

**DRAFT
FOR DISCUSSION**

**JOINT POWERS AGREEMENT
ESTABLISHING A COORDINATED SYSTEM
FOR HEALTH CARE SERVICES**

This Joint Powers Agreement establishing a Community Collaborative for Health Care Services (hereinafter, the "Agreement") is entered into by and between the San Benito Healthcare District and the County of San Benito ("Parties") as of _____, pursuant to the provisions of Title I, Division 7, Chapter 5, Article I (Sections 6500, et seq.) of the California Government Code (hereinafter, the "Act") relating to joint exercise of powers by public agencies.

Recitals

A. The Parties are a local healthcare district organized pursuant to the Local Health Care District Law (California Health and Safety Code sections 32000 et seq., hereinafter referred to as "District Law") of the State of California, and a County government. The District owns and operates a licensed acute care hospital, two skilled nursing facilities, related ancillary services and a number of physician clinics (the "Facilities") in the geographic boundaries of the San Benito Health Care District and the County of San Benito, California (herein referred to as "the Region")

B. The Parties wish to form a joint powers authority entity (hereinafter, "JPA") pursuant to the Act to assist in pursuing the joint mission of providing healthcare services in the Region. The Parties desire to establish this cooperative relationship for the following purposes:

- i. To oversee the management and operations of the Facilities, and to oversee the development and implementation of a business plan;
- ii. To create a broader governance structure for the health care operations that would include board members with needed expertise to guide the future of health care services in the Region;
- iii. To foster and capitalize the further development and expansion of a local healthcare delivery system to provide high quality services to residents of the Region;
- iv. To ensure a sufficient foundation of local support through a transparent governance model with participation of residents who may have disparate ideas.
- v. To ensure long-term financial stability for the organization;
- vi. To provide mechanisms for expanding access to care through the formation of a new, sustainable, multi-specialty group (>25) of medical providers;
- vii. To increase public confidence in the local healthcare delivery system, increasing the likelihood that patients will choose to receive their care locally; and

- viii. To maintain a locally operated health care delivery system focusing on serving the healthcare needs of the residents in the Region, and to preserve and enhance access to the broadest range of services possible to all residents, regardless of their ability to pay.

NOW, THEREFORE, THE PARTIES HEREBY AGREE TO THE TERMS AND CONDITIONS SET FORTH BELOW.

Agreement

1. **Recitals.** The Recitals set forth above are true and correct.
2. **General Purpose of Agreement.** The purpose of this Agreement is to establish a cooperative relationship by and among the Parties through the creation of a joint powers agency (JPA) that is able to operate healthcare services efficiently and effectively in the Region. The JPA shall seek to expand services and to improve the financial viability of the organization. The Parties intend that additional public agencies within the Region, such as cities, may join the JPA in the future subject to the applicable terms and conditions stated in this Agreement.
3. **Joint Powers Authority Created.** Pursuant to Section 6506 of the Act, the Parties create a public entity, separate and apart from the Parties to this Agreement, to be known as the San Benito Health Care Authority (hereinafter, the "Authority"). The debts, liabilities, and obligations of the Authority shall not constitute the debts, liabilities, and/or obligations of any of the Member Parties.
6. **Governance.**
 - A. **Operating Board ("Operating Board").** The JPA shall be governed by an Operating Board. The Operating Board, as the governing and administrative body of the JPA, shall formulate and set policy, and shall exercise the powers set forth in this Agreement to accomplish its purpose. Appointments to the Operating Board shall be made through the following process:
 - (i) Each JPA Agency shall recommend a slate of two board members to represent that Agency on the Operating Board. Each party's slate shall be subject to the approval of the other Agency. Any subsequent Agency that joins the JPA may be given one additional seat on the board;
 - (ii) The four board members appointed by the JPA Agencies shall serve as the nominating committee for all remaining community board members. There shall be no fewer than three and no more than seven appointed community members.

B. Term of Office of Directors. Each Director shall serve a two (2) year term of office. All Directors shall serve at the will and pleasure of their respective Agencies and may be replaced at any time and without cause by the member Agency that initially appointed the Director. Any replacement Director shall serve out the balance of the term of the Director being replaced.

