

SETTLEMENT AND SYSTEMS IMPROVEMENT AGREEMENT

This Settlement Agreement and Systems Improvement Agreement (the “Agreement”) is made between (i) the City and County of San Francisco (“City”), acting by and through its Department of Public Health, which has administrative jurisdiction over and operates the Laguna Honda Hospital & Rehabilitation Center D/P SNF (“LHH”), (ii) the California Department of Public Health (“CDPH”), and (iii) the United States Department of Health & Human Services (“DHHS”), Centers for Medicare & Medicaid Services (“CMS”) (collectively, the “Parties”). This Agreement is being executed and implemented: (1) to temporarily continue federal funding for LHH while LHH follows a revised closure plan; (2) to ensure LHH’s substantial compliance with the statutory requirements in sections 1819 and 1919 of the Social Security Act (the “Act”) (42 U.S.C. §§ 42 U.S.C. 1395i–3 and 1396r, respectively) and the applicable regulatory requirements found at 42 C.F.R. Part 483, Subpart B (and other applicable statutory and regulatory requirements) during its enactment of its closure plan; (3) to facilitate quality system improvements at LHH including personnel and resource investments; and (4) to safeguard the health and safety of the residents of LHH while LHH pursues Medicare and Medicaid recertification.

Recitals

A. *Whereas*, LHH is a hospital that was certified as a distinct part Skilled Nursing Facility (“SNF”) and a Nursing Facility (“NF”), as those terms are defined by 42 C.F.R. § 488.301, and seeks to be recertified as a SNF in the Medicare program and as a NF in the Medicaid program. LHH has operated as a public nursing facility for 156 years and is one of the largest public skilled nursing facilities in the country; it provides care for medically fragile residents, many of whom are economically disadvantaged. LHH had Medicare and Medicaid provider agreements for its distinct part SNF until they were terminated by CMS on April 14, 2022. To receive federal funding, LHH is required to comply with federal regulations, including, without limitation, the regulatory requirements found at 42 C.F.R. Part 483, Subpart B, in order to receive federal funding. LHH is currently planning to seek recertification and new Medicare and Medicaid provider agreements for its SNF.

B. *Whereas*, CDPH is the State Survey Agency, as the term is defined by 42 C.F.R. § 488.1, that performs survey and review functions pursuant to an agreement with CMS and Sections 1864, 1819(g), and 1919(g) of the Act.

C. *Whereas*, the DHHS requires SNFs and NFs participating in the Medicare and Medicaid programs to be in substantial compliance with applicable federal participation requirements and has delegated to CMS the responsibility for verifying that SNFs and NFs achieve and sustain compliance with federal participation requirements. To verify compliance, CMS acts directly or through the State Survey Agency, CDPH, to survey LHH periodically for compliance with the federal participation requirements.

D. *Whereas*, between October 14, 2021, and April 13, 2022, CDPH completed 11 surveys of LHH that concluded that the facility was non-compliant with some of the applicable federal

requirements for nursing homes participating in the Medicare program under Title XVIII of the Act. *See* 42 C.F.R. Part 483, Subpart B. CDPH completed those surveys and issued Statements of Deficiencies (“SODs”) for them on Form CMS-2567s with the respective exit dates of: (1) October 14, 2021; (2) October 15, 2021; (3) November 5, 2021; (4) December 21, 2021; (5) December 28, 2021; (6) January 13, 2022; (7) January 21, 2022; (8) February 3, 2022; (9) March 28, 2022; (10) March 30, 2022; and (11) April 13, 2022.

E. *Whereas*, the SODs in the above-mentioned 11 surveys of LHH identified 26 total regulatory deficiency citations and set forth the bases of CMS’s conclusion that LHH failed to substantially comply with the applicable Medicare and Medicaid regulations.

F. *Whereas*, CMS issued enforcement letters based on CMS’s factual findings and conclusions of law about LHH’s substantial noncompliance, respectively dated February 24, 2022, and March 30, 2022, which imposed the following remedies against LHH:

- A Denial of Payment for New Admissions (“DPNA”) from January 14, 2022, through April 13, 2022;
- Termination of LHH’s Medicare and Medicaid provider agreements effective April 14, 2022;
- A \$2,455.00 per-day Civil Money Penalty (“CMP”) from October 14, 2021, through January 20, 2022;
- A \$550.00 per-day CMP from January 21, 2022, through February 2, 2022;
- A \$1,640.00 per-day CMP from February 3, 2022, through March 21, 2022;
- A \$10,195.00 per-day CMP from March 22, 2022, through March 26, 2022; and
- A \$1,640.00 per-day CMP from March 27, 2022, through April 13, 2022.

The total sum of CMPs imposed against LHH for the 11 above-mentioned surveys was \$407,770.00.

G. *Whereas*, pursuant to 42 C.F.R. Part 498, Subpart D, on February 15, 2022; April 25, 2022; and May 28, 2022; LHH appealed the remedies, including its termination, imposed in CMS’s letters dated February 24, 2022, and March 30, 2022, in three separate appeals. The U.S. Department of Health and Human Services, Departmental Appeals Board (“DAB”), Civil Remedies Division (“CRD”), docketed LHH’s appeals as *Laguna Honda Hospital & Rehabilitation Center D/P SNF (CCN: 55-5020) v. Centers for Medicare & Medicaid Services*, Docket Nos. C-22-327, C-22-478, and C-22-555 respectively. On June 2, 2022, the CRD consolidated all the cases under Docket No. C-22-555.

H. *Whereas*, LHH has enacted a closure plan dated May 13, 2022 (“Closure Plan”) with the goal of obtaining extended federal funding, and DHHS and CMS exercised their discretionary authority pursuant to 42 C.F.R. § 489.55(b) to make continued payments for residents who are beneficiaries of the Medicare and Medicaid programs and who were admitted to LHH prior to January 14, 2022, until September 13, 2022, while LHH transferred and discharged its residents. On May 13, 2022, CMS notified LHH that it approved an additional four months of federal funding beyond 30-days from its termination date. On August 15, 2022, CMS approved this federal funding extension for another two months, for a total of six months of extended funding until November 13, 2022.

I. *Whereas*, on July 28, 2022, CMS agreed to LHH’s request to pause transfers and discharges of LHH residents to ensure that safety and planning precautions were taken while the Closure Plan was enacted.

J. *Whereas*, on August 3, 2022, the City, which is LHH’s owner and operator, filed a Complaint against DHHS and Xavier Becerra, Secretary of DHHS, docketed in the United States District Court, Northern District of California, *City and County of San Francisco v. U.S. Department of Health and Human Services et al.*, Case No. 3:22-CV-4500.

K. *Whereas*, on August 3, 2022, certain LHH residents, a resident conservator, and a resident guardian, filed a putative class action Complaint against Chiquita Brooks-LaSure, Administrator for CMS; Xavier Becerra, Secretary of DHHS; CDPH; and Tomás Aragón, Director of CDPH, docketed in the United States District Court, Northern District of California, *D.B. et al. v. Brooks-LaSure et al.*, Case No. 3:22-CV-4501.

L. *Whereas*, LHH has made to CMS a continued commitment to make substantial improvements and to make substantive personnel and resource investments, in order to meet federal nursing home Medicare and Medicaid participation requirements at 42 C.F.R. Part 483, Subpart B and improve systems of care so that LHH is able to achieve and maintain substantial compliance with all federal nursing home requirements consistently over time and while following a revised closure plan (“Revised Closure Plan”).

M. *Whereas*, the Parties intend to ensure that LHH provides quality services to residents that meet regulatory requirements at all times. The Parties agree that they are coming together in the spirit of mutual cooperation for the purposes of improving the care for residents and that each Party will work to prioritize the health, safety, and wellbeing of LHH residents in implementing the terms of this Agreement.

