

Agenda Item Number: 6-6-13.12

**SANDOVAL COUNTY
BOARD OF COUNTY COMMISSIONERS**

Date of Commission

Meeting: June 6, 2013

Division / Elected

Office: Office of the County Manager / County Attorney

Staff Contact: Patrick F. Trujillo, County Attorney

Title of Item: Memorandum of Understanding with UNM Sandoval Regional Medical Center Inc., ("SRMC"), Presbyterian Healthcare Services ("PHS") and Sandoval County regarding interpretation of Health Facilities Agreements approved by the Board on September, 17, 2009

Action Requested: Discussion and Motion to Approve MOU with PHS and SRMC Interpreting and Clarifying the Obligations of the Parties under Section 7 (c), "Fixed Distribution Period", of the Health Facilities Agreements Approved by the Board on September 17, 2009

Summary: On September 17, 2009, the Board approved two Health Facilities Agreements, one with PHS and the other with SRMC. The agreements are substantively identical. The purpose of the agreements is to set out a procedure for disbursing mil levy proceeds collected pursuant to the Hospital Funding Act. Section 7(c) of the agreement is entitled "Fixed Distribution Period" and sets out the procedure for distribution of funds collected after the Accumulation Fund is Distributed and before July 1, 2014. The language in this section of the agreements is confusing and has led to the need to clarify the obligations of the parties under the agreements.

The MOU clarifies the language in the original agreements making clear what each hospital will receive during the "Fixed Distribution Period". The MOU does not change the amounts each hospital is to receive under the original agreements; it merely quantifies these amounts and clarifies the distribution procedures for the remainder of the "Fixed Distribution Period".

Staff recommends approval.



Agenda Item Number: 6-6-13.12

Attachments:

1. Proposed MOU between the County, PHS and SRMC
2. Original Agreement between the County and PHS
3. Original Agreement between the County and SRMC

FISCAL IMPACT

None

STAFF ANALYSIS SUMMARY

County Manager:

Recommend Board of County Commission approval. PPR 5/29/2013

**Initiating Elected Official /
Division Director:**

See summary. PFT 5/29/13

Legal:

Recommend Approval PFT 5/29/2013

Finance:

Funding is in place and is ready for disbursement as per MOA- CCH 5/29/2013

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is dated as of the 15th day of April, 2013, by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SANDOVAL, a political subdivision of the State of New Mexico (“County”), PRESBYTERIAN HEALTHCARE SERVICES, a New Mexico non-profit corporation (“PHS”), and UNM SANDOVAL REGIONAL MEDICAL CENTER, INC., a New Mexico nonprofit and University Research Park and Economic Development Act corporation (“SCRMC”).

WHEREAS, PHS and SCRMC each entered into a Health Facilities Contract (“Contract or “Contracts”) with the County, whereby the County agreed to levy and collect Mill Levy Proceeds for distribution to Contracted Hospitals (as defined in such Contracts) in exchange for the performance by PHS and SCRMC of certain obligations, all in accordance with the Contracts; and

WHEREAS, the Contracts contain identical definitions and provisions for the distribution of such Mill Levy Proceeds; and

WHEREAS, PHS became a Contracted Hospital on October 17, 2010, and SCRMC became a Contracted Hospital on August 16, 2012; and

WHEREAS, a question has arisen regarding the distribution of Mill Levy Proceeds collected during the Fixed Distribution Period, as that term is defined in the Contracts, due to an ambiguity in the mechanics of distribution caused by the application of the distribution methodology set forth in the Contracts to the collection processes and procedures of the County and the County’s inability to distribute moneys prior to collection; and

WHEREAS, the parties to the Contracts and this MOU desire to clarify the Contracts and agree on the mechanics for distributing the Mill Levy Proceeds collected during the Fixed Distribution Period to each Contracted Hospital;

NOW, THEREFORE, the parties hereto agree as follows:

1. Unless otherwise defined in this MOU, the capitalized terms used herein shall have the meanings set forth in the Contracts.
2. The Fixed Distribution Period under the Contracts commenced on October 17, 2010.
3. PHS is entitled to receive 100% of the Mill Levy Proceeds collected by the County from the commencement of the Fixed Distribution Period through the end of the County fiscal year ending June 30, 2012.
4. In accordance with the terms of the Contracts, and subject to the provisions of paragraph 5, below, for the County fiscal year ending June 30, 2013, each party is entitled to receive the following percentage of all Mill Levy Proceeds collected during the fiscal year:
 - (a) PHS is entitled to receive 100% of the Mill Levy Proceeds from July 1, 2012 through August 15, 2012, i.e., the amount derived by multiplying the total Mill Levy Proceeds collected by the County for the fiscal year by the fraction of 1.5/12.
 - (b) Including and after August 16, 2012, SCRMC is entitled to receive 60% of the total Mill Levy Proceeds collected for the fiscal year, i.e., 60% of the amount derived by multiplying the total Mill Levy Proceeds collected by the County for the fiscal year by the fraction of 10.5/12.
 - (c) Including and after August 16, 2012, PHS is entitled to receive 40% of the total Mill Levy Proceeds collected for the fiscal year, i.e., 40% of the amount derived by multiplying the total Mill Levy Proceeds collected by the County for the fiscal year by the fraction of 10.5/12.
 - (d) Each party's entitlement to the percentage of Mill Levy Proceeds set forth in subparagraphs 4(b) and 4(c), above, is dependent on each Contracted Hospital continuing to meet the obligations set forth in its Contract that entitle it to that percentage of proceeds. In the event either Contracted Hospital fails to meet such obligations, the percentage of Mill Levy Proceeds to which the parties are entitled shall be adjusted accordingly.

5. Because Mill Levy Proceeds are not collected throughout the year on a consistent basis, the Mill Levy Proceeds collected by the County for the fiscal years ending June 30, 2012 and 2013 shall be distributed by the County as follows:

(a) Within 21 days following the execution of this Agreement by all parties, the County shall distribute to PHS the sum of \$13,310,558.28, which sum represents 100% of all Mill Levy Proceeds collected during the fiscal year ending June 30, 2012 not previously distributed to PHS.

(b) Within 21 days following the execution of this Agreement by all parties, the County shall also distribute to PHS from the Mill Levy Proceeds previously collected during the fiscal year commencing on July 1, 2012, the sum of \$5,107,879.26, which sum represents the parties' best estimate of the amount to which PHS will ultimately be entitled under paragraph 4(a) and (c), above, for the period from July 1, 2012 through April 30, 2013.

