

PROFESSIONAL SERVICES AGREEMENT

This Memorandum of Agreement ("Agreement") entered into by and between The Regents of the University of California, a California Constitutional corporation, on behalf of the University of California, San Francisco, School of Medicine, Department of Pediatric Rehabilitation Medicine ("UCSF"), and County of Monterey on behalf of its Health Department-Medical Therapy Conference ("MONTEREY COUNTY"), a political subdivision of the State of California, sets forth the terms and conditions under which UCSF will provide professional pediatric rehabilitation medical services to HEALTH DEPARTMENT.

RECITALS

A. Monterey County Health Department operates the medical therapy conference serves as the focal point for the coordination of all CCS physical and occupational therapy and medically related services for physically handicapped children eligible for CCS located in Salinas, California.

B. The Medical Therapy Conference (MTC) physician is the team leader and makes the final determination of the child's MTC plan of care. The physician shall work with the family and other team members to develop a coordinated treatment plan based on the child's comprehensive medical information and current physical and functional status consistent with CCS guidelines.

C. The physician provides dispute resolution and oversight for the prescriptions from private physicians. The physician's goal is to assure that the Medical Therapy Plan provides the child with appropriate medical intervention to allow the child the opportunity to reach maximum physical function. MTC physician services will be provided at A. B. Ingham Therapy Unit and North Salinas Therapy Unit Salinas.; and

D. MONTEREY COUNTY desires to retain a person or firm to provide the following service: Pediatric Rehabilitation Medicine physician services as set forth in this Agreement. In doing so, UCSF shall support the mission of the University of California by providing qualified and competent UCSF physicians to render the aforesaid services.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and restrictions set forth herein, the parties agree as follows:

1. **RESPONSIBILITIES OF UCSF AND MONTEREY COUNTY**

1.1 Professional Services and Coverage. During the term of this Agreement, UCSF will designate qualified and competent physicians licensed to practice medicine in the State of California, California Children's Services (CCS) paneled, and experienced in Pediatric Rehabilitation Medicine to provide services described herein. Designated physicians must be acceptable to MONTEREY COUNTY. UCSF and MONTEREY COUNTY mutually agree that contract services shall initially be provided by Dr. Christine Aguilar.

1.2 Scope of Services. UCSF agrees to provide all of the services described in Exhibit A attached hereto and by this reference made a part hereof.

1.3 Policies and Procedure. Each UCSF physician providing services hereunder shall comply with all HEALTH DEPARTMENT policies and procedures. If UCSF Provider desire to utilize UCSF written protocols, UCSF Providers will discuss with the MONTEREY COUNTY prior to implementation.

1.4 Overall Responsibility for MTC. MONTEREY COUNTY shall remain responsible for the overall operation of the MTC and shall maintain such space and facilities in good and sanitary order, condition, and repair. MONTEREY COUNTY shall provide the space, equipment, services, supplies and personnel required for the Services provided under this Agreement in accordance with sound medical and legal practices and any applicable federal and state laws and regulations.

2. TERM AND TERMINATION

2.1 Term. The term of this Agreement shall be from March 1, 2020 until September 30, 2023.

2.2 Termination Without Cause. Either party may terminate this Agreement without cause upon at least sixty (60) days prior written notice to the other party.

2.3 Termination with Cause. Either party may terminate this Agreement upon the material breach of this Agreement by the other party by giving the other party fifteen (15) days' prior written notice of such breach. If such breach is not cured by the breaching party within fifteen (15) days of receipt of this notice, this Agreement shall terminate at the end of such fifteen (15) day period.

2.4 Immediate Termination. Notwithstanding any other provision herein, either party upon notification may terminate the services of an individual Provider immediately if: (a) UCSF Physicians or MONTEREY COUNTY (including its individual physicians) have their respective license to practice medicine in the State of California suspended or revoked; or (b) if the insurance coverage for UCSF Physicians or MONTEREY COUNTY, as required hereunder, is canceled or modified. Notwithstanding any other provision herein, either party upon notification may terminate this Agreement immediately if UCSF or MONTEREY COUNTY fails to maintain its accreditation or meet the requirements of the Medicare and Medi-Cal conditions of participation.