7. Meetings of the Operating Board.

A. Conducting Meetings. The Board shall hold regular meetings at least monthly and shall adopt bylaws for conducting their meetings and other business. All meetings of the Board, including without limitation regular, adjourned regular, and special meetings, shall be called, noticed, and conducted, in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

B. Quorum and Decision-Making Methods. A majority of voting members of the Board shall constitute a quorum. Each Director, or alternate, shall be entitled to one vote. Decisions shall be made by supermajority votes of at least seventy-five percent (75%) of the voting members present, except where otherwise required by law or established by Board bylaws or other provisions of this Agreement.

C. Board Officers. The Board shall have a Chair to preside over and conduct all meetings, and a Vice Chair who shall succeed the Chair and preside in the absence of the Chair. The offices of Chair and Vice Chair shall rotate through each of the seats on the Board annually in a manner to be determined by the bylaws.

8. Limitation on Powers. Nothing in this Agreement shall authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the California Business and Professions Code.

9. Appointed Officers. Pursuant to section 6505.6 of the Act, the Operating Board shall appoint an Auditor and a Treasurer for the JPA to perform the duties required by law, as well as provide any other services that may be desired by the JPA. Should the County Auditor and County Treasurer be willing to serve, they may serve the JPA as Auditor and Treasurer, or the JPA may select another eligible Auditor and Treasurer to perform such duties. Such officers shall receive no compensation for holding the appointed office but shall be compensated for the cost of providing services per written agreement with the Authority. Under general authority provided by Government Code sections 6505 et seq, the Operating Board may appoint an executive officer to manage the operations of the Authority.

10. **Activities of the JPA.** The activities of the JPA shall include the following:

- A. **Operational and Strategic Oversight.** The Operating Board shall oversee the management of the healthcare Facilities.
- B. **Financial Management and Oversight.** Except for assets and liabilities specifically excluded from the scope of this agreement, all financial activities related to the Facilities shall be overseen by the JPA.
- C. **Business Planning.** The Operating Board of the JPA shall develop and approve a business plan for the health care system and shall oversee its implementation. The business plan shall be subject to the reserve approval rights specified in Section 5(C) of this Agreement.
- D. **Budget.** The Operating Board of the JPA shall approve an annual budget each year subject to the reserve approval rights specified in Section 5(C) of this agreement.
- E. **Medical Staff Oversight.** The operating board shall receive reports and credentialing recommendations from the medical staff and shall approve all physician privileges.
- F. **Quality.** The Operating Board shall oversee quality and shall seek improvement where needed.
- G. **Medical Group Development and Provider Employment.** The Operating Board shall oversee the development of a new multi-specialty medical group and shall have the authority to re-structure existing rural clinics.
- H. **Other Activities.** The JPA shall also be responsible for the following other activities under this Agreement:
 - iv. Labor management, employment policies and benefit programs;
 - ix. Pooled financing, issuance of bonds and other funding vehicles (revenue, general obligation and other short term and long term);
 - x. Fundraising-philanthropy in partnership with the Hazel Hawkins Hospital Foundation;
 - xi. Contracting negotiations with various third party and government payers inclusive of Medical, managed care, commercial PPO, HMO, existing medical groups, and IPA's;
 - v. Regulatory compliance and accreditation;
 - xii. Such other projects which may be added in the future by agreement among the Parties;
 - xiii. Joint venture activities relating to inpatient and outpatient services;
 - xiv. Management activities;
 - xv. Development and implementation of insurance/provider networks; and
 - xvi. Sharing and crossover of managed care contractual rates.

5. Powers and Duties.

A. Authority. The JPA shall have the powers specified in Section 4 and other powers that are set forth in section 32121 of the District Law. Such powers shall be exercised in the manner provided in the Act subject only to the restrictions set forth in this Agreement. The JPA is authorized in its own name to perform all acts necessary for the exercise of common powers.

