt Blvd, Ontario, CA 91761 (hereinafter referred to as “FQHC”, and Montclair Hospital Medical Center (“Hospital” or “Institution”), a hospital licensed under the laws of the State of California.

Recitals

A. Hospital is a licensed acute care hospital located at 5000 San Bernardino Street, Montclair, CA 91763

B. FQHC are Federally Qualified Health Centers as recognized and designated by the US Department of Health and Human Services’ Health Resources and Services Administration (HRSA) Bureau of Primary Health Care,

C. HRSA requires FQHCs to enter into arrangements with hospitals to firmly establish the procedures for Emergency Department (ED) visits or hospital admission of FQHC patients, including discharge planning and patient tracking, for FQHC patients receiving treatment at such hospitals, for the purpose of FQHC patient continuity of care. This includes hospital admission paperwork, copy of any discharge summaries, operative notes, medications, referrals and any information related to follow-up care. For obstetric patients copies of labor and delivery notes, newborn statistics (length, weight, Apgar scores), any Neonatal Intensive Care Unit (NICO) service delivery information.

D. Hospital will follow Maternal Fetal Transport Agreement by and between Pomona Valley Medical Center executed in October 2019 and Maternal and Neonatal Patient Transfer and Regional Cooperation Agreement by and between University of California Irvine and Montclair Hospital Medical Center executed in December 2019.

Agreement

NOW, THEREFORE, the parties agree as follows:

1. **Purpose of MOU.** Each Institution agrees on the terms and conditions of this MOU to collaborate and cooperate with the other in order to coordinate care for FQHC patients who receive treatment at Hospital. Nothing herein shall be interpreted to create an exclusive relationship between the Institutions. Each Institution shall be free to enter into memoranda of understanding and/or MOUs with other entities. FQHC makes no warranty and is under no obligation to refer patients to Hospital for care.

2. **To Designated Representative.** Each Institution hereby designates a representative (each a “Designated Representative”) to whom all information under this MOU shall be sent and who shall be designated by such Institution to have responsibility to distribute such information to the appropriate employees or other representatives of such Institution for review, action and/or decision. The Designated Representative of each Institution as of the date of this MOU is identified on **Exhibit A** to this MOU. Each Institution may at any time change its Designated Representative by a notice in writing delivered to the other Institution.

3. **Transitional Care Planning.**

(a) Hospital agrees that when an FQHC patient visits Hospital's ED or is admitted to the Hospital and is identified as an FQHC patient, Hospital agrees to notify the Designated Representative of FQHC of such ED visit or admission (each, an "Admission Notice"). Such ED visit or Admission Notice shall be given in writing and no later than 48 business hours after ED visit or Hospital admission. The hospital's ED will contact the FQHC within 24 business hours of ED visit so the Health Center staff can contact the patient and schedule a follow-up visit."

(b) Each ED visit or Admission Notice shall include: date of admission, diagnosis (es) and location of patient.

(c) Following each ED visit or Admission Notice, each Institution agrees to use good faith efforts to collaborate with the other by exchanging information about the FQHC patient for the purpose of providing a smooth transition for the FQHC patient following his or her ED visit or discharge from Hospital in order to assist each Institution to provide care for the FQHC patient consistent with such FQHC patient's prior medical background and history.

(d) Upon ED visit or discharge by Hospital of any FQHC patient, Hospital agrees to deliver to FQHC a discharge summary which shall include the following information: discharge date, discharge diagnosis (es), summary of ED visit or hospital course, list of current medications, summary of any procedures, including labor and delivery notes, and any other pertinent information that will facilitate continuity of care for the patient, such as laboratory, radiology, or other results.

4. **Billing Arrangements.** All bills incurred with respect to services performed by either Institution for patients pursuant to this MOU shall be collected by the Institution rendering such services directly from the patient, third-party reimbursement source, or other sources normally billed by the Institution.

5. **Parties' Relationship.** Hospital and FQHC shall have exclusive control of the management, assets, and affairs of their respective institutions. Each of the parties hereto shall be responsible only for its own acts and omissions with respect to patient care, and neither party by virtue of this MOU assumes any liability for any debts or obligations of either a financial or a legal nature incurred by the other party to this MOU.

6. **Term.** This MOU shall be effective for the period beginning February 15, 2020, for a term of one year, and thereafter it shall be renewed automatically for four successive periods of one year, unless sooner terminated as herein provided. Notwithstanding the foregoing, this MOU may be terminated at any time by either party for any reason or no reason at all by giving thirty days' prior written notice to the other party of its intention to withdraw from this MOU and by ensuring the continuity of care to patients who already are involved in the transfer process.