2.5 Compliance. The Compliance Officer of either party, on advice of legal counsel, may terminate the Agreement at any time upon notice to the other party based upon a determination, in the Compliance Officer's reasonable discretion, that this Agreement presents a compliance risk for that party. If that party's Compliance Officer determines the compliance risk does not require immediate termination, both parties may mutually agree to cure the risk by amending the Agreement and changing related policies and procedures, if in each Compliance Officer's reasonable discretion, the compliance risk can be eliminated within an appropriate period of time.

3. INDEMNIFICATION AND INSURANCE

3.1 Indemnification by MONTEREY COUNTY.

MONTEREY COUNTY shall defend, indemnify and hold UCSF, UCSF Physicians and UCSF Nurse Practitioners, its officers, employees and agents harmless from and against any and all liability, loss, expense, (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of MONTEREY COUNTY, its officers, employees, or agents.

3.2 Indemnification by UCSF. UCSF shall defend, indemnify and hold MONTEREY COUNTY, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UCSF, its officers, employees, or agents.

3.3 Insurance for MONTEREY COUNTY. MONTEREY COUNTY shall secure and maintain the insurance coverage or self-insurance described in Exhibit 1.2, a copy of which is attached hereto and incorporated herein by this reference.

3.4 Insurance for UCSF. The University of California shall secure and maintain the insurance coverage or self-insurance described in Exhibit 1.3, a copy of which is attached hereto and incorporated herein by this reference.

4. COMPLIANCE WITH LAWS

The parties shall comply with all applicable state and federal laws and regulations and with the requirements of Medicare, Medi-Cal and CCS.

5. GENERAL

5.1 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with and subject to the laws of the State of California.

5.2 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereto shall remain in full force and effect and shall in no way be affected, impaired or invalidated as a result of such decision.

5.3 Assignment. Neither party may assign, delegate or transfer in any manner the obligations and rights set forth in this Agreement.

5.4 Amendments. This Agreement or any part of it may be amended only

by the mutual written consent of the duly authorized representatives of the parties unless otherwise provided in this Agreement.

5.5 Entire Agreement. This Agreement is the entire agreement between the parties relating to the subject matter of the Agreement and shall supersede all prior arrangements, negotiations, and understandings between the parties, whether oral or written. No waiver of any term, provision or condition of this Agreement shall be deemed to be, or shall constitute a waiver of any term, and no waiver of any present condition shall constitute a waiver of such condition occurring in the future.

5.6 Notice. Any written notification required hereunder shall be personally served or mailed by certified mail, return receipt requested, to the following:

To UCSF:

Chief Administrative Officer, Dept of Orthopaedic Surgery
University of California, San Francisco
500 Parnassus Ave, MU West 324
San Francisco, CA 94143-0728

To Health Department:

Elsa Jimenez, Director of Health
Monterey County Health Department
1270 Natividad Road
Salinas, CA 93906

5.7 Use of Name. The parties agree that any use of the “UCSF” or the “University of California” name or other similar references to the University of California San Francisco, its physicians or facilities, shall be subject to the prior written approval of The Regents of the University of California in accordance with the provisions of applicable law, including but not limited to California Education Code Section 92000.

5.8 Marketing of UCSF Physicians. MONTEREY COUNTY shall not advertise or use any of the UCSF Physician’s names in any marketing materials without UCSF’s prior written consent.

5.9 Cooperation in Disposition of Claims. MONTEREY COUNTY and UCSF agree to cooperate with each other in the timely investigation and disposition of certain audits, disciplinary actions and third-party liability claims arising out of any Services provided under this Agreement. To the extent allowed by law, MONTEREY COUNTY and UCSF shall have reasonable and timely access to the medical records, charts, and/or de-identified quality assurance data of the other party relating to any claim or investigation related to Services provided pursuant to this Agreement. Provided, however, that nothing shall require either MONTEREY COUNTY or UCSF to disclose any peer review documents, records or communications which are privileged under Section 1157 of the California Evidence Code, under the Attorney-Client Privilege or under the Attorney Work-Product Privilege. UCSF

shall be responsible for discipline of UCSF Physicians in accordance with UCSF's applicable policies and procedures.