(c) Within 21 days following the execution of this Agreement by all parties, the County shall distribute to SCRMC from the Mill Levy Proceeds previously collected during the fiscal year commencing on July 1, 2012, the sum of \$5,130,569.38, which sum represents the parties' best estimate of the amount to which SCRMC will ultimately be entitled under paragraph 4(a) and (c), above for the period from August 16, 2012 through April 30, 2013.

(d) On or before June 22, 2013, the County shall distribute all remaining Mill Levy Proceeds collected through May 30, 2013, 60% to SCRMC and 40% to PHS. Thereafter, and subject to the remaining terms and conditions of each party's Contract, the County shall distribute the Mill Levy Proceeds collected in each month through the fiscal year ending June 30, 2013, 60% to SCRMC and 40% to PHS on or before the 22nd day of the month following the month in which such Proceeds are collected.

(e) On or before July 31, 2013, PHS and SCRMC shall reconcile the amount of Mill Levy Proceeds actually paid to each party under this paragraph 5 with the amounts to which each

party is entitled under paragraph 4 of this MOU. If either party received funds in excess of the amount due under paragraph 4, that party shall pay such excess amount to the other party so that each party's ultimate receipt of Mill Levy Proceeds matches those amounts set forth in paragraph 4 of this MOU. Each of PHS and SCRMC agree that the County shall have no liability whatsoever for reconciling amounts due from one to the other under this subparagraph (d) and the County shall have no liability for other payments set forth in this paragraph 5 provided that the County makes the payments as specified herein. No interest or other amounts shall be due or assessed on the amount payable under this subparagraph.

6. Mill Levy Proceeds collected by the County for the fiscal year ending June 30, 2014, shall be distributed monthly on an "as collected" basis, i.e., the Proceeds collected in each month shall be distributed by the 22nd day of the following month, in accordance with the percentages specified in the Contracts.

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7. Nothing in this MOU is intended to substantively modify or change any provision of the Contracts with the exception of the clarification above and the specification of the mechanics for distributing the Mill Levy Proceeds during the Fixed Distribution Period as set forth above.

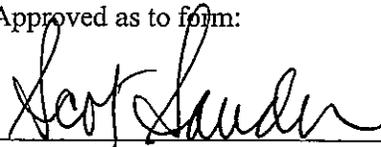
PRESBYTERIAN HEALTHCARE SERVICES

By:  _____

UNM SANDOVAL REGIONAL MEDICAL CENTER,
INC.

By:  for Kevin Rogols VP Finance
Kevin Rogols, FACHE
Title: President and Chief Executive Officer
Date: 5/21/13

Approved as to form:

 _____

Scot Sauder, Esq.
Senior Associate University Counsel
Health Law Section
Office of University Counsel, University of
New Mexico

County:

CHAIRMAN, BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY OF
SANDOVAL, NEW MEXICO

Date: _____

By: _____

Title: _____

Approved as to Form:

By: _____
County Attorney

Presbyterian Health Inc.

2009028090 09/24/2009 11:12:15 AM B: 412 P: 28090

AGREEMENT Pg. 1 of 14

Sally S. Padilla, Sandoval County Clerk



SANDOVAL COUNTY HEALTH FACILITIES AGREEMENT

THIS HEALTH FACILITIES AGREEMENT (this "Agreement"), is made by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SANDOVAL, a political subdivision of the State of New Mexico (the "County"), and PRESBYTERIAN HEALTHCARE SERVICES, a New Mexico non-profit corporation ("PHS").

RECITALS:

WHEREAS, PHS has commenced the construction of and intends to operate a community-based hospital (the "Hospital") in Rio Rancho, Sandoval County, New Mexico, for the purpose of providing health care services to all residents of Sandoval County, New Mexico, as contemplated in N.M. STAT. ANN. §§ 4-48B-3G and 4-48B-12 (1978) (the "Hospital Funding Act");

WHEREAS, pursuant to Section 4-48B-12 of the Hospital Funding Act, the County levied a Mill Levy to pay to contracting hospitals in accordance with a health care facilities contract described in Section 4-48B-3G of the Hospital Funding Act (the "Mill Levy") and, consistent with the requirements of Section 4-48B-15 of the Hospital Funding Act, the voters of Sandoval County voted to approve the Mill Levy;

WHEREAS, subject to and on the terms and conditions set forth in this Agreement, the County and PHS desire to enter to a health care facilities contract as contemplated in Section 4-48B-3G of the Hospital Funding Act and to set forth the terms and conditions for distribution of the proceeds of the Mill Levy (the "Mill Levy Proceeds") to PHS pursuant to this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. **Definitions.** For the purpose of this Agreement, unless otherwise required by their context, the following terms shall have the meanings assigned thereto below.

(a) "Accumulation Fund" means the amount of Mill Levy Proceeds collected by the County during the Accumulation Period. Because Mill Levy Proceeds are not collected through-

out the year on a consistent basis, for purposes of this Agreement, the amount of Mill Levy Proceeds collected during the Accumulation Period shall be determined by allocating to each month during such period 1/12 of the annual collection for any given County fiscal year.

(b) "Accumulation Period" means the period of time commencing on the date the Mill Levy is first imposed by the County and ending on the date that a Contracted Hospital first commences operation.

(c) "Contracted Hospital" means a Qualifying Hospital that is party to a Health Facilities Contract with the County.

(d) "County" means Sandoval County, New Mexico.

(e) "Fixed Distribution Period" means the period of time commencing at the expiration of the Accumulation Period and extending through June 30, 2014. Because Mill Levy Proceeds are not collected throughout the year on a consistent basis, for purposes of this Agreement, the amount of Mill Levy Proceeds collected during the Fixed Distribution Period shall be determined by allocating to each month during such period 1/12 of the annual collection for any given County fiscal year.

(f) "Health Facilities Contract" means a contract entered into between the County and a Qualifying Hospital pursuant to and in accordance with the requirements of the Hospital Funding Act, NMSA §§ 4-48-1 et seq.

(g) "Qualifying Hospital" shall mean a hospital located within Sandoval County, New Mexico, which meets definition of a healthcare facility with more than twenty-five (25) beds as set forth in Section 4-48B-3 of the Hospital Funding Act, is licensed as a general acute care hospital by the New Mexico Department of Health, participates in the Medicare and Medicaid programs, has an open medical staff, and offers full acute care services (including emergency department services) to the residents of Sandoval County, New Mexico.

2. Purpose. PHS will operate the Hospital to include medical services typically offered in community hospitals including medical, surgical and emergency services including, without limitation, those services identified in Section 4-48B-3G of the Hospital Funding Act.

3. Availability of Services.

(a) The Hospital will undertake to insure that Hospital services are provided to all residents of the County, and such other persons as may require them without regard to race, sex, religion, color, national origin, ancestry, sexual orientation, gender identity, physical or mental handicap or ability to pay for such services.