N. *Whereas*, CMS has agreed to consider a proposed plan to facilitate ongoing substantial compliance with federal nursing home requirements at LHH while LHH follows its Revised Closure Plan and applies for a new certification.

O. *Whereas*, the Parties recognize concerns raised about protecting residents’ rights, minimizing resident transfer trauma, and ensuring the safety and well-being of residents who may be transferred or discharged from LHH pursuant to a Revised Closure Plan.

P. *Whereas*, LHH intends to reapply, and is working on reapplying for Medicare and Medicaid certification as soon as it is able to achieve and demonstrate sustained compliance with the Medicare and Medicaid program’s Long Term Care Facility participation requirements at 42 C.F.R. Part 483, Subpart B. LHH wishes to avoid the need for any future transfers or discharges mandated by CMS, so long as LHH is working to achieve substantial compliance and recertification.

Q. *Whereas*, in view of (i) the Parties’ shared goal to work together to prioritize the safety of the residents, (ii) LHH’s pledge to correct its deficiencies cited in the above-mentioned 11 surveys, (iii) the unique and vulnerable population LHH serves, and (iv) LHH’s large resident population, CMS has decided to extend the time period for transfers/discharges in the approved Closure Plan to provide for a more prolonged schedule for assessment and transfer process over the course of the time contemplated by this Agreement. Thus, pursuant to the terms of this Agreement, CMS

decided to exercise its discretionary authority pursuant to 42 C.F.R. § 489.55(b) to provide Medicare and Medicaid funding to LHH after the 30 days provided pursuant to 42 C.F.R. § 489.55(a) past its April 14, 2022, termination, for up to 18 months, which is November 13, 2023, or until otherwise specified by the terms of this Agreement. The conditions of this Agreement enable CMS and CDPH to closely monitor LHH resident well-being and LHH's continuing efforts to achieve and sustain substantial compliance with all the federal participation requirements as LHH relocates and discharges its residents pursuant to its Revised Closure Plan and while LHH simultaneously seeks recertification.

THEREFORE, in consideration of the Recitals stated above in Paragraphs A-Q and the obligations and commitments expressed herein, the Parties agree as follows:

General Terms:

1. Duration of the Agreement: This Agreement expires effective November 14, 2023, at 12:01 a.m., Pacific Daylight Time, unless one of the following occurs before that date: (1) the Parties expressly, mutually agree in writing to a different date to terminate this Agreement; (2) CMS terminates the Agreement because of a material breach by LHH of any its obligations under this Agreement, after the notice and cure period and dispute escalation process set forth in this Agreement; or (3) LHH obtains a new Medicare or Medicaid provider agreement.

2. Extended Payments to LHH: CMS agrees to exercise its discretionary authority pursuant to 42 C.F.R. § 489.55(b) to extend federal Medicare and Medicaid payments to LHH for a period of time through and including November 13, 2023, in exchange for LHH's compliance with the terms of this Agreement. *See* 42 U.S.C. 1320a-7j(h)(2)(B). Consistent with the Denial of Payment for New Admissions referenced in Paragraph F above, this provision applies only to funding for the care of residents admitted to LHH on or before January 13, 2022.

3. Termination of this Agreement: LHH agrees that CMS retains authority to terminate this Agreement, including any Medicare and Medicaid funding provided pursuant to this Agreement, if LHH materially breaches this Agreement, after the notice and dispute escalation process specified in Paragraph 5 of this Agreement is completed. If CMS concludes that LHH has materially breached this Agreement and intends to terminate this Agreement based on that material breach, it shall provide written notice ("Termination Notice"), pursuant to Paragraph 45, and such notice shall include the provision CMS believes LHH has breached, and the conduct from LHH that CMS believes constitutes the breach, and how LHH can attempt to cure the breach. Such notice shall trigger the meet-and-confer and escalation procedures in Paragraph 5 if LHH elects to follow this process, except for termination based on an Immediate Jeopardy finding documented by a monitoring survey completed pursuant to this Agreement as provided in Paragraph 5(h), below, which would only require CMS to provide two days of Termination Notice and not require the meet-and-confer escalation process before ending federal funding, subject to Paragraph 14, below. If CMS elects to terminate this Agreement due to LHH's material breach of this Agreement, it will provide LHH notice of 30 days in writing, in the manner set forth in Paragraph 45, of its decision. This 30-day period will run concurrently with any meet-and-confer and dispute resolution process pursuant to Paragraph 5. Unless CMS agrees for an extension of time in writing, delays in the dispute escalation process under Paragraph 5 will not extend the 30-day notice period or delay the noticed termination. At the end of the 30-day period, absent CMS's written notice stated otherwise, LHH's Medicare and Medicaid funding will be terminated pursuant to the

Termination Notice. After this notice period, subject to the meet and confer and dispute escalation provisions, LHH will no longer be entitled to any Medicare and Medicaid funding pursuant to this Agreement. LHH acknowledges and agrees that CMS may, pursuant to its discretionary authority at 42 C.F.R. § 489.55(b), provide additional funding even after the effective date it terminates this Agreement for LHH's material breach, and CMS retains sole discretion to determine the duration of any period of additional funding it will provide if LHH materially breaches this Agreement after the notice and cure period and dispute escalation process specified in this Agreement. Circumstances that would constitute LHH's material breach of this Agreement include, but are not limited to the following:

- a.** CMS determines LHH fails to substantially comply (as that term is defined by 42 C.F.R. § 488.301) with the standards specified in the Requirements for Long Term Care Facilities at 42 C.F.R. Part 483, Subpart B at any time on or after February 13, 2023.
- b.** LHH fails to participate in the survey process or materially impedes the survey process specified by this Agreement. This includes LHH's failure to provide documents in a reasonable time requested by surveyors performing duties pursuant to this Agreement, and LHH's failure to provide surveyors with access to interviews of staff and residents, to the extent the surveyors are legally entitled under the terms of this Agreement or other legal authority to those documents or that access.
- c.** CMS determines that Immediate Jeopardy to resident health and safety occurred, as that term is defined by 42 C.F.R. § 488.301.
- d.** CMS determines that LHH is not progressing toward substantial compliance with federal requirements based on LHH's failure to meet its Action Plan benchmarks at any time after February 13, 2023, as evidenced by the monthly reports described in Paragraphs 8 and 12, or information gathered during monitoring visits.
- e.** LHH fails to timely provide to CMS, CDPH, or the Facilitator any required material document as set forth by this Agreement or as necessary to carry out the terms of this Agreement, or materially impedes CMS, CDPH, or the Facilitator's access to interviews with staff and residents, to the extent they are legally entitled to those documents or that access under the terms of this Agreement or through other legal authority.
- f.** LHH fails to timely retain an external expert or unreasonably fails to cooperate materially with an external expert's recommendations to enact an Action Plan.
- g.** LHH fails to enact the Revised Closure Plan, including failing to appropriately and safely discharge or transfer residents according to the terms of the Revised Closure Plan and failing to honor resident rights during the relocation process.
- h.** CMS determines that LHH fails to comply with any of the other material terms and conditions of this Agreement.

4. No Admissions: To resolve this matter expeditiously and to avoid the burden or expense of investigation or litigation, the Parties agree to the terms of this Agreement. The promises, obligations, and other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between the Parties. This Agreement shall not be deemed or construed to be an admission or evidence of any violation of law or regulation or of any liability or wrongdoing on the part of LHH. Nor shall it be deemed or construed to be an admission or evidence that DHHS, CMS, or CDPH violated any law, including as this relates to the City's claims in *City and County of San Francisco v. U.S. Department of Health and Human Services et al.*, Case No. 3:22-CV-4500, and did not have a good faith basis for the initial determinations at issue in the appeal docketed at the consolidated DAB Case No. C-22-555 or any of the survey findings and remedies imposed and discussed above in the Recitals at Paragraphs D, E, and F.