7. **Notices.** Any notices permitted or required by this MOU will be deemed made on the day personally delivered in writing or mailed by certified mail, postage prepaid, to the other party at the address set forth below or to such other person and address as either party may designate in writing:

If to FQHC: Department of Public Health
351 N. Mountain View Avenue
San Bernardino, CA 92415
Re: Ontario Health Center

Attn: Jennifer Baptiste-Smith

If to Hospital: Montclair Hospital Medical Center
5000 San Bernardino St.
Montclair, CA 91763
Attn: Gail Aviado

8. **Confidentiality.**

(a) **Facility Information.** Hospital recognizes and acknowledges that, by virtue of entering into this MOU and providing services to FQHC hereunder, Hospital may have access to certain information of FQHC that is confidential and constitutes valuable, special, and unique property of FQHC. Hospital agrees that Hospital will not at any time, either during or subsequent to the term of this MOU, disclose to others, use, copy, or permit to be copied, without FQHC's express prior written consent, except pursuant to Hospital's duties hereunder, any confidential or proprietary information of FQHC, including, but not limited to, information which concerns FQHC's patients, costs, prices, and treatment methods at any time used, developed, or made by FQHC and which is not otherwise available to the public.

FQHC recognizes and acknowledges that, by virtue of entering into this MOU and providing services to Hospital hereunder, FQHC may have access to certain information of Hospital that is confidential and constitutes valuable, special, and unique property of Hospital. FQHC agrees that FQHC will not at any time, either during or subsequent to the term of this MOU, disclose to others, use, copy, or permit to be copied, without Hospital's express prior written consent, except pursuant to FQHC's duties hereunder, any confidential or proprietary information of Hospital including, but not limited to, information which concerns Hospital's patients, costs, prices, and treatment methods at any time used, developed, or made by Hospital and which is not otherwise available to the public.

(b) **Patient Identifying Information.** All medical information and data concerning specific patients (including, but not limited to, the identity of the patients), derived from the business relationship set forth in this MOU, shall be treated and maintained in a confidential manner by the parties to this MOU and their employees and agents and shall not be released, disclosed, or published to any party other than as required or permitted under applicable laws. The parties to this MOU shall comply with all applicable state and federal laws and regulations regarding confidentiality of patient records, including but not limited to the Health Insurance Portability and Accountability Act of 1996 and the Privacy and Security Rules (45 C.F.R. Parts 160 and 164) and the Standards for Electronic Transactions (45 C.F.R. Parts 160 and 162) (collectively, "HIPAA") promulgated or to be promulgated by the Secretary of Health and Human Services, the California Confidentiality of Medical Information Act (CMIA) and any other applicable federal or state law.

(c) **Survival.** The provisions of this paragraph shall survive expiration or other termination of this MOU, regardless of the cause of such termination.

9. **Warranties and Certifications.** Each party represents and warrants to the other party that neither it nor any of its owners officers, directors, managers, or employees are excluded from participation in any federal health care programs, as defined under 42 U.S.C. 1320a-7b (f), or any form of state Medicaid program, and to the party's knowledge, there are no pending or threatened governmental investigations that may lead to such exclusion. Each party agrees to notify the other party of the commencement of any such exclusion or investigation within seven (7) business days of the party first learning of it. Each party shall have the right to immediately terminate this MOU upon learning of any such exclusion or investigation. Each party agrees to notify the other party of the status of any such investigation.

10. **Miscellaneous.**

(a) **Severability.** The invalidity or unenforceability of any provisions of this MOU will not affect the validity or enforceability of any other provision.

(b) **Interpretation.** The headings used herein are for convenience only and do not limit or expand the contents of this MOU.

(c) **No Waiver.** No waiver of a breach of any provision of this MOU will be construed to be a waiver of any other breach of this MOU, whether of a similar or dissimilar nature.

(d) **Survival.** Any provisions of this MOU creating obligations extending beyond the term of this MOU will survive the expiration or termination of this MOU, regardless of the reason for such termination.

(e) **Amendments.** Any amendments to this MOU will be effective only if in writing and signed by the parties hereto.

(f) **Entire MOU.** This MOU constitutes the entire agreement of the parties with respect to the subject matter hereof.

(g) **Assignment.** Neither party may assign its rights or obligations hereunder without the prior written approval of the other; provided, however, that such an assignment may be made to an entity which is directly or indirectly, wholly-owned or controlled by the same entity as the assigning party.