(b) The Hospital shall at all times maintain a program to provide free care, discounted care or other financial assistance for medically necessary services to persons who qualify for the same whose income is up to two hundred and fifty percent (250%) of the Federal Poverty Guidelines for the 48 Contiguous States and the District of Columbia for the then current calendar year (as published from time to time by the Secretary of the U.S. Department of Health & Human Services) and based on such other financial criteria as may be approved by PHS..

4. Medical Staff. Membership on the Hospital's medical staff shall be open to all physicians who meet Hospital's credentialing and privileging requirements, without regard to the physician's employment or other affiliations. Hospital shall use its best efforts to collaborate with other hospitals and physicians in the County to provide call coverage, including coordinated call, across specialty shortage areas but physicians on the Hospital's medical staff shall not be required to cover the physical location of the other hospital unless such physician is otherwise obligated to take call as a member of that hospital's medical staff.

5. Term. The term of this Agreement shall commence automatically on the date the Hospital is duly licensed by the New Mexico Department of Health to provide the services described in Section 4-48B-3HG of the Hospital Funding Act; provided, however, that in the event the County and its voters

do not continue the Mill Levy beyond the statutory expiration date set forth in the Hospital Funding Act, this Agreement shall automatically terminate on the date the Mill Levy expires (the "Term").

6. Operations of the Hospital. PHS will operate the Hospital in such a manner as to meet or exceed the standards for certification and participation in government programs, including but not limited to Medicare and Medicaid. PHS has the exclusive responsibility, jurisdiction and authority to control and manage the Hospital all in accordance with the terms and conditions of this Agreement. PHS will operate the Hospital in substantial compliance with all applicable laws, rules and regulations of the federal and state governmental authorities having jurisdiction with respect to the Hospital.

7. County Covenant to Provide Revenues.

(a) During the term of this Agreement, and to the extent of its authority, the County will take the steps necessary and required under the Hospital Funding Act, or any successor statute thereto, to continue to impose the Mill Levy, segregate all taxes collected thereunder together with all sums received by it as required by the Hospital Funding Act. Until a Qualifying Hospital commences operations, the County shall accumulate the Mill Levy Proceeds in the Accumulation Fund. The County shall distribute the proceeds of the Mill Levy, and any renewal thereof, commencing as soon as practicable, amongst Hospital and other hospitals in the County which have entered into Health Facilities Contracts with the County in the manner specified herein below, such funds to be used by all hospitals, including Hospital, only for non-sectarian purposes in making available the facilities and services set forth in Section 4-48B-3G of the Hospital Funding Act for the care of the sick of the County.

(b) Distribution of Accumulation Fund. Upon the opening of the first Contracted Hospital to commence operations, the County will distribute fifty percent (50%) of the Accumulation Fund to that Contracted Hospital. The remaining 50% of the Accumulation Fund will be distributed to the second Contracted Hospital to commence operations; provided, however, if the Hospital is not the first Contracted Hospital to commence operations and has not, by the end of

November 2012, made significant progress toward completing construction of a Qualifying Hospital, then the remaining balance of the Mill Levy Proceeds in the Accumulation Fund shall be distributed in such method, timing, and manner to other Contracted Hospitals as the County may determine.

(c) *Fixed Distribution Period.* The County shall distribute the Mill Levy Proceeds collected by the County during the Fixed Distribution Period as follows:

(1) All Mill Levy Proceeds collected during that portion of the Fixed Distribution Period during which only one Contracted Hospital is operating, as determined pursuant to paragraph 1(e), above, shall be distributed monthly as allocated to that Contracted Hospital.

(2) Mill Levy Proceeds collected during that portion of the Fixed Distribution Period commencing after the date on which a second Contracted Hospital commences operations, as determined pursuant to paragraph 1(e), above, shall be distributed as follows:

(i) Twenty percent (20%) of such Mill Levy Proceeds shall be distributed to the University of New Mexico Sandoval County Regional Medical Center (UNMSRMC) in consideration of its operation of an inpatient behavioral health program (consisting of at least eight (8) licensed beds) within Sandoval County in conjunction with the Hospital once such program is in operation; and

(ii) The remaining eighty percent (80%) of such Mill Levy Proceeds (or 100% prior to the date on which the behavioral health program referenced above commences operations) shall be distributed equally to each Contracted Hospitals in consideration of acute care services provided at such hospital; provided that if for a continuous period of more than twelve (12) months, no behavioral health program as described above is being offered by UNMSRMC at the

Hospital, then the moneys allocated for such period of time shall be distributed as provided in this subparagraph (c)(2)(ii).

(d) *Volume-Based Distribution Period.* The County shall distribute the Mill Levy Proceeds collected on and after July 1, 2014 to Contracted Hospitals as follows:

(1) Twenty percent (20%) of such Mill Levy Proceeds shall be distributed to UNMSRMC in consideration of its operation of an inpatient behavioral health program (consisting of at least eight (8) licensed beds) within Sandoval County in conjunction with the Hospital once such program is in operation;

(2) Fifty percent (50%) of the remaining eighty percent (80%) of such Mill Levy Proceeds (or 100% prior to the date on which the behavioral health program referenced above commences operations) shall be distributed among all Contracted Hospitals based on the percentage that the number of emergency room visits to each Contracted Hospital during the preceding County fiscal year bears to the total number of emergency room visits for all Contracted Hospitals in Sandoval County during the preceding County fiscal year; and

(3) Fifty Percent (50%) of the remaining eighty percent (80%) of such Mill Levy Proceeds (or 100% prior to the date on which the behavioral health program referenced above commences operations) shall be distributed among all Contracted Hospitals based on the percentage that the number of inpatient census days for the Hospital during the preceding County fiscal year bears to the total number of inpatient census days for all Contracted Hospitals in Sandoval County during the preceding fiscal year.

(4) If, for a continuous period of more than twelve (12) months on and after July 1, 2014, no behavioral health program as described above is being offered by UNMSRMC within Sandoval County in conjunction with the Hospital, then 100% of the

Mill Levy Proceeds collected during such period of time shall be distributed as provided above in subparagraph (d)(2) and (d)(3).

The amount of distribution to Contracted Hospitals during this Volume-Based Distribution Period shall be determined on an annual basis.

(e) Hospital and the County acknowledge that the County has the right and duty under the Hospital Funding Act annually to determine the amount of the mill levy to be paid based upon the needs of the Hospital and other hospitals that are supported with the Mill Levy Proceeds and the obligations of the County pursuant to existing Health Facilities Contracts.