5. Meet-and-Confer and Dispute Escalation Process:

- a. Upon receipt of CMS's written Termination Notice sent pursuant to Paragraph 3 and Paragraph 45 or as otherwise provided in this Agreement, above, LHH shall, within 5 calendar days, provide written notice to CMS sent pursuant to Paragraph 456 that it either: (i) accepts CMS's determination, (ii) will attempt to cure the breach, or (iii) disputes CMS's determination ("LHH Response Notice"). The LHH Response Notice must (1) identify any specific legal issues and findings of facts or conclusions with which LHH disagrees; and (2) specify the basis for why LHH contends that the findings and conclusions are incorrect.
- b. If LHH wishes to cure the breach, the LHH Response Notice shall include LHH's showing that it has cured or will cure the breach and any relevant supporting documentation. CMS retains discretion whether to accept any proposed cure and whether to proceed with termination of this Agreement.
- c. If CMS, upon receipt of the LHH Response Notice, still intends to terminate this Agreement, the Parties shall meet-and-confer within 5 calendar days of CMS's receipt of LHH's Response Notice. At the end of this meet-and-confer, CMS will provide written notice whether the dispute resolution was successful.
- d. If any issues are not resolved by the end of the above meet-and-confer process, the Parties agree that representatives from the San Francisco City Attorney's Office and the HHS Office of the General Counsel will confer within 10 calendar days of CMS's receipt of LHH's Response Notice in an attempt to address the outstanding dispute. Notwithstanding the foregoing, the representatives from the San Francisco City Attorney's Office and the HHS Office of the General Counsel may meet-and-confer concurrently with the meet-and-confer process in Paragraph 5(c), above.
- e. If the representatives from the San Francisco City Attorney's Office and the HHS Office of the General Counsel are unsuccessful in resolving all remaining issues, the Director of CMS's Center for Clinical Standards & Quality or the Director's designee and the San Francisco Director of Health or the Director's Designee shall have 10 calendar days to confer in an attempt to resolve the outstanding dispute.

- f. Any time period set forth in Paragraphs 5(a)-(e) above may be extended by mutual written agreement of LHH and CMS.
- g. If, after the process outlined in Paragraphs 5(a)-(e) above does not resolve all remaining disputes, then CMS may terminate this Agreement, including any Medicare and Medicaid funding provided pursuant to this Agreement. After termination of this Agreement, LHH may, without limiting its other rights or remedies at law or in equity, file a lawsuit to enforce the terms of this Agreement pursuant to Paragraph 55, below.
- h. In the event that CMS's Termination Notice is based on CMS's determination that LHH violated the federal regulations at an Immediate Jeopardy level, CMS may, in its discretion terminate this Agreement after two days from providing LHH with Termination Notice, subject to paragraph 14 below, regardless of whether all of the steps set forth in Paragraphs 5(a)-(e) have been completed.

System Improvements:

6. Plan of Correction ("POC"): LHH will submit acceptable POCs for the surveys listed in Recitals Paragraph D, except for the POCs that CDPH or CMS already accepted, by October 15, 2022. For any new federal deficiencies identified after April 13, 2022, LHH must submit any required POC within 10 days of receipt of the SOD(s), identifying the deficiency. For a POC to be acceptable, it must address all of the required elements specified in Chapter 7304 of the State Operations Manual. LHH must obtain approval of the POCs from CDPH or CMS. CDPH and CMS will not unreasonably withhold approval. The Parties agree that failure to submit an acceptable POC within 10 days of receipt of the SOD(s), or by October 15, 2022 for any outstanding POCs required, may result in CMS terminating the Agreement and discontinuing federal funding, subject to the meet-and-confer and dispute escalation procedures set forth in Paragraph 5, above. CDPH and CMS will make reasonable efforts to timely respond to any POC submitted by LHH. If CDPH rejects the POC, CDPH will state in writing the element(s) of the POC that are unacceptable and the reason(s)/bases(es) for the unacceptability of the POC. LHH will have a reasonable amount of time to address the issues raised by CDPH in a corrected POC. If CMS promulgates new regulations contrary to previously approved POCs, those new regulations will control over any existing POC. LHH will have a reasonable amount of time to change practices in accordance with any newly issued rules that are contrary to approved POCs.

7. Closure Plan: During the term of this Agreement, LHH will continue conducting thorough individual assessments of residents for the purpose of determining appropriateness of transfer or discharge as specified in LHH's Revised Closure Plan, subject to the terms and conditions of this Agreement, and will provide safe and orderly discharges for residents that request to leave. Nothing in this Agreement or the Revised Closure Plan precludes LHH residents from being transferred or discharged from LHH of their own volition or for reasons unrelated to the Revised Closure Plan. In the event of any conflict between the Revised Closure Plan and this Agreement, the terms of this Agreement will prevail. LHH will update its Revised Closure Plan accordingly if actions taken pursuant to this Agreement necessitate altering the timeline or other terms of the Revised Closure Plan, including if CMS terminates this Agreement or pauses the period of time for LHH to transfer and discharge residents pursuant to this Agreement. LHH will

not admit new residents unless LHH obtains Medicare or Medicaid certification. CDPH's and LHH's responsibilities pursuant to the Revised Closure Plan to transfer and discharge LHH residents will be resumed on February 2, 2023, unless CMS provides notice in writing providing that LHH resident transfer and discharges may be resumed at a later date. If LHH is complying with its obligations under this Agreement, CMS will consider whether LHH may be provided federal payment if LHH adjusts the timeline for implementing the Revised Closure Plan, including permitting a pause on the transfer or discharge of residents pursuant to the Revised Closure Plan, as specified in Paragraph 14, below, and coterminous with the duration of this Agreement.

8. Federal Facilitator: LHH agrees to permit CMS to appoint or continue the placement of the current on-site facilitator ("Facilitator") to monitor LHH, including its progress in enacting the Revised Closure Plan, resident transfers and discharges, the terms of this Agreement, and progress towards achieving and maintaining substantial compliance with the applicable Medicare and Medicaid participation regulations. If CMS appoints a new Facilitator pursuant to this Agreement, CMS will provide five days written notice to LHH, identifying and describing the qualifications of the new Facilitator. CMS will not appoint any individual from CDPH who conducted a survey of LHH since January 1, 2022, as the new Facilitator. If LHH objects to CMS's appointment of a specific individual to act as Facilitator, LHH may elect to follow the 30-day, Meet-and-Confer and Dispute Escalation Process in Paragraph 5 in attempt to resolve its objection. CMS will provide reasonable consideration to LHH's objection, but if the LHH and CMS cannot agree to a specific individual to act as the Facilitator at the end of the Dispute Escalation Process, CMS's appointment of a Facilitator will prevail. CMS's newly appointed Facilitator will remain in their appointed position while the Meet-and-Confer Dispute Escalation Process occurs. The parties acknowledge and agree that the Facilitator will perform the services described in the Facilitator Scope of Work. The Parties may modify the Scope of Work by written mutual agreement in which case the revised Scope of Work shall control over this Paragraph. LHH will reasonably cooperate with and provide information to the Facilitator, including, but not limited to, promptly providing all requested documents directly to the Facilitator by the end of the next business day and making LHH staff available for confidential interviews with the Facilitator as soon as practicable, but no later than one calendar day if the requested LHH employee is on duty. If an LHH staff member is out on leave, LHH agrees, to the extent permitted by applicable law, to make reasonable attempts to have the LHH staff member available for an interview by the Facilitator as soon as reasonably practicable. The information the Facilitator may request includes, but is not limited to, documents about proposed, pending, and completed transfers and discharges of current and former residents including: independent and full access to facility policies and access to records, confidential communications with residents, and physical access within the facility. These records include the Facilitator's access to: (1) physician assessments and communications, (2) physician discharge orders, (3) notifications to patients and the facility, (4) residents' vital signs measured within the 72-hours before a discharge or transfer, (5) resident laboratory results, (6) nursing assessments documenting resident status and transfer plans, (7) resident discharge or transfer care plans, (8) social services' communications with residents and family, (9) resident medication lists, (10) resident transfer forms, (11) resident medication reconciliation records including Medical Administration Records ("MAR") and Treatment Administration Records ("TAR"), (12) records about the use of medical equipment, and (13) facility communication with residents. The Facilitator will make monthly reports to CMS and CDPH that include: (1) dates, times, and duration of each visit by the Facilitator; (2) summary of observations made during the visits; (3) summary of any interviews conducted and with whom; (4) summary of any records reviewed; (5)