To the extent allowed by law and in accordance with the applicable institution policies, the parties shall notify one another as soon as possible of any adverse event which may result in liability to the other party. The failure to provide notice shall not be deemed a breach of the Agreement, and such failure to do so shall not relieve the indemnifying party of its indemnity obligations if such delay does not prejudice the defense thereof.

It is the intention of the parties to fully cooperate in the disposition of all such audits, actions or claims. Such cooperation may include, but is not limited to, timely notice, joint investigation, defense, disposition of claims of third parties arising from Services performed under this Agreement, and making witnesses available; provided, however only to the extent consistent with UCSF policies and only so long as any personnel assistance by UCSF does not materially interfere with any UCSF employee's performance of his or her UCSF employment responsibilities.

5.10 Patient Records. Any and all of MONTEREY COUNTY's medical records and charts created at MONTEREY COUNTY's facilities as a result of performance under this Agreement shall be and shall remain the property of MONTEREY COUNTY. Both during and after the term of this Agreement, UCSF shall be permitted to inspect and/or duplicate, at UCSF's expense, any individual charts or records, *subject to any requisite patient authorization and consent, as required by law*, which are: (1) necessary to assist in the defense of any malpractice or similar claim; (2) relevant to any disciplinary action; (3) for educational or research purposes; and/or (4) necessary for UCSF to ensure compliance with all regulatory requirements. Such inspection and/or duplication shall be permitted and conducted pursuant to commonly accepted standards of patient privacy and confidentiality in accordance with applicable federal, state and local laws.

5.9 Change in Law. In the event that a change in state or federal law, statute, regulation, or enforcement or same materially affects this Agreement, the parties agree to negotiate immediately, in good faith, any necessary or appropriate amendment(s) to the terms of this Agreement. If the parties fail to reach a mutually agreeable amendment within thirty (30) days of such negotiation period, this Agreement shall terminate at the end of such thirty (30) day period.

5.10 Third Parties. This Agreement is not intended and shall not be construed to create any rights for any third party.

5.11 Exhibits. All Exhibits referred to herein are hereby incorporated herein. In the event that any provision of this Agreement conflicts with any Exhibit to this Agreement, the Exhibit shall control with respect to the subject matter of such Exhibit.

5.12 Counterparts. This Agreement may be executed in any number or counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

5.13 Ability to Enter Agreement. Each party represents and warrants that it is

free to enter into this Agreement and to perform each of the terms and conditions of the Agreement.

5.14 Non-exclusive agreement. This Agreement is non-exclusive and both MONTEREY COUNTY and UCSF expressly reserve the right to contract with other entities for the same or similar services.

5.15 Ability to Enter Agreement. Each party represents and warrants that it is free to enter into this agreement and to perform each of the terms and conditions of the Agreement.

5.16 Entire Agreement. This Agreement is the entire agreement between the parties relating to the subject matter of the Agreement and shall supersede all prior arrangements, negotiations, and understandings between the parties, whether oral or written. No waiver of any term, provision or condition of this Agreement shall be deemed to be, or shall constitute a waiver of any term, and no waiver of any present condition shall constitute a waiver of such condition occurring in the future.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year set forth in Article 4 above.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

COUNTY OF MONTEREY HEALTH DEPARTMENT

By: DocuSigned by: Neal Cohen
Neal Cohen, MD

By: _____
Contracts/Purchasing

Title: Vice Dean, UCSF School of Medicine

Date: 8/13/2020 | 1:05 PM PDT

Date: _____

Read and Acknowledged by:

By: DocuSigned by: Thomas Vail
Thomas Vail, MD

Approved as to Legal Form:

By: DocuSigned by: Marina Pantchenko
Deputy County Counsel

Title: Chair, UCSF Dept. of Orthopaedic Surgery

Date: 8/17/2020 | 3:21 PM PDT

Date: 9/15/2020 | 2:30 PM PDT

Approved as to Liability Provisions:

By: DocuSigned by: Christine Aguilar
Christine Aguilar, MD

8/18/2020 | 6:14 PM PDT

By: _____
Risk Management

Date: _____

By: _____

Approved as to Fiscal Provisions:

By: DocuSigned by: Gary Giboney
Auditor-Controller

Date: 9/15/2020 | 2:32 PM PDT

By: _____
Elsa Jimenez, Director of Health

Date: _____

EXHIBIT 1.2
MONTEREY COUNTY INSURANCE

MONTEREY COUNTY, at its sole cost and expense, shall insure its activities in connection with this Agreement, and obtain, keep in force and maintain insurance as follows:

1. Professional Medical Liability Insurance with financially sound and reputable companies with limits of five million dollars (\$5,000,000) per occurrence and a general aggregate of ten million dollars (\$10,000,000). If such insurance is written on a claims-made form, it shall continue for five (5) years following termination of this Agreement. The insurance shall have a retroactive date prior to coinciding with the effective date of this Agreement and a deductible of no more than five hundred thousand dollars (\$500,000). In the event that a claims-made policy is canceled or non-renewed, then MONTEREY COUNTY shall obtain extended reporting (tail) coverage for the remainder of the five (5)-year period.
2. Comprehensive or Commercial Form General Liability Insurance (contractual liability included) with a limit of (1) one million dollars (\$1,000,000) per occurrence (2) one million dollars (\$1,000,000) Personal and Advertising Injury; and (3) five million (\$5,000,000) General Aggregate. If such insurance is written on a claims-made form, it shall continue for five (5) years following termination of this Agreement. The insurance shall have a retroactive date prior to or coinciding with the effective date of this Agreement.
3. Workers' Compensation Insurance in a form and amount covering MONTEREY COUNTY's full liability as required by law under the Workers' Compensation Insurance and Safety Act of the State of California as amended from time to time.
4. Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of the parties against other insurance risks relating to performance.

It should be expressly understood, however, that the coverages required under this Agreement shall not in any way limit the liability of MONTEREY COUNTY.

MONTEREY COUNTY, upon execution of this Agreement, shall furnish UCSF with Certificates of Insurance evidencing compliance with all requirements. Certificates shall further provide for thirty (30) days' advance written notice to UCSF of any modification, change or cancellation of any of the above insurance coverages.

EXHIBIT 1.3

UCSF PHYSICIAN'S INSURANCE

The University certifies that it maintains a program of self-insurance that covers its activities in connection with this Agreement as follows:

1. Professional Medical Liability Insurance with self-insured retention of five million dollars (\$5,000,000) per occurrence, with a general aggregate of ten million dollars (\$10,000,000). If such insurance is written on a claims-made form, it shall continue for five (5) years following termination of this Agreement. The insurance shall have a retroactive date prior to or coinciding with the effective date of this Agreement and a deductible of no more than five hundred thousand dollars (\$500,000). In the event that a claims-made policy is canceled or non-renewed, then UCSF shall obtain extended reporting (tail) coverage for the remainder of the five (5) year period.
2. Comprehensive or Commercial Form General Liability Insurance (contractual liability included) with a limit of two and a half million dollars (\$2,500,000) per occurrence. If such insurance is written on a claims-made form, it shall continue for five (5) years following termination of this Agreement. The insurance shall have a retroactive date prior to or coinciding with the effective date of this Agreement.
3. Worker's Compensation Liability Insurance with self-insured retention in amounts required by the State of California.
4. Such other insurance in such amounts from time to time may be reasonably required by the mutual consent of the parties against other insurance risks relating to performance.

It should be expressly understood, however, that the coverages required under this Agreement shall not in any way limit the liability of UCSF.

UCSF, upon execution of this Agreement, shall furnish MONTEREY COUNTY with Certificates of Insurance evidencing compliance with all requirements. Certificates shall further provide for thirty (30) days' advance written notice to MONTEREY COUNTY of any modification, change or cancellation of any of the above insurance coverages.