7. **Review and Inspection of Hospital.** Subject to applicable federal and state laws, rules, and regulations governing privacy, security and confidentiality of patient health information (including, without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Privacy Rule Regulation promulgated thereunder, the New Mexico Mental Health Code, the New Mexico Mental Health Treatment Decisions Act, the New Mexico Children's Code, and the New Mexico Children's Mental Health Treatment Decisions Act), authorized representatives of County shall have the right to inspect the Hospital and PHS' accounts and records pertaining to the Hospital's performance of its obligation to provide the services described in Section 4-48B-3G of the Hospital Funding Act during regular business hours of the Hospital, but not to the extent of any unreasonable interference with PHS' operation or obligations or disclosure of information that is otherwise proprietary or confidential to PHS. The County shall provide PHS with copies of all reports produced as a result of such inspections, unless any such reports are confidential and/or privileged as a result of pending or threatened litigation.

8. **Liability: Insurance.** PHS will be responsible for legal liabilities incurred in connection with the operations of the Hospital. In this connection, PHS will carry or provide for professional and general liability coverage, property and such other coverage as is customary and appropriate for Hospital facilities of similar size offering similar services. PHS at its option may provide the medical malpractice

component of such liability insurance by qualifying under the New Mexico Medical Malpractice Act or such similar programs as may be established under state or federal law.

9. Participation in Government Programs, Certification and Accreditation. The Hospital shall at all times participate in Medicare and Medicaid and other government programs that expand the availability of healthcare. The Hospital shall at all times maintain its certification to participate in such programs.

10. Termination of Agreement.

(a) This Agreement may be terminated by mutual agreement, which must be evidenced by a written agreement executed by all of the parties to this Agreement.

(b) In the event either party materially defaults in the performance of its obligations under this Agreement, and fails to cure such default within 90 days after written notice thereof from the other party (or if the default is such that it cannot be cured within 90 days, has failed to take substantial steps to effect such cure), the non-defaulting party may terminate this Agreement by providing a final notice of termination at least 30 days prior to the date of termination.

(c) Notwithstanding Section 12(b), failure of the County to provide and pay over to PHS the Mill Levy distribution described in Paragraph 7, above, shall result in the automatic termination of this Agreement. In this connection, PHS shall provide the County with 30 days' prior written notice via certified U.S. mail, return receipt requested, thereof to the County and stating the date of termination to the County.

(d) If this Agreement is terminated or terminates as provided in Section 4 of this Agreement, PHS will be relieved of its obligations as described in this Agreement to provide healthcare services to medically indigent residents of Sandoval County. Following any termination, any Mill Levy Proceeds to be imposed and collected as provided herein shall be paid to PHS for that portion of the fiscal year of the County during which this Agreement remained in effect.

11. Community Advisory Board. PHS shall establish a community advisory board for the Hospital to review the operations of the Hospital and provide input on the services and care provided. The County shall have the right to appoint two individuals to serve as members of the advisory board.

12. Miscellaneous.

(a) *No Discrimination.* The Hospital shall not discriminate in employment, granting of medical staff privileges, or availability of Hospital facilities on account of race, age, sex, religion, color, national origin, ancestry, sexual orientation, gender identity, physical or mental handicap, serious medical condition or spousal affiliation.

(b) *Hospital Operation.* PHS takes and assumes all financial and other responsibility for the operating costs of the Hospital. PHS shall be responsible for all losses arising out of the operation of the Hospital and shall receive all excess revenues of the Hospital.

(c) *Entire Agreement.* This Agreement represents the entire understanding between the parties with respect to the subject matter hereof, and supersedes any prior agreements or understandings with respect to the subject matter of this Agreement. No changes, amendments or alterations to this Agreement will be effective unless in writing and signed by duly authorized representatives of the parties to this Agreement. Notwithstanding the foregoing, no change in the provisions of paragraph 7, above, shall be effective unless agreed to in writing by the County and all hospitals who would be affected by such change as Contracted Hospitals.

(d) *Governing Law.* This Agreement will be construed, interpreted, governed and enforced in accordance with the statutes, judicial decisions, and other laws of the State of New Mexico.

(e) *Third Parties.* Except as specifically set forth herein, nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this Agreement.

(f) *Exclusion from Participation in Government Programs.* Each party represents that neither it, nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under this Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. § 1320a-7, and that it, and its employees, and independent contractors who will have any involvement with in the services provided under this Agreement are not otherwise ineligible for participation in federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors who will have any involvement with in the services provided under this Agreement. Each party will notify the other party immediately upon becoming aware of any pending or final action in any of these areas.

(g) *Notices.* Any notice required to be given pursuant to the terms and provisions of this Agreement will be in writing and will be sent by certified mail, return receipt requested, postage prepaid, as follows:

To PHS:
Presbyterian Healthcare Services
Attn: Administrator, Presbyterian Rio Rancho Medical Center
P.O. Box 26666
Albuquerque, NM 87125-6666

With a Copy to:
Presbyterian Healthcare Services
Attn: Legal Services Dept.
P.O. Box 26666
Albuquerque, New Mexico 87125-6666

To County: Sandoval County Commission
c/o Sandoval County Manager
711 Camino Del Pueblo
P.O. Box 40
Bernalillo NM 87004

(h) *Binding Effect.* This Agreement is binding upon, and inures to the benefit of, the parties to this Agreement and their respective successors and assigns.

(i) *Severability.* Except as set forth in such provision, each provision of this Agreement is intended to be severable. If any term or provision of this Agreement will be determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason whatsoever, such provision will be severed from this Agreement and will not affect the validity of the remainder of this Agreement.

(j) *Counterparts.* This Agreement may be executed in one or more exact counterparts, and when so executed by the parties, will be effective in accordance with the terms hereof.

(k) *Remedies; No Waiver.* All rights, powers, and remedies granted to either party by any particular term of this Agreement are in addition to, and not in limitation of, any rights, powers, or remedies which it has under any other term of this Agreement, at common law, in equity, by statute, or otherwise. All such rights, powers and remedies may be exercised separately or concurrently, in such order and as often as may be deemed expedient by either party. No delay or omission by either party to exercise any right, power, or remedy will impair such right, power, or remedy or be construed to be a waiver of or an acquiescence to any breach or default. A waiver by either party of any breach or default hereunder will not constitute a waiver of any subsequent breach or default.

(l) *Assignment.* This Agreement will not be assigned by either party, nor will the duties imposed upon either party by this Agreement be delegated, subcontracted, or transferred by either party, in whole or in part, without the prior written consent of the other party, which consent may not be unreasonably withheld, delayed or conditioned.