any quality concerns identified; (6) any complaints received by the Facilitator; (7) assessment of adequacy of staffing; (8) progress or lack thereof made on each item of the LHH's Action Plan; and (9) detailed information about all residents who have been or imminently will be discharged or transferred from LHH. LHH agrees to permit the Facilitator to perform the terms of this Agreement, including permitting the Facilitator to access the facility, conduct interviews, and review records. Any complaints received by the Facilitator will be forwarded to LHH, CDPH, and CMS. LHH acknowledges and agrees that, if requested by CMS, the Facilitator may provide to CMS any documents that the Facilitator has obtained from the facility pursuant to this Agreement. CMS will be responsible for the Facilitator's compensation. CMS accepts all responsibility and applicable obligations related to any unauthorized access or disclosure caused by or resulting from Facilitator's action or inaction with respect to any LHH patient health information received from LHH. CMS affirms that the Facilitator is a person or entity acting under a grant of authority from or contract with CMS with regards to CMS's activities as a health oversight agency within the meaning of the HIPAA Privacy Rule regulations at 45 C.F.R. §§ 164.512(d), 164.501.

9. Quality Improvement Expert(s): LHH will contractually engage one or more external quality improvement experts ("QIEs") experienced in quality improvement specific to SNF and NF services to assist in carrying out the actions described in this Agreement. LHH may continue to contractually engage the services of a QIE that it already has recently contractually engaged, provided that expert meets the terms of this Agreement. No one who currently or in the past 24 months has been an employee of LHH or has any other conflict of interest under applicable laws, may act as a QIE pursuant to this Agreement. If LHH believes that successful performance of this Agreement requires using a person who may have a conflict of interest as a QIE, then LHH will provide CMS with the following information in writing: the name of the individual with the conflict of interest; an explanation of the nature and scope of the conflict; an explanation of why LHH cannot obtain this person's skills or expertise from another source; and an explanation of the steps LHH will take to monitor and mitigate the conflict of interest.

- a. If CMS has not already approved LHH's proposed QIE(s) before the implementation of this Agreement, then: by October 15, 2022, LHH will submit to CMS and CDPH the curriculum vitae ("CV") for each QIE it proposes to retain, or has already retained, along with scope of work information, and proposed start and end dates; and by October 25, 2022 CMS, after consulting with CDPH, if CMS so chooses, will determine whether a proposed QIE is qualified to perform the tasks required by this Agreement for which LHH proposes to use the QIE and inform LHH. CMS may seek the opinion of CDPH before making its determination.
- b. CMS will inform LHH in writing, sent by e-mail under Paragraph 45, of its decision whether to approve the QIE(s) LHH proposes. Such approval may not be unreasonably withheld. But if CMS does withhold approval of a QIE, then LHH will propose alternate candidates for CMS's approval within 10 business days.
- c. If LHH proposes to change its QIE at any point during the term of this Agreement, any proposed substitute QIE must be submitted to CMS and CDPH for approval consistent with Paragraphs 9(a) and 9(b) above. CMS must provide written approval for dismissing the services of a QIE that it previously accepted pursuant to this Agreement.

- d. LHH will be responsible for payment for the services of the QIE(s). LHH must enter into a contract with an approved external QIE as soon as possible and no later than November 4, 2022. LHH shall provide a copy of its contract(s) with the approved external QIE(s) to CMS and CDPH via electronic mail to ROSFEnforcements@cms.hhs.gov; yvonne.pon@cms.hhs.gov; stephanie.magill@cms.hhs.gov; cassie.dunham@cdph.ca.gov; susan.fanelli@cdph.ca.gov
- e. LHH will sign a business associate agreement with the external QIE(s) described in this Agreement that requires compliance with HIPAA.

10. Root Cause Analysis: LHH will direct the external QIE(s) to perform a “Root Cause Analysis” to determine the factors that resulted in CMS concluding that LHH violated a federal regulation and to ensure long-term substantial compliance in the future with federal participation requirements at 42 C.F.R. Part 483, Subpart B. As part of the Root Cause Analysis, the external QIE(s) will identify and define problems; investigate and collect supporting information; and analyze and identify the root causes of each identified problem. The Root Cause Analysis will specifically address, but is not limited to, all deficiencies identified during the surveys identified in Recitals Paragraphs D and E above and all deficiencies that were discovered and disclosed to LHH by CDPH, CMS, or a contract surveyor after those surveys.

- a. The Root Cause Analysis will specifically address:
- The adequacy and competency of LHH staffing and the provision of quality of care and quality of life for LHH’s residents in compliance with 42 C.F.R. § 483.35(a)(3)(4)(c) (F726).
 - Training of all LHH staff regarding the identification of contraband and the systems in place to ensure resident safety with regards to contraband in compliance with 42 C.F.R. § 483.35(a)(3)(4)(c) (F726).
 - Ensuring that all LHH residents receive appropriate and sufficient supervision and that LHH implements appropriate interventions to keep LHH residents safe from accident hazards, including illegal drug use, illegal drug possession, and other contraband possession in compliance with 42 C.F.R. § 483.25(d)(1)(2) (F689). Such interventions must include both facility-wide interventions and appropriate, individualized interventions for each affected resident. To address compliance with this regulation, LHH should review and implement improvements consistent with CMS’s guidance to the state survey agencies set forth in the Advanced Copy of Appendix PP of the State Operations Manual (“SOM”) expected to be published on October 24, 2022 related to the prevention of accidents for individuals with substance use disorders. If the SOM is further revised or modified at any time during the term of this Agreement, LHH agrees and understands that the most recent revised or modified version is CMS’s current guidance to the state survey agencies. To

the extent there is any conflict between the SOM and 42 C.F.R. § 483.25(d)(1)(2), LHH acknowledges and agrees that the regulation prevails as the instructive term for this Agreement.