B. Assessments. Pursuant to Section 6504 of the Act, the JPA is empowered, and by this Agreement required, to assess the Parties to finance the entire operation of the JPA as specified below:

- (i) The County of San Benito shall contribute \$5 million of initial capital to the JPA.
- (ii) The San Benito Health Care District shall delegate management all of the Assets and Liabilities associated with the Facilities, except for those specified in Exhibit A. Specifically excluded from the JPA's scope of financial management shall be a fund of \$500,000 each year, which shall be exclusively managed by the District in furtherance of wellness and preventive care for residents in the Region.
- (iii) All administrative expenses of the JPA shall be paid from the operating budget of the Facilities.
- (iii) All supplemental tax payments, grants, and income and expense related to Federal Disproportionate Share ("DSH") and Quality Assurance Fee ("QAF") programs shall be managed by the JPA.
- (iv) The County of San Benito may serve as a credit facility to the JPA for the purpose of providing capital during the first ten (10) years of this Agreement. The current estimated need for such capital is between \$7-10 million. The JPA may, at its sole discretion, issue municipal debt instruments to fulfill the need for this capital.
- (v) The County of San Benito may, at its sole discretion, adopt new development fees to provide an additional source of capital for the facilities.

C. Reserve Powers. The San Benito Health Care District shall have the right to approve (i) the JPA business plan, (2) JPA expenditures greater than \$5 million, (iii) agreement to enter into partnership with third party health systems, and (iv) any discontinuation of service.

10. Fiscal Year and Annual Budget/Financing.

A. Fiscal Year. The JPA's fiscal year shall be the twelve (12) month period commencing each _____, except if the effective date of this Agreement is other than _____, the first fiscal year shall be the short year commencing the effective date and ending the following _____.

B. Annual Budget. The JPA shall operate only under an approved fiscal year budget. Once adopted annually for each fiscal year, the total annual expenditure budget may only be increased by unanimous vote of the Operating Board. The JPA will adopt a preliminary annual budget no later than _____ for the following fiscal year and will adopt a final budget prior to _____.

C. Budget Elements. The budget policy shall include, but is not limited to, the following components:

i. **Operation and Maintenance Expenses.** The costs of operating and maintaining Facilities and the equipment housed therein shall include, but will not be limited to, personnel salaries and benefits, office and computer supplies and other consumables, payments for lease facilities, medical equipment, and expenses necessary to repair facility equipment due to normal wear and tear from ordinary usage.

ii. **Capital Expenditures.** Capital expenditures shall include the costs of Facility improvements, medical equipment, strategic growth investments as approved in the business plan, and the original purchase of equipment, hardware, software, and other fixed asset type items typically having a useful life of more than one (1) year. All costs associated with capital purchases, such as installation, shall be capitalized. Replacement of such equipment at the end of its useful life shall be a capital item. Capital expenditures shall be paid in accordance with a budget established in the business plan and shall be paid for through available cash or JPA debt.

11. Funding and Cost Allocation. The JPA's annual budget shall include a reasonable provision for contingencies as well as financing for the maintenance, upgrade, or ultimate replacement of key fixed assets and structures. The JPA shall endeavor to provide its services in the most cost-effective manner available without compromising quality standards. For the first ten years of this Agreement, the JPA shall contribute \$2 million per year to the San Benito Healthcare District's now-frozen employee pension fund. Additional contributions to the pension fund shall be made based on annual actuarial studies and professional advice.

12. Appeals to the Operating Board. Any member agency shall have the right to appeal any implemented or recommended policy or procedure to the JPA's Operating Board for final determination should, in the opinion of the member agency, such policy or procedure pose a significant adverse impact on the member agency. In such cases, a unanimous vote of the JPA's Operating Board (excluding the Directors from the appealing agency) shall be required to approve the policy or recommendation.

13. Term of Agreement and Termination Provisions. This Agreement shall be deemed to go into effect on _____ (the "Effective Date") and shall continue in full force and effect until rescinded or terminated, as set forth below.