(m) *Force Majeure.* The parties shall be excused for failures and delays in the performance of their respective obligations, excluding payment obligations, under this Agreement due

to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, terrorism, riot or insurrection, law or regulation, strike, flood, fire, pandemic health event, public health emergency contemplated under the New Mexico Public Health Emergency Response Act, N.M. STAT. ANN. § 12-10A-1 *et seq.* (1978), explosion or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities. Upon claiming any such excuse or delay for non-performance, such party shall give prompt written notice thereof to the other party, provided that failure to give such notice shall not in any way limit the operation of this provision.

(o) *Participation in Provider Networks.* The County is aware that, in addition to its hospital and other health care operations, PHS operates a health plan and/or managed care plan for third parties (the "PHS Health Plans"). The County intends that all residents of Sandoval County who are members or are otherwise covered by any one or more of the PHS Health Plans should have access to all hospitals within Sandoval County with whom the County has entered into a Health Facilities Contract. Accordingly, in the event that the PHS Health Plans fail to or refuse to permit the UNMSRMC to participate as an in-network provider in the PHS Health Plans and/or the PHS Health Plans fail and refuse to enter into a provider and/or managed care agreement with UNMSRMC on terms mutually acceptable to the PHS Health Plans and UNMSRMC, then the County reserves the right to adjust (and increase) the amount of the Required Mill Levy Distribution described in subsections (b), (c) and (d) of Section 7 payable to UNMSRMC to account for such failure or refusal by the PHS Health Plans. Notwithstanding the foregoing, there shall be no adjustment to the required Mill Levy Distribution described in Section 7 if the failure to permit UNMSRMC to participate as an in-network provider or to enter into a provider and/or managed care agreement with UNMSRMC is due to (i) UNMSRMC's failure or refusal to agree to non-capitated rates in the range generally paid by the PHS Health Plans to non-teaching community hospitals in the central New Mexico four-county area; (ii) UNMSRMC's failure or refusal

to meet the Health Plans' credentialing criteria or to agree to comply with program requirements, such as those related to quality and utilization management, generally applicable to providers in the provider network maintained by UNMSRMC and similar to quality and utilization management program requirements imposed by the PHS Health Plans on hospitals operated by PHS; or (iii) a decision by PHS to no longer affiliate with the PHS Health Plans. The PHS Health Plans may offer products limited to PHS Hospitals if the primary care network for such products is limited to primary care providers employed by PHS or an affiliate of PHS. At the request of an employer who self-insures its employees ("ASO" business), the PHS Health Plans may provide to that employer a network that does not include all hospitals who are otherwise part of the PHS

Health Plans' network, provided that UNMSRMC shall be allowed to participate in such network unless the employer requests otherwise. In the event that such employer requests result in greater than 25% of PHS Health Plans' total ASO membership in the four-county metropolitan area (based on residency zip codes) utilizing a network that excludes UNMSRMC, then the County and the Contracted Hospitals shall reassess the distribution methodology described in Section 7 of this Agreement. In the event of the development of a managed care or other health benefit financing plan by or under the direction or authority of UNMSRMC or the Board of Regents of the University of New Mexico, the requirements under this paragraph shall be reciprocal to such plan with respect to a Contracted Hospital operated by PHS if so requested by PHS.

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

[SIGNATURES ON FOLLOWING PAGE]

County:

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SANDOVAL, NEW MEXICO

Date: 9-17-09

By: [Signature]

Title: Chairman

Approved as to Form:

By: [Signature]
County Attorney

PHS:

PRESBYTERIAN HEALTHCARE SERVICES

Date: 9/22/09

By: [Signature]
James H. Hinton
President and CEO

SANDOVAL COUNTY HEALTH FACILITIES AGREEMENT

THIS HEALTH FACILITIES AGREEMENT (this "Agreement"), is made by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SANDOVAL, a political subdivision of the State of New Mexico (the "County"), and UNM SANDOVAL COUNTY REGIONAL MEDICAL CENTER, INC., a New Mexico non-profit and University Research Park and Economic Development Act corporation ("UNMSRMC").

RECITALS:

WHEREAS, the Regents of the University of New Mexico ("UNM") owns certain real estate at or near the city center in Rio Rancho, Sandoval County, New Mexico, and together with UNMSRMC, have announced their joint intention to take the steps necessary to build and operate a community-based, general teaching hospital (the "Hospital") on the campus of UNM in Rio Rancho, Sandoval County, New Mexico, through a wholly-owned University Research Park and Economic Development Act subsidiary of UNM, UNMSCRC, for the purpose of providing health care services to all residents of Sandoval County, New Mexico, as contemplated in N.M. STAT. ANN. §§ 4-48B-3G and 4-48B-12 (1978) (the "Hospital Funding Act");

WHEREAS, pursuant to Section 4-48B-12 of the Hospital Funding Act, the County levied a Mill Levy to pay to contracting hospitals in accordance with a health care facilities contract described in Section 4-48B-3G of the Hospital Funding Act (the "Mill Levy") and, consistent with the requirements of Section 4-48B-15 of the Hospital Funding Act, the voters of Sandoval County voted to approve the Mill Levy;

WHEREAS, subject to and on the terms and conditions set forth in this Agreement, the County, UNM, and UNMSRMC desire to enter to a health care facilities contract as contemplated in Section 4-48B-3G of the Hospital Funding Act and to set forth the terms and conditions for distribution of the proceeds of the Mill Levy (the "Mill Levy Proceeds") to UNMSRMC pursuant to this Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. **Definitions.** For the purpose of this Agreement, unless otherwise required by their context, the following terms shall have the meanings assigned thereto below.

(a) "Accumulation Fund" means the amount of Mill Levy Proceeds collected by the County during the Accumulation Period. Because Mill Levy Proceeds are not collected throughout the year on a consistent basis, for purposes of this Agreement, the amount of Mill Levy Proceeds collected during the Accumulation Period shall be determined by allocating to each month during such period 1/12 of the annual collection for any given County fiscal year.

(b) "Accumulation Period" means the period of time commencing on the date the Mill Levy is first imposed by the County and ending on the date that a Contracted Hospital first commences operation.

(c) "Contracted Hospital" means a Qualifying Hospital that is party to a Health Facilities Contract with the County.

(d) "County" means Sandoval County, New Mexico.

(e) "Fixed Distribution Period" means the period of time commencing at the expiration of the Accumulation Period and extending through June 30, 2014. Because Mill Levy Proceeds are not collected throughout the year on a consistent basis, for purposes of this Agreement, the amount of Mill Levy Proceeds collected during the Fixed Distribution Period shall be determined by allocating to each month during such period 1/12 of the annual collection for any given County fiscal year.

(f) “Health Facilities Contract” means a contract entered into between the County and a Qualifying Hospital pursuant to and in accordance with the requirements of the Hospital Funding Act, NMSA §§ 4-48-1 et seq.