- Ensuring that each resident is free from abuse, neglect, misappropriation of resident property, and exploitation in compliance with 42 C.F.R. § 483.12(a)(1) (F600).
- Ensuring that residents only self-administer medications if the interdisciplinary team determines the practice is clinically appropriate in compliance with 42 C.F.R. § 483.10(c)(7) (F554).
- Developing comprehensive care plans and completing comprehensive assessments of all residents in compliance with 42 C.F.R. § 483.21(b)(2)(i)-(iii) (F657) and ensuring that all care plans meet professional standards of quality in compliance with 42 C.F.R. § 483.21(b)(3)(i) (F658).
- Ensuring that residents admitted to LHH with limited ranges of motion receive appropriate treatment and services to increase their range of motion or prevent further decrease in their range of motion in compliance with 42 C.F.R. § 483.25(c)(1)-(3) (F688).
- Ensuring that residents who need respiratory care are provided such care consistent with professional standards of practice, a comprehensive person-centered care plan, and the residents' goals and preferences in compliance with 42 C.F.R. § 483.25(i) (F695).
- Ensuring that pain management is provided to residents who require those services consistent with the professional standards of practice, the comprehensive person-centered care plan, and the residents' goals and preferences in compliance in compliance with 42 C.F.R. § 483.25(k) (F697).
- Labeling drugs and biologicals used in the facility in accordance with currently accepted professional principles, including appropriate accessory and cautionary instructions, and the expiration date when applicable in compliance with 42 C.F.R. § 483.45(g)(h)(1)(2) (F761).
- Establishing and maintaining an infection prevention and control program designed to provide a safe, sanitary, and comfortable environment to help prevent the development and transmission of communicable diseases and infections in compliance with 42 C.F.R. § 483.80(a)(1)(2)(4)(e)(f) (F880).
- Ensuring that residents are provided the right to a dignified existence, self-determination, and communication with and access to persons and services

inside and outside the facility in compliance with 42 C.F.R. § 483.10(a)(1)(2)(b)(1)(2) (F550).

- Ensuring that each resident receives the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, consistent with the resident's comprehensive assessment and plan of care in compliance with 42 C.F.R. § 483.24 (F675).
- Ensuring that each resident receives treatment and care in accordance with professional standards of practice, the comprehensive person-centered care plan, and the resident's choices in compliance with 42 C.F.R. § 483.25 (F684).
- Providing routine and emergency drugs and biologicals to residents, or obtaining them under an agreement, and ensuring that pharmaceutical services are provided to each resident that meets their individual needs in compliance with 42 C.F.R. § 483.45 (F755).
- Ensuring that, based on a comprehensive assessment, residents who use psychotropic drugs receive gradual dose reductions, and behavior interventions, unless clinically contraindicated, in an effort to discontinue these drugs in compliance with 42 C.F.R. § 483.45(e)(2) (F756).
- Developing, implementing, and maintaining an effective, comprehensive, data-driven quality assurance performance improvement program that focuses on indicators of the outcomes of care and quality of life and that is accountable to the governing body in compliance with 42 C.F.R. § 483.75 (F865).
- Ensuring that the facility is designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public and in compliance with 42 C.F.R. § 483.90.
- Complying with all applicable Federal, State, and local emergency preparedness requirements, and establishing and maintaining an emergency preparedness program in compliance with 42 C.F.R. § 483.73.
- Ensuring that each resident receives the necessary behavioral health care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care, including but not limited to providing prevention and treatment for mental and substance use disorders in compliance with 42 C.F.R. § 483.40 (F740).
- Ensuring each resident is provided nourishing, palatable, and well-balanced diet that meets the individual's daily nutritional and special dietary needs, taking into consideration the preferences of each resident in compliance with 42 C.F.R. § 483.60 (F800).

- b. Report and Recommendations:** The external QIE(s) will provide a report on the results of the analyses required by this Agreement, as set forth in the preceding paragraphs (the “Report”). The Report must include a list of recommendations for changes and improvements necessary for LHH to achieve and maintain compliance with applicable federal participation requirements. Once the Report and recommendations are approved by CMS, these recommendations shall form the basis for the plan to implement the recommendations and necessary improvements (the “Action Plan”), as provided in Paragraph 11.
- c. Delivery of Report:** The QIE(s) will submit the Report in writing to CMS and CDPH as soon as possible but no later than December 1, 2022. CMS may require the external QIE(s) to revise the Root Cause Analysis, at LHH’s expense, before CMS will approve it. Such approval may not be unreasonably withheld and CMS will promptly provide a response to the Report after acknowledging receipt of the Report. If CMS does not provide a written response by December 11, 2022, after acknowledging receipt of the Report, the Report will be deemed approved.

11. Action Plan: The external QIE(s) will assist LHH in developing an Action Plan to respond to the findings of the Root Cause Analysis. LHH will be responsible for payment for the creation and implementation of the Action Plan. As soon as possible, but no later than January 6, 2023, LHH will submit the Action Plan to CMS and CDPH for review and approval. The Action Plan will include improvement solutions identified in the Root Cause Analysis. All elements of the Action Plan shall be incorporated into LHH’s quality assurance program.

- a.** The Action Plan must, at a minimum:

 - i. Be fully implemented by May 13, 2023;
 - ii. Identify the actions LHH must take to correct all problems identified in the Root Cause Analysis; and
 - iii. Establish a timeline of activities (“the Timeline”), including a detailed list of milestones and completion dates for each corrective action.
- b.** CMS will have final approval of the proposed Action Plan, and CMS may require the external QIE(s) or LHH to revise the Action Plan, at LHH’s expense, before CMS will accept it. Initial comments from CMS must be provided January 17, 2023 or the Action Plan will be deemed approved. The QIE or LHH shall provide any revisions to the Action Plan requested by CMS within ten business days of receipt of CMS’s revision request, unless CMS in writing allows the QIE and LHH additional time to submit revisions. CMS shall provide a response to all revisions of such Action Plan within ten business days of receipt of the written submittal by LHH. Once CMS has approved the Action Plan, LHH will cooperate with the external QIE(s) to promptly implement the Action Plan. If the Parties cannot agree on an Action Plan that CMS approves, CMS may elect to terminate this Agreement and discontinue discretionary federal funding to LHH, subject to the meet-and-confer and dispute escalation procedures set forth in Paragraph 5, above.

- c. If LHH refuses to implement any material aspect of the Action Plan without good cause, as determined by CMS, it shall be considered in material breach of this Agreement. Such breach shall be grounds for CMS to terminate the Agreement and to discontinue discretionary federal funding to LHH, subject to the meet-and-confer and dispute escalation procedures set forth in Paragraph 5, above.

12. Monitoring and Reporting: After the Action Plan has been approved, the external QIE(s) will provide a monthly written report to CMS by the 10th calendar day of each month and will contemporaneously send copies of the reports to the CDPH and LHH.

- a. The reports will include, but are not limited to, the following information:
 - i. Dates and times of the visits by the external QIE(s);
 - ii. Summary of observations made during the visits;
 - iii. Summary of any interviews conducted and with whom;
 - iv. Summary of any records reviewed;
 - v. Any quality concerns identified;
 - vi. Any complaints related to resident health and safety received and reviewed by the QIE;
 - vii. Number and description of complaints received by LHH from any source;
 - viii. Number and description of incidents reported to CDPH;
 - ix. Assessment of LHH in meeting established goals outlined in the Action Plan;
 - x. Obstacles on each item of LHH's Action Plan and proposed solutions to those barriers; and
 - xi. Summary of any proposed or enacted transfers and discharges.
- b. At CMS's discretion, these reports may be followed by face-to-face, video conference, or telephone conference discussions between the external QIE(s) and CMS. Any such discussions will be confidential between CMS and the external QIE(s). The QIE may disclose any concerns or challenges that the QIE(s) identified and disclosed to CMS, directly to LHH.
- c. If LHH fails to provide reports, documents, or information identified in the Agreement to the QIE(s), CMS, or CDPH, or if CMS determines that LHH is not adequately progressing toward full compliance with federal participation requirements by not complying with its Action Plan, CMS may find a material breach of this Agreement. Such breach shall be grounds for CMS to exercise its discretion to terminate this Agreement and to discontinue federal funding to LHH, subject to the meet-and-confer and dispute escalation procedures in Paragraph 5, above.