A. Termination of Individual Membership. Any member may terminate its participation in this Agreement by giving written notice to the JPA Operating Board not less than eighteen months before the start of the fiscal year, which termination shall be effective only on the beginning of the next fiscal year. If a member terminates its participation in this Agreement any and all assets and liabilities of the JPA shall become assets and liabilities of the San Benito Healthcare District, except for debt issued to the JPA under Section 5(B)(iv) of this agreement, shall become assets and liabilities of the San Benito Healthcare District. The member requesting Termination shall bear any expenses specifically related to termination.

B. Rescission of Agreement by All Parties. At any time, this Agreement may be rescinded and terminated, and the Authority may be dissolved, by a unanimous vote of all Parties.

15. Membership. Membership in the Authority shall be open to all cities, independent districts, and other public agencies which have an interest in providing healthcare services in the Region.

A. Admission of New Members. The Operating Board has the authority to admit new members to the Authority, after noticing existing members and an opportunity for them to be heard at a public meeting. The Board shall set the terms and conditions for admitting new members (either individually or generally) that it deems appropriate.

B. Cost of Admitting New Members. The Operating Board shall determine the cost of admitting any new members to the JPA, such as on-going assessments or charges that new members will be required to pay to the JPA.

C. New Member Obligations. Each agency accepted as a new member shall be required to pay any assessments established by the Operating Board, and sign a copy of this Agreement, or an acknowledgement that it is bound to all the terms and conditions herein (at the discretion of the JPA).

16. Amendments to Agreement. This Agreement may be amended or modified only by a unanimous vote of the Member Agencies that are Parties to this Agreement. Any amendments to this Agreement shall be in writing and signed by all members.

17. Severability. Should any part, term, portion or provision of this Agreement, or the application thereof to any person or circumstances, be in conflict with any State or Federal law, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions or the application thereof to other persons or circumstances, shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to continue to constitute the Agreement that the Parties intended to enter into in the first instance.

18. Insurance. The JPA shall be required to obtain insurance or join a self-insurance program in which one or more of the Parties participate, appropriate for its operations. Any and all insurance coverages provided by the JPA shall name each and every Party to this agreement as an additional insured for all liability arising out of or in connection with the operations by or on behalf of the named insured in the performance of this Agreement. Minimum Levels of the insurance or self-insurance program shall be set by the JPA in its ordinary course of business. The JPA shall also require all contractors and subcontractors to have insurance appropriate for their operations.

19. Indemnity. The JPA shall indemnify, defend and hold harmless the Parties their officers, agents, servants, employees, and volunteers from any and all claims, losses, costs or liability resulting to any person, firm, or corporation, or any other public or private entity for damages of any kind, including, but not limited to, injury, harm, sickness, or death to persons and/or property from any cause whatsoever arising from, or in any way connected with, the performance of its operations and exercise of its powers, except from any such claim arising solely out of acts or omissions attributable to the member Party or its officers, employees, volunteers, or agents.

20. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties hereto.

21. Notice of Creation. A notice of the creation of the JPA by this Agreement shall be filed by the Authority with the Secretary of State pursuant to Section 6503.5 of the Act.

22. Other Notices. Notices to the JPA required or permitted to be given under this Agreement shall be in writing. Delivery of such notices shall be conclusively taken and sufficiently given forty-eight (48) hours after deposit in the United States Mail, return receipt requested, with the postage thereon fully prepaid, addressed to the Authority as follows:

[Insert address of principle place of business]

Notices to the Parties shall be provided in the same manner as above, addressed as set forth in the signature page hereto. The JPA may change its address above for notices by giving written notice as described above to all Parties. Any Party may change its address for notices by giving written notice as described above to the Authority.

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

24. Entire Agreement. This Agreement contains the final and entire agreement of the Member Parties and supersedes all other agreements, written or oral, heretofore made by the parties. The parties shall not be bound by any terms, conditions, statements, or representations, oral or written, not contained herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, as of the day and year first above written.

Dated: _____

[PARTY NAME]

By: _____

Address: _____

Dated: _____

[PARTY NAME]

By: _____

Address: _____

Dated: _____

[PARTY NAME]

By: _____

Address: _____

**

EXHIBIT A

TBD