(g) “Qualifying Hospital” shall mean a hospital located within Sandoval County, New Mexico, which meets definition of a healthcare facility with more than twenty-five (25) beds as set forth in Section 4-48B-3 of the Hospital Funding Act, is licensed as a general acute care hospital by the New Mexico Department of Health, participates in the Medicare and Medicaid programs, has an open medical staff, and offers full acute care services (including emergency department services) to the residents of Sandoval County, New Mexico.

2. **Purpose.** UNMSRMC will undertake to build and operate the Hospital on the campus of UNM in Sandoval County. UNMSRMC will operate the Hospital to include medical services typically offered in community hospitals including medical, surgical and emergency services including, without limitation, those services identified in Section 4-48B-3G of the Hospital Funding Act.

3. **Availability of Services.**

(a) The Hospital will undertake to insure that Hospital services are provided to all residents of the County, and such other persons as may require them without regard to race, sex, religion, color, national origin, ancestry, sexual orientation, gender identity, physical or mental handicap or ability to pay for such services.

(b) The Hospital shall at all times maintain a program to provide free care, discounted care or other financial assistance for medically necessary services to persons who qualify for the same whose income is up to two hundred and fifty percent (250%) of the Federal Poverty Guidelines for the 48 Contiguous States and the District of Columbia for the then current calendar

year (as published from time to time by the Secretary of the U.S. Department of Health & Human Services) and based on such other financial criteria as may be approved by UNMSRMC..

4. **Medical Staff.** Membership on the Hospital's medical staff shall be open to all physicians who meet Hospital's credentialing and privileging requirements, without regard to the physician's employment or other affiliations. Hospital shall use its best efforts to collaborate with other hospitals and physicians in the County to provide call coverage, including coordinated call, across specialty shortage areas but physicians on the Hospital's medical staff shall not be required to cover the physical location of the other hospital unless such physician is otherwise obligated to take call as a member of that hospital's medical staff.

5. **Term.** The term of this Agreement shall commence automatically on the date the Hospital is duly licensed by the New Mexico Department of Health to provide the services described in Section 4-48B-3HG of the Hospital Funding Act; provided, however, that in the event the County and its voters do not continue the Mill Levy beyond the statutory expiration date set forth in the Hospital Funding Act, this Agreement shall automatically terminate on the date the Mill Levy expires (the "**Term**").

6. **Operations of the Hospital.** UNMSRMC will operate the Hospital in such a manner as to meet or exceed the standards of The Joint Commission ("**TJC**") and the Council on Medical Education of the American Medical Association ("**AMA**") or other approved accreditation entity of the AMA as long as resources are reasonably available so as to make it reasonably possible to comply with such standards. UNMSRMC has the exclusive responsibility, jurisdiction and authority to control and manage the Hospital all in accordance with the terms and conditions of this Agreement. UNMSRMC will operate the Hospital in substantial compliance with all applicable laws, rules and regulations of the federal and state governmental authorities having jurisdiction with respect to the Hospital.

7. **County Covenant to Provide Revenues.**

(a) During the term of this Agreement, and to the extent of its authority, the County will take the steps necessary and required under the Hospital Funding Act, or any successor sta-

tute thereto, to continue to impose the Mill Levy, segregate all taxes collected thereunder together with all sums received by it as required by the Hospital Funding Act. Until a Qualifying Hospital commences operations, the County shall accumulate the Mill Levy Proceeds in the Accumulation Fund. The County shall distribute the proceeds of the Mill Levy, and any renewal thereof, commencing as soon as practicable, amongst Hospital and other hospitals in the County which have entered into Health Facilities Contracts with the County in the manner specified herein below, such funds to be used by all hospitals, including Hospital, only for non-sectarian purposes in making available the facilities and services set forth in Section 4-48B-3G of the Hospital Funding Act for the care of the sick of the County.

(b) *Distribution of Accumulation Fund.* Upon the opening of the first Contracted Hospital to commence operations, the County will distribute fifty percent (50%) of the Accumulation Fund to that Contracted Hospital. The remaining 50% of the Accumulation Fund will be distributed to the second Contracted Hospital to commence operations; provided, however, if the Hospital is not the first Contracted Hospital to commence operations and has not, by the end of November 2012, made significant progress toward completing construction of a Qualifying Hospital, then the remaining balance of the Mill Levy Proceeds in the Accumulation Fund shall be distributed in such method, timing, and manner to other Contracted Hospitals as the County may determine.

(c) *Fixed Distribution Period.* The County shall distribute the Mill Levy Proceeds collected by the County during the Fixed Distribution Period as follows:

(1) All Mill Levy Proceeds collected during that portion of the Fixed Distribution Period during which only one Contracted Hospital is operating, as determined pursuant to paragraph 1(e), above, shall be distributed monthly as allocated to that Contracted Hospital.

(2) Mill Levy Proceeds collected during that portion of the Fixed Distribution Period commencing after the date on which a second Contracted Hospital commences operations, as determined pursuant to paragraph 1(e), above, shall be distributed as follows:

(i) Twenty percent (20%) of such Mill Levy Proceeds shall be distributed to UNMSRMC in consideration of its operation of an inpatient behavioral health program (consisting of at least eight (8) licensed beds) within Sandoval County in conjunction with the Hospital once such program is in operation; and

(ii) The remaining eighty percent (80%) of such Mill Levy Proceeds (or 100% prior to the date on which the behavioral health program referenced above commences operations) shall be distributed equally to each Contracted Hospitals in consideration of acute care services provided at such hospital; provided that if for a continuous period of more than twelve (12) months, no behavioral health program as described above is being offered by UNM SRMC at the Hospital, then the moneys allocated for such period of time shall be distributed as provided in this subparagraph (c)(2)(ii).

(d) *Volume-Based Distribution Period.* The County shall distribute the Mill Levy Proceeds collected on and after July 1, 2014 to Contracted Hospitals as follows:

(1) Twenty percent (20%) of such Mill Levy Proceeds shall be distributed to UNMSRMC in consideration of its operation of an inpatient behavioral health program (consisting of at least eight (8) licensed beds) within Sandoval County in conjunction with the Hospital once such program is in operation;

(2) Fifty percent (50%) of the remaining eighty percent (80%) of such Mill Levy Proceeds (or 100% prior to the date on which the behavioral health program referenced above commences operations) shall be distributed among all Contracted Hospitals

based on the percentage that the number of emergency room visits to each Contracted Hospital during the preceding County fiscal year bears to the total number of emergency room visits for all Contracted Hospitals in Sandoval County during the preceding County fiscal year; and

(3) Fifty Percent (50%) of the remaining eighty percent (80%) of such Mill Levy Proceeds (or 100% prior to the date on which the behavioral health program referenced above commences operations) shall be distributed among all Contracted Hospitals based on the percentage that the number of inpatient census days for the Hospital during the preceding County fiscal year bears to the total number of inpatient census days for all Contracted Hospitals in Sandoval County during the preceding fiscal year.