13. CMS May Share Information with the External QIE(s) and Facilitator: CMS may provide the external QIE(s) and Facilitator with information acquired during the course of this Agreement that may be relevant to developing or implementing the Action Plan.

14. Monitoring Surveys: LHH will be subject to onsite, federal surveys at least once every 90 days (about every three months) after October 10, 2022 to assess LHH's compliance with the

Medicare and Medicaid nursing home care requirements at 42 C.F.R. 483, Subpart B and all other federal requirements. Monitoring surveys will be conducted either by CDPH, CMS, or a private contracting survey entity that CMS approves in writing. CMS retains authority to determine who will conduct the surveys. These surveys will be unannounced and may be performed at any time and without any limit to how many surveys that CDPH and CMS may conduct. These surveys will provide feedback as to the level and degree of compliance that LHH may have achieved. For any survey findings identified at Level 2 or above (i.e., a finding of potential for more than minimal harm, actual harm, or immediate jeopardy), LHH will engage its external QIE(s) to develop a new Root Cause Analysis to identify why noncompliance was cited and develop an updated Action Plan to address those findings. For any survey findings identified as “Immediate Jeopardy” (as that term is defined in 42 C.F.R. § 488.1), LHH agrees to provide and implement a removal/action plan and take immediate action, consistent with Appendix Q of the SOM, in which case CMS will consider whether the Immediate Jeopardy finding has been removed. If CMS determines LHH has removed the Immediate Jeopardy finding, the Immediate Jeopardy termination procedure in 5(h) shall not apply. LHH must make measurable and demonstrated progress towards compliance with Medicare nursing home requirements and the Action Plan in accordance with this Agreement. LHH’s failure to achieve substantial compliance by February 13, 2023, which would be signified by a survey with Level 2 or higher findings (federal deficiencies with potential for more than minimal harm, actual harm, or Immediate Jeopardy), may result in CMS terminating this Agreement, discontinuing extended funding, and/or requiring LHH to accelerate the effective and orderly transfer or discharge of remaining residents by a date to be determined by CMS, subject to the meet-and-confer and dispute escalation procedures in Paragraph 5, above. Conversely, if CMS and CDH determine that LHH has achieved and maintained substantial compliance with all federal requirements based on these monitoring surveys, CMS will consider whether LHH may adjust the timeline for implementing the Closure Plan, including permitting a pause on the transfer or discharge of residents pursuant to the Closure Plan until the results of the next monitoring survey. At any time after December 1, 2022, LHH may submit a written request for CMS participate in the meet-and-confer and dispute escalation procedures in Paragraph 5, above to determine whether an extended pause on transfers or discharges is appropriate. In such a written request, LHH will explain the basis(es) why it contends that it is appropriate under 42 C.F.R. § 489.55(b) for the HHS Secretary to continue funding under this Agreement, and include any supporting documentation LHH wishes CMS to consider. CMS is not obligated by this Agreement to participate in the Paragraph 5 meet-and-confer and dispute escalation process to hear LHH’s request to adjust the Closure Plan timeline, including pausing transfers or discharges, but will consider LHH’s request.

15. Complaint Surveys: LHH acknowledges and agrees that CMS will continue to conduct, or to have CMS federal survey contractors or CDPH conduct on its behalf, unannounced complaint and entity reported event investigations at LHH in accordance with State and Federal law during the term of this Agreement. All surveys performed pursuant to this Agreement will be conducted with confidentiality of resident and staff interviews, and LHH will provide full access to policies and records, as well as providing surveyors full access to interviews of residents and staff, to maintain the integrity of the survey process. Neither this paragraph nor any term in this Agreement precludes CDPH or other state regulatory agencies from investigating complaints or incidents under its state licensure authority.

16. Staffing: Consistent with its obligations under 42 C.F.R. Part 483, Subpart B, LHH will ensure adequate staffing in all disciplines and areas to protect the health and safety of the residents

residing there. Professional staff will, as necessary: (a) engage in direct service delivery (i.e., provide assessments, therapy, consultations, referrals); (b) participate in Interdisciplinary Team Meetings; and (c) provide training and technical support to LHH staff (i.e., train and monitor effectiveness of program plans developed by professional staff but implemented by non-professional staff).

17. Responsibility for Compliance and Expenses: LHH acknowledges that it is solely responsible for achieving and maintaining compliance with all applicable Medicare and Medicaid participation requirements and is solely responsible for the expenses of: hiring of independent QIE(s); conducting the Root Cause Analysis; preparing and implementing the Action Plan; and the monitoring activities specified in this Agreement.

18. New Certification Application(s): This Agreement does not preclude LHH from applying to CMS or the State Medicaid Agency for a new certification and provider agreement as a SNF Medicare and/or NF Medicaid participant at any time during the duration of this Agreement. CMS and CDPH recognize that LHH has maintained an interest in reapplying to the Medicare and Medicaid programs. Although this Agreement acknowledges that LHH may reapply to the Medicare and Medicaid programs, it provides no affirmative assurances about LHH's readmission to either program based on any provision in this Agreement. Likewise, in the event that LHH reapplies to the Medicare and/or Medicaid programs during the course of this Agreement, those applications in no way change or limit LHH's responsibilities herein to enact its Closure Plan and safely discharge and transfer residents pursuant to its Closure Plan. CMS and CDPH may use the successful results of any monitoring survey conducted pursuant to this Agreement as part of the recertification surveys in connection with LHH's application for a new Medicare or Medicaid provider agreement. For the term of this Agreement, CDPH agrees that a Chief Deputy Director, Deputy Director or Branch Chief from CDPH, or CMS federal reviewer will review the survey results related to LHH's application for certification, if those results find deficiencies that preclude certification.

CDPH agrees to do the following on behalf of CMS:

19. Cooperation with CMS: CDPH agrees to cooperate with CMS and help CMS, as its State Survey Agency acting on behalf of CMS, enforce LHH's responsibilities set forth by this Agreement.

20. Root Cause Analysis and Action Plan Contractors: CDPH agrees to collaborate with CMS to review LHH's proposed external QIE(s), the external QIE's Root Cause Analysis, and the external QIE's Action Plan, and further collaborate with CMS to assess whether LHH's progress as to these actions comply with the terms of this Agreement.

21. On-Site External Quality Improvement Monitoring Expert or Organization: CDPH agrees to cooperate with CMS to review the qualifications of LHH's proposed external QIE(s) and continue to assess LHH's QIE's success in carrying out the terms of this Agreement.

22. Review of Monitoring Reports: CDPH will, in conjunction with CMS, review the QIE's monthly reports and the Facilitator's monthly reports and act in accordance with this

Agreement and its other legal responsibilities in response to any quality concerns identified in those reports.

23. Surveys and Complaint Investigations: CDPH agrees to conduct state complaint survey investigations of complaints and facility reported incidents at LHH for the duration of this Agreement based on applicable state statutes (Title 22, Health and Safety Code, etc.) as required by state law, and all federal regulatory requirements incorporated by state law, and any subsequent required re-visits to such surveys and share these findings with CMS. CDPH will continue to survey LHH pursuant to its licensure and other state authorities, which are additional and separate regulatory activities that will continue, in addition to the survey obligations required by this Agreement, including the surveys specified in Paragraphs 14 and 15 above. CDPH agrees to conduct all surveys fairly and reasonably, and that a Chief Deputy Director, Deputy Director or Branch Chief from CDPH, or a CMS federal surveyor will review the survey results of any surveys specified in this Agreement that results in a substantial noncompliance finding of actual harm or an Immediate Jeopardy.