(h) **Changes in Law or Regulation.** In the event that legislation is enacted or regulations are promulgated or a decision of a court or administrative tribunal is rendered which affects or may affect, in the opinion of legal counsel, the legality of this MOU or adversely affect the ability of either party to perform its obligations or receive the benefits intended hereunder, then, within fifteen (15) days following notice, each party will negotiate in good faith an amendment to this MOU, which will carry out the original intention of the parties to the extent possible in light of such legislation, regulation, or decision, and each party will execute such amendment. In the event that the parties cannot reach MOU on the terms and provisions of any such amendment within sixty (60) days following the notice provided in this paragraph, this MOU may be terminated upon not less than thirty (30) days' prior written notice of termination to the nonterminating party.

(i) **Referrals.** Nothing in this MOU shall be construed as an offer or payment by one party to the other party or any affiliate of the other party of any cash or other remuneration, whether directly or indirectly, overtly or covertly, specifically for patient referrals or for recommending or arranging the purchase, lease, or order of any item or service. Any payments made by FQHC to Hospital represent the fair market value of the supplies and/or services to be rendered by Hospital hereunder and are not in any way related to or dependent upon referrals by and between FQHC and Hospital.

(j) **California Law.** This MOU shall be governed in all respects, including validity, interpretation, and effect in accordance with the laws of the State of California.

(k) **No Violation.** Neither party shall be deemed to be in violation of this MOU if it is, or reasonably determines it is, prevented from performing any of its duties or obligations for any reason beyond such party's control, including, without limitation, flood, storm, strikes, acts of God or the public enemy, or statute, ordinance, regulation, rule or action of any applicable governmental entity.

(l) **No Joint Venture.** It is understood and agreed by the parties that nothing contained in this MOU shall be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the parties, or a relationship of landlord and tenant, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this MOU. In no event shall either party be liable for the debts or obligations of the other of them, except as otherwise specifically provided in this MOU.

(m) **Notice of Request for Information.** Each party shall notify the other party within five (5) days of any request by any governmental agency, whether local, state or federal, of any request for information of any kind pertaining to the other party. Said Notice shall be given pursuant to the directions and requirements contained in paragraph 10 of this MOU.

(n) **Non-Discrimination.** Each Institution agrees that it shall not deny service or otherwise discriminate against any patient or potential patient on the basis of age, sex, race, religion, national origin, ancestry, creed, disability or any other basis protected by law.

(o) Insurance and Indemnification

Contractor agrees to and shall comply with the following indemnification and insurance requirements:

1. Indemnification – The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor's indemnification obligation applies to the County's "active" as well

as “passive” negligence but does not apply to the County’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.

2. Additional Insured – All policies, except for the Workers’ Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.1185.
3. Waiver of Subrogation Rights – The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor’s employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.
4. Primary and Non-Contributory – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.
5. Severability of Interests – The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.
6. Proof of Coverage – The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
7. Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A-VII”.
8. Deductibles and Self-Insured Retention – Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to Risk Management.
9. Failure to Procure Coverage – In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is

canceled and not replaced, the County has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

10. Insurance Review – Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County’s risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

11. The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- a. Workers’ Compensation/Employers Liability – A program of Workers’ Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer’s Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this Contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as “employees” under the Labor Code and the requirement for Workers’ Compensation coverage will be waived by the County’s Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

b. Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

1. Premises operations and mobile equipment.
2. Products and completed operations.
3. Broad form property damage (including completed operations).
4. Explosion, collapse and underground hazards.
5. Personal injury.
6. Contractual liability.
7. \$2,000,000 general aggregate limit.

c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one (1) or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits.

or

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits.

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

f. Cyber (internet) and Electronic Data Processing (EDP) Insurance – Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

(p) **Performance Standard.** The performance of the obligations under this MOU shall be conducted with due diligence and in full compliance with the professional standards of practice in the industry and all applicable laws.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the date first above written.

**San Bernardino County
Federally Qualified Health Center
("FQHC")**

**Montclair Hospital Medical Center
("Hospital")**

By: _____

By: _____

Name: Curt Hagman

Name: Gail Aviado, MSN, RN

Title: Chairman, Board of Supervisors

Title: Administrator/Chief Nursing
Officer/Risk Manager

EXHIBIT A

Designated Representatives

Designated Representative for Hospital

Name: Gail Aviado, MSN, RN

Title: Administrator/Chief Nursing Officer/Risk Manager

Address: Montclair Hospital Medical Center

5000 San Bernardino St.

Montclair, CA 91763

Telephone: (909) 625-8192

Emergency

Telephone: (909) 625-8251

E-mail: gaviado@primehealthcare.com

Designated Representative for FQHC

Name: Jennifer Baptiste-Smith

Title: Division Chief

Address: Public Health Administration

351 N. Mountain View Avenue

San Bernardino, CA 92415

Telephone: (909) 387-6215

Emergency

Telephone: (909) 841-5734

E-mail: JBaptiste-Smith@dph.sbcounty.gov