(4) If, for a continuous period of more than twelve (12) months on and after July 1, 2014, no behavioral health program as described above is being offered by UNMSRMC within Sandoval County in conjunction with the Hospital, then 100% of the Mill Levy Proceeds collected during such period of time shall be distributed as provided above in subparagraph (d)(2) and (d)(3).

The amount of distribution to Contracted Hospitals during this Volume-Based Distribution Period shall be determined on an annual basis.

(e) Hospital and the County acknowledge that the County has the right and duty under the Hospital Funding Act annually to determine the amount of the mill levy to be paid based upon the needs of the Hospital and other hospitals that are supported with the Mill Levy Proceeds and the obligations of the County pursuant to existing Health Facilities Contracts.

7. **Accounting Records; Audits.** UNMSRMC will keep records of the Hospital's financial affairs in accordance with principles of accounting generally accepted by the hospital industry and in accordance with applicable laws or regulations. UNMSRMC will have the financial affairs of the Hospital

audited at least once each year. Copies of annual audits will be furnished to the County as soon as they become final and available.

8. **Review and Inspection of Hospital.** Subject to applicable federal and state laws, rules, and regulations governing privacy, security and confidentiality of patient health information (including, without limitation, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Privacy Rule Regulation promulgated thereunder, the New Mexico Mental Health Code, the New Mexico Mental Health Treatment Decisions Act, the New Mexico Children's Code, and the New Mexico Children's Mental Health Treatment Decisions Act), authorized representatives of County shall have the right to inspect the Hospital and UNMSRMC's accounts and records pertaining to the Hospital's performance of its obligation to provide the services described in Section 4-48B-3G of the Hospital Funding Act during regular business hours of the Hospital, but not to the extent of any unreasonable interference with UNMSRMC's operation or obligations. The County shall provide UNMSRMC with copies of all reports produced as a result of such inspections, unless any such reports are confidential and/or privileged as a result of pending or threatened litigation.

9. **Liability; Insurance.** UNMSRMC will be responsible for legal liabilities incurred in connection with the operations of the Hospital. In this connection, UNMSRMC will carry professional and general liability coverage, property or other coverage as set forth in the New Mexico Tort Claims Act, N.M. STAT. ANN. § 41-4-1 *et seq.* (1978) and the University Research Park and Economic Development Act, N.M. STAT. ANN. § 21-28-1 *et seq.* (1978).

10. **Participation in Government Programs, Certification and Accreditation.** The Hospital shall at all times participate in Medicare and Medicaid and other government programs that expand the availability of healthcare. The Hospital shall at all times maintain its certification to participate in such programs as well as accreditation by TJC or other hospital accrediting organization approved by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

11. Termination of Agreement.

(a) This Agreement may be terminated by mutual agreement, which must be evidenced by a written agreement executed by all of the parties to this Agreement.

(b) In the event either party materially defaults in the performance of its obligations under this Agreement, and fails to cure such default within 90 days after written notice thereof from the other party (or if the default is such that it cannot be cured within 90 days, has failed to take substantial steps to effect such cure), the non-defaulting party may terminate this Agreement by providing a final notice of termination at least 30 days prior to the date of termination.

(c) Notwithstanding Section 12(b), failure of the County to provide and pay over to UNMSRMC the Mill Levy distribution described in Paragraph 7, above, shall result in the automatic termination of this Agreement. In this connection, UNMSRMC shall provide the County with 30 days' prior written notice via certified U.S. mail, return receipt requested, thereof to the County and stating the date of termination to the County.

(d) If this Agreement is terminated or terminates as provided in Section 4 of this Agreement, UNMSRMC will be relieved of its obligations as described in this Agreement to provide healthcare services to medically indigent residents of Sandoval County. Following any termination, any Mill Levy Proceeds to be imposed and collected as provided herein shall be paid to UNMSRMC for that portion of the fiscal year of the County during which this Agreement remained in effect.

12. **Board Position.** The County shall have the right to nominate to the Regents an individual to serve as a voting Director of UNMSRMC. The County understands, acknowledges, and agrees that because UNMSRMC is a corporation organized under and pursuant to the University Research Park and Economic Development Act, only the Regents may act to appoint Directors of UNMSRMC. In this connection, the County agrees that in nominating such an individual to serve as a Director of UNMSRMC, the County will follow the processes for such nomination as set forth in the Bylaws of UNMSRMC.

13. **Miscellaneous.**

(a) *No Discrimination.* The Hospital shall not discriminate in employment, granting of medical staff privileges, or availability of Hospital facilities on account of race, age, sex, religion, color, national origin, ancestry, sexual orientation, gender identity, physical or mental handicap, serious medical condition or spousal affiliation.

(b) *Hospital Operation.* UNMSRMC takes and assumes all financial and other responsibility for the operating costs of the Hospital. UNMSRMC shall be responsible for all losses arising out of the operation of the Hospital and shall receive all excess revenues of the Hospital.

(c) *Entire Agreement.* This Agreement represents the entire understanding between the parties with respect to the subject matter hereof, and supersedes any prior agreements or understandings with respect to the subject matter of this Agreement. No changes, amendments or alterations to this Agreement will be effective unless in writing and signed by duly authorized representatives of the parties to this Agreement. Notwithstanding the foregoing, no change in the provisions of paragraph 7, above, shall be effective unless agreed to in writing by the County and all hospitals who would be affected by such change as Contracted Hospitals.

(d) *Governing Law.* This Agreement will be construed, interpreted, governed and enforced in accordance with the statutes, judicial decisions, and other laws of the State of New Mexico.

(e) *Third Parties.* Except as specifically set forth herein, nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this Agreement.

(f) *Exclusion from Participation in Government Programs.* Each party represents that neither it, nor any of its management or any other employees or independent contractors who will have any involvement in the services or products supplied under this Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. § 1320a-7, and that it; and its employees, and independent contractors who will have any involvement with in the services provided under this Agreement are not otherwise ineligible for participation in federal healthcare programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent contractors who will have any involvement with in the services provided under this Agreement. Each party will notify the other party immediately upon becoming aware of any pending or final action in any of these areas.