The Parties further agree:

24. Discharges and Transfers: In the event that discharges and transfers resume under this Agreement, the State will comply with 42 C.F.R. § 488.426(b) and LHH will comply with 42 C.F.R. § 483.70(l).

25. Survey Authority: Notwithstanding any provision of this Agreement, including but not limited to Paragraphs 14 and 15 above, CMS has authority, as does the CDPH, as the State Survey Agency, under its Section 1864 Agreement, to investigate complaints or otherwise evaluate LHH's compliance with federal participation requirements.

26. Resolve Past Complaints: CMS and CDPH agree to not use the survey results of any complaint surveys of LHH that document noncompliance before or were submitted before July 1, 2022 as a basis to terminate this Agreement. This Paragraph does not limit CMS or CDPH's action based on noncompliance that began or occurred prior to July 1, 2022 that remains ongoing after that date.

27. Requirements of 42 C.F.R. Part 483, Subpart B apply: LHH affirms its obligation to comply with all applicable laws, regulations, and requirements, including without limitation, the participation requirements at 42 C.F.R. Part 483, Subpart B.

28. CMS is Not Required to Provide Technical Assistance: This Agreement does not require CMS to provide LHH or its external expert(s) with technical advice or resources for meeting LHH's obligations under this Agreement and federal law.

29. CMP Payment: Pursuant to the authority at sections 1819(h)(2)(B) and 1128A(f) of the Social Security Act (and 42 C.F.R. § 488.444), and based on further review and consideration, CMS exercises its discretion and agrees to accept the amount of \$203,885 as payment in full for the CMP imposed for the noncompliance described in Recitals Paragraphs D, E, and F.

30. DPNA Duration: The Denial of Payment for New Admissions discussed in Recitals Paragraph F will continue through the duration of this Agreement. This Agreement does not limit

CMS and CDPH's authority to impose any new or subsequent DPNA if LHH obtains recertification for any reason authorized under federal law.

31. No Changes to the SODs: CMS will not make any changes to the Statement of Deficiencies for any of the 11 surveys described in Recitals Paragraphs D and E, including to any regulatory citations or their respective scope-and-severity levels.

32. CMP Payment Instructions: As provided in Paragraph 29 above, LHH agrees to pay a total CMP amount of \$203,885 and CMS agrees to accept this amount as full payment of the CMPs referenced in Recitals Paragraph F. The CMP payment owed by LHH is due within ten (10) calendar days of this Agreement being executed by both parties. The CMP payment should be made directly through the CMP Pay.gov portal: <https://www.pay.gov/public/form/start/998675240>. To process the payment via Pay.gov, LHH acknowledges that it will need to provide its CMS Certification No: 55-5020 and the CMP Case Number: 2022-09-LTC-458. LHH agrees to send a copy of its payment receipt from the CMP Pay.gov portal to the CMS San Francisco Office at ROSFEnforcements@cms.hhs.gov with the **Subject Line: CMP No. 2022-09-LTC-458; ATTN: Yvonne Pon.**

33. Failure to Timely Pay CMP: LHH further agrees that if it fails to submit the CMP payment referenced in Paragraph 29 within the specified time period, per 45 C.F.R. § 405.378, the entire unpaid amount of the CMP, plus interest (*see* 45 C.F.R. § 30.18(b)(1)) at the Federal Treasury rate in effect at the time of default (currently set at 8.75% per annum, but subject to change quarterly per 45 C.F.R. § 405.378(d)(1)(i)), will be deducted from any sum[s] then or later owing to LHH by Medicare, Medicaid, or any other federal government entities, agents, or programs until the CMP (including interest) is paid in full, in accordance with 42 C.F.R. § 488.442(c) and (d) or by any other means available under law for collection of debts due to the United States or its agencies. *See also* 42 C.F.R. § 405.378. LHH accepts that it may not receive any additional notice before these deductions will begin.

34. In the Event of Bankruptcy Proceedings: In the event that LHH commences, or is involuntarily placed in, a bankruptcy or reorganization proceeding under Title 11 of the United States Code, LHH agrees not to contest or oppose any motion filed by the United States or CMS seeking relief from or modification of the automatic stay, 11 U.S.C. § 362. LHH expressly acknowledges that this waiver of any rights it may have under the automatic stay is in consideration for final settlement of all issues and disputes between the parties in the proceedings identified above. LHH further agrees that the CMP payable under the Agreement is non-dischargeable in bankruptcy by virtue of 11 U.S.C. § 523(a)(7) as a "fine, penalty, or forfeiture payable to and for the benefit of a governmental unit" that "is not compensation for actual pecuniary loss."

35. Instructions to Not Send CMP to CMS's San Francisco Office: LHH further agrees not to send its CMP payment check to the CMS San Francisco Office. LHH acknowledges that if it sends its CMP payment other than as specified in Paragraph 32 above, its payment may be considered late and offset may be initiated and/or interest may be imposed.

36. Withdrawal of Appeal: Within five (5) business days after this Agreement is signed by the Parties following approval by ordinance by the San Francisco Board of Supervisors and Mayor of San Francisco, LHH agrees to withdraw its appeal of the certifications/findings of

noncompliance and resulting remedies, including termination, currently pending before the U.S. Department of Health and Human Services, Departmental Appeals Board, Civil Remedies Division docketed as *Laguna Honda Hospital & Rehabilitation Center D/P SNF (CCN: 55-5020) v. Centers for Medicare & Medicaid Services*, Docket No. C-22-555. LHH agrees that it will notify the Administrative Law Judge by electronically filing a letter or motion withdrawing its request for hearing with prejudice in the above-referenced case DAB Docket No. C-22-555 via the Departmental Appeals Board Electronic Filing System website (DAB E-file) at <https://dab.efile.hhs.gov>. LHH affirms that **it will not send** or communicate the contents of this Agreement to the Administrative Law Judge or the staff attorney.

37. Dismissal of Complaint: Within five (5) business days after this Agreement is signed by the Parties following approval by ordinance by the San Francisco Board of Supervisors and Mayor, the City and County of San Francisco agrees to file a Notice of Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) to dismiss their lawsuit described in Recitals Paragraphs J above, Case No. 3:22-CV-4500, currently pending in the Northern District of California. The Notice of Dismissal shall dismiss the case with prejudice, including all claims asserted or that could have been asserted in that action. The Notice of Dismissal shall also provide that each party will bear their own attorney's fees, costs, and expenses.

38. Waiver of appeal rights: LHH agrees to waive all rights to administratively or judicially challenge in any forum in which the United States, DHHS, CMS, or any component of the federal government, or their officers, employees or agents, is a party or has an interest: (a) the certifications/findings of noncompliance based on CMS's determination that LHH was not in "substantial compliance" with the participation requirements for nursing homes at 42 C.F.R. Part 483, as documented in the Statements of Deficiencies for the 11 surveys referenced in Recitals Paragraphs D and E; (b) all remedies referenced in Recitals Paragraph F including the CMPs imposed as a result of the certifications/findings of noncompliance based on the 11 surveys, as modified by Paragraph 29 above; (c) the April 14, 2022 termination date of LHH's Medicare and Medicaid provider agreements; and (d) any claims related to DHHS and CMS's use and duration of discretionary 42 C.F.R. § 489.55(b) funding and LHH's issuance of the Closure Plan that existed or accrued on or before the date when this Agreement is fully executed by all Parties. LHH further agrees that it shall not file or submit any other action or suit against the United States, DHHS, CMS, or any component of the Federal government, including their officers, employees and agents, in any administrative or judicial forum with respect to the certifications/findings of noncompliance and the corresponding remedies imposed by CMS for the surveys described in Recitals Paragraphs, D, E, and F, as modified by Paragraph 29 above.

39. Agreement as Basis for Resolution: This Agreement sets forth the full and complete basis for the resolution by the Parties of all the deficiencies in the 11 surveys described in Recitals Paragraphs D and E above; CMS's remedies imposed on LHH described in Recitals Paragraph F above including but not limited to the CMPs, DPNA, and termination described in those paragraphs; and all issues involving DAB Docket No. C-22-555. This Agreement also sets forth the full and complete basis for the resolution by the Parties of all the City's claims in the lawsuit described in Recitals Paragraphs J above, Case No. 3:22-CV-4500, currently pending in the Northern District of California.

40. Relation to Federal Authority: The Parties agree nothing in this Agreement is binding on any other component of the United States government nor does it in any way define, limit, or circumscribe Federal civil or criminal authority. The Parties agree that nothing in this Agreement limits, contradicts, or circumscribes CMS's existing authority, enforcement discretion, or activities pursuant to Titles XVIII and XIX of the Social Security Act and its implementing regulations including 42 C.F.R. Parts 430, 431, 441, and 442. The Parties agree that CMS retains all authority and discretion accorded to the Agency pursuant to existing regulations and statutes.

41. Public Disclosure: The Parties recognize that this Agreement may be subject to disclosure in accordance with the Freedom of Information Act ("FOIA") and/or in accordance with all applicable laws and processes. All Parties consent to the public disclosure of this Agreement, and information about this Agreement.

42. Applicability of Federal and State Privacy Laws: The Parties acknowledge that documents, information, and data produced or prepared in accordance with this Agreement may be subject to federal and state privacy laws, including the Privacy Act (5 U.S.C. § 552a), HIPAA, and laws protecting the privacy of medical records, quality assurance, patient safety, peer review, and performance improvement activities, and so may be subject to the limits on disclosure these laws impose. However, nothing in this paragraph shall provide a basis for LHH to withhold from CMS or the CDPH relevant information necessary to confirm LHH's compliance with its Action Plan or with the federal participation requirements more generally. CMS does not consent to be bound by state law or to waive any argument of sovereign immunity available to it, and nothing in this paragraph or this Agreement abridges DHHS's or CMS's sovereign immunity. Further, CMS does not waive any administrative exhaustion defenses and rights that CMS possesses and may later accrue in future enforcement actions.

43. Binding Nature of Agreement: This Agreement shall be final and binding upon the Parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties hereto in accordance with Paragraph 56.

44. Change in Ownership: In the event that LHH decides to pursue a Change of Ownership ("CHOW"), it will notify CMS in writing at least 60 days prior to the CHOW with a proposed transition plan that ensures LHH's compliance with the federal participation requirements and the terms of this Agreement. The Parties agree that this Agreement shall be fully disclosed to the prospective owner before it acquires LHH's long term care facility, and before it files a CHOW. CMS reserves the right to terminate this Agreement if a CHOW occurs and the terms of this Agreement are not acceptable to CMS and the new owners. Nothing in this Agreement limits CMS's existing statutory and regulatory authority and discretion to reject or preclude any new ownership's participation in the Medicare and Medicaid programs. As stated above, any new assignee approved by CMS shall be bound by the terms of this Agreement.

45. Contacts for Reporting Requirements: For the purposes of this Agreement, all documents, reports, communications and notices specified in this Agreement shall be forwarded via e-mail to the following representatives:

LHH:

Laguna Honda Hospital
Attn: Roland Pickens, Interim Chief Executive Officer
375 Laguna Honda Blvd,
San Francisco, CA 94116
Phone: (415) 554-2610
E-Mail: roland.pickens@sfdph.org

San Francisco City Attorney's Office
Attn: Sara Eisenberg, Tara Steeley, and Henry Lifton
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Phone: (415) 554-4700
E-Mail: sara.eisenberg@sfcityatty.org; tara.steeley@sfcityatty.org;
henry.lifton@sfcityatty.org

California Department of Public Health

Attn: Cassie Dunham
California Department of Public Health
Center for Health Care Quality
1615 Capitol Avenue, MS 3201
Sacramento, California 95814
Phone: 916-440-7360
E-mail: Cassie.Dunham@cdph.ca.gov; Susan.Fanelli@cdph.ca.gov;
Heather.Chamizo@cdph.ca.gov

Centers for Medicare & Medicaid Services:

Attn: Stephanie Magill and Yvonne Pon
San Francisco and Seattle Survey & Enforcement Division
Survey & Operations Group
CMS Region IX
90 Seventh Street, Suite 600
San Francisco, California 94103
Phone: (415) 744-3746
E-mail: ROSFEnforcements@cms.hhs.gov; stephanie.magill@cms.hhs.gov;
rufus.arther@cms.hhs.gov; yvonne.pon@cms.hhs.gov

46. Complete Agreement: This Agreement contains a complete description of the agreement between the Parties. All material representations, understandings, and promises of the parties are contained in this Agreement.

- 47. Voluntary Agreement:** The Parties represent that this Agreement is entered into voluntarily, with knowledge of the events described herein and after a reasonable opportunity to consult with legal counsel.
- 48. Attorney's Fees and Costs:** Each Party agrees to bear its own costs, fees, and expenses, including attorney's fees and costs.
- 49. Modification:** Any modifications of this Agreement must be in writing and signed by all the Parties.
- 50. Execution in Counterparts:** This Agreement may be executed in multiple identical counterparts, each of which shall be considered original for all purposes.
- 51. No Waiver:** Failure by CMS to enforce any provision of this Agreement, or CMS's decision to refrain from terminating this Agreement in the event of a breach or failure by LHH or CDPH to meet any condition of this Agreement shall not be deemed a waiver or consent to a subsequent breach or failure.
- 52. Effective Date of Agreement:** The effective date of this Agreement shall be the date that all the Parties sign and deliver this Agreement. The City cannot sign and deliver this Agreement until after the agreement is approved by ordinance by the San Francisco Board of Supervisors and the Mayor of San Francisco, consistent with the City's Charter.
- 53. Order of Execution:** CMS shall be the last party to execute this Agreement. Before CMS executes this Agreement, the City and CDPH shall sign and date this Agreement.
- 54. Timing:** All time periods in this Agreement are to be measured by calendar days unless specified otherwise. If a deadline or date falls on a weekend or State or Federal holiday, the deadline or date is extended to the next business day.
- 55. Jurisdiction:** In the event of a contractual dispute related to this Agreement that has not been resolved after compliance with the meet-and-confer and dispute escalation procedures set forth in Paragraph 5, above, each Party agrees to submit to the jurisdiction of the United States Federal Court for the Northern California District, solely for actions as specified in this Agreement. For the avoidance of doubt, nothing in this Agreement is intended to be construed as a submission by a Party to the general jurisdiction of any court or other tribunal, nor as a submission for any purpose except as specified herein.
- 56. Authority by Signatories:** Each person executing this Agreement in a representative capacity on behalf of one of the Parties warrants that individual is duly authorized to bind the party for which he, she, or they sign.

SIGNED THIS DAY BELOW:

For LHH:

By: _____ Date: _____

Name: _____

Title: _____

City and County of San Francisco, acting for and on behalf of Laguna Honda Hospital & Rehabilitation Center D/P SNF

Approved as to form:
David Chiu, City Attorney

By: _____ Date: _____

Name: _____

Deputy City Attorney

For CDPH:

By: _____ Date: _____

Name: _____

Title: _____

The California Department of Public Health

For CMS:

By: _____ Date: _____

Jean Ay
Director
San Francisco and Seattle Survey & Enforcement Division
Survey & Operations Group
Center for Clinical Standards and Quality
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services