(g) *Notices.* Any notice required to be given pursuant to the terms and provisions of this Agreement will be in writing and will be sent by certified mail, return receipt requested, postage prepaid, as follows:

To UNMSRMC: UNM Sandoval Regional Medical Center, Inc.
c/o UNM Medical Group, Inc.
933 Bradbury, S.E. Suite 2222
Albuquerque, NM 87106
Attn: Chief Executive Officer

With a Copy to: Senior Associate University Counsel—
Health Law Section Leader
Office of University Counsel
1 University of New Mexico
MSC 09 5300
Albuquerque, New Mexico 87131-0001

To County: Sandoval County Commission
c/o Sandoval County Manager
711 Camino Del Pueblo
P.O. Box 40
Bernalillo NM 87004

(h) *Binding Effect.* This Agreement is binding upon, and inures to the benefit of, the parties to this Agreement and their respective successors and assigns.

(i) *Severability.* Except as set forth in such provision, each provision of this Agreement is intended to be severable. If any term or provision of this Agreement will be determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason whatsoever, such provision will be severed from this Agreement and will not affect the validity of the remainder of this Agreement.

(j) *Counterparts.* This Agreement may be executed in one or more exact counterparts, and when so executed by the parties, will be effective in accordance with the terms hereof.

(k) *Remedies; No Waiver.* All rights, powers, and remedies granted to either party by any particular term of this Agreement are in addition to, and not in limitation of, any rights, powers, or remedies which it has under any other term of this Agreement, at common law, in equity, by statute, or otherwise. All such rights, powers and remedies may be exercised separately or concurrently, in such order and as often as may be deemed expedient by either party. No delay or omission by either party to exercise any right, power, or remedy will impair such right, power, or remedy or be construed to be a waiver of or an acquiescence to any breach or default. A waiver by either party of any breach or default hereunder will not constitute a waiver of any subsequent breach or default.

(l) *Assignment.* This Agreement will not be assigned by either party, nor will the duties imposed upon either party by this Agreement be delegated, subcontracted, or transferred by

either party, in whole or in part, without the prior written consent of the other party, which consent may not be unreasonably withheld, delayed or conditioned.

(m) *Force Majeure.* The parties shall be excused for failures and delays in the performance of their respective obligations, excluding payment obligations, under this Agreement due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, terrorism, riot or insurrection, law or regulation, strike, flood, fire, pandemic health event, public health emergency contemplated under the New Mexico Public Health Emergency Response Act, N.M. STAT. ANN. § 12-10A-1 *et seq.* (1978), explosion or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities. Upon claiming any such excuse or delay for non-performance, such party shall give prompt written notice thereof to the other party, provided that failure to give such notice shall not in any way limit the operation of this provision.

(n) *County Acknowledgement.* The County understands, acknowledges, and agrees that the obligations of UNMSRMC under this Agreement are obligations of UNMSRMC and not of the Regents of the University of New Mexico and the County agrees that in no event shall the Regents have any financial responsibility for or obligation to perform or otherwise undertake to do or carry out any of the obligations of UNMSRMC under this Agreement.

(o) *Participation in Provider Networks.* The County is aware that Presbyterian Healthcare Services (“**PHS**”) has announced its intention to construct and operate a hospital in Rio Rancho, Sandoval County, New Mexico and will be a party to a Health Facilities Contract with the County. The County is also aware that, in addition to its hospital and other health care operations, PHS operates a health plan and/or managed care plan for third parties (the “**PHS Health Plans**”). The County intends that all residents of Sandoval County who are members or are otherwise covered by any one or more of the PHS Health Plans should have access to all hospitals within Sandoval County with whom the County has entered into a Health Facilities Con-

tract. Accordingly, in the event that the PHS Health Plans fail to or refuse to permit the UNMSRMC to participate as an in-network provider in the PHS Health Plans and/or the PHS Health Plans fail and refuse to enter into a provider and/or managed care agreement with UNMSRMC on terms mutually acceptable to the PHS Health Plans and UNMSRMC, then the County reserves the right to adjust (and increase) the amount of the Required Mill Levy Distribution described in subsections (b), (c) and (d) of Section 7 payable to UNMSRMC to account for such failure or refusal by the PHS Health Plans. Notwithstanding the foregoing, there shall be no adjustment to the required Mill Levy Distribution described in Section 7 if the failure to permit UNMSRMC to participate as an in-network provider or to enter into a provider and/or managed care agreement with UNMSRMC is due to (i) UNMSRMC's failure or refusal to agree to non-capitated rates in the range generally paid by the PHS Health Plans to non-teaching community hospitals in the central New Mexico four-county area; (ii) UNMSRMC's failure or refusal to meet the Health Plans' credentialing criteria or to agree to comply with program requirements, such as those related to quality and utilization management, generally applicable to providers in the provider network maintained by UNMSRMC and similar to quality and utilization management program requirements imposed by the PHS Health Plans on hospitals operated by PHS; or (iii) a decision by PHS to no longer affiliate with the PHS Health Plans. The PHS Health Plans may offer products limited to PHS Hospitals if the primary care network for such products is limited to primary care providers employed by PHS or an affiliate of PHS. At the request of an employer who self-insures its employees ("ASO" business), the PHS Health Plans may provide to that employer a network that does not include all hospitals who are otherwise part of the PHS Health Plans' network, provided that UNMSRMC shall be allowed to participate in such network unless the employer requests otherwise. In the event that such employer requests result in greater than 25% of PHS Health Plans' total ASO membership in the four-county metropolitan area (based on residency zip codes) utilizing a network that excludes UNMSRMC, then the County

and the Contracted Hospitals shall reassess the distribution methodology described in Section 7 of this Agreement. In the event of the development of a managed care or other health benefit financing plan by or under the direction or authority of UNMSRMC or the Board of Regents of the University of New Mexico, the requirements under this paragraph shall be reciprocal to such plan with respect to a Contracted Hospital operated by PHS if so requested by PHS.

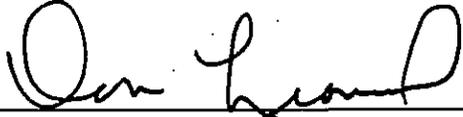
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

[SIGNATURES ON FOLLOWING PAGES]

County:

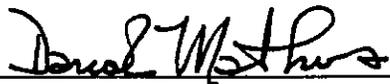
CHAIRMAN, BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SANDOVAL, NEW MEXICO

Date: 9-17-09

By: 

Title: Chairman

Approved as to Form:

By: 
County Attorney

UNMSRMC:

UNM SANDOVAL COUNTY REGIONAL MEDICAL CENTER, INC., a New Mexico non-profit and University Research Park and Economic Development Act corporation,

Date: 9-17-09

By: 
Paul B. Roth, M.D., F.A.C.E.P.
Chairman of the Board

Approved as to Form:

By: 
Scot Sauder, Esq., Senior Associate
University Counsel, Health Law Section
Leader