

COMMUNITY NURSE SERVICES AGREEMENT

This COMMUNITY NURSE SERVICES AGREEMENT (“**Agreement**”), effective as of September 1, 2019 (“**Effective Date**”), is entered by and between JOHN MUIR HEALTH, a California nonprofit public benefit corporation (“**JMH**”), which operates the John Muir Community Health Improvement, and Mt. Diablo Unified School District, (“**District**”). **JMH** and **DISTRICT** are sometimes referred to in this Agreement individually as a “**Party**” or, collectively, as the “**Parties.**”

RECITALS

JMH desires and intends to offer its personnel to act as a Community Nurse and a Primary Care Resident Physician for the Cambridge Elementary School and the Meadow Homes Elementary School located within the Mt. Diablo Unified School District.

The District desires to enhance the nursing and physician services available to low income schools with the use of additional personnel,

NOW, THEREFORE, in consideration of the mutual promises contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

ARTICLE I JMH'S RESPONSIBILITIES

1.1. Services. JMH agrees to provide, at no cost to District, (1) one individual (hereinafter referred to as “**Community Nurse**”) to perform the services described in **Exhibit “A”** of this Agreement and (2) one First Year Primary Care Resident Physician (hereinafter referred to as “**Resident Physician**”) to perform the services described in **Exhibit “B”** of this Agreement for the following elementary school(s) located within the District:

*Cambridge Elementary School, located at 1135 Lacey Lane, Concord
Meadow Homes Elementary School, located at 1371 Detroit Ave., Concord*

(referred to as “**School**”). It is the intention of the Parties that the Community Nurse and Resident Physician provided by JMH shall be in addition to and supplement the currently funded School Nurse position(s) within the District.

1.2. Community Nurse Qualifications. JMH shall ensure that the Community Nurse meets the qualifications set forth in **Exhibit A** of this Agreement. The Community Nurse provided under this Agreement will provide the services for a maximum of forty (40) hours per week.

1.3. Resident Physician Qualifications. JMH shall ensure that the Resident meets the qualifications set forth in **Exhibit B**. The Resident Physician provided under this Agreement will provide the services for a maximum of six (6) hours per week under the direction of the

Community Nurse, with clinical oversight by physician faculty at the John Muir Health Family Medicine Residency Clinic.

ARTICLE II TERM AND TERMINATION

2.1. Term. This Agreement shall be effective as of the Effective Date and shall continue through July 31, 2020 or the 2019-2020 school year to include summer school, as requested, subject to the termination provisions set forth in this Agreement.

2.2. Termination.

(a) Termination by JMH. JMH shall have the right to terminate this Agreement immediately upon the occurrence of any one or more of the following events: (i) breach of this Agreement by DISTRICT, if such breach is not cured to the satisfaction of JMH within thirty (30) days after written notice of such breach from JMH; (ii) DISTRICT is suspended, excluded, debarred or otherwise sanctioned from participation in any government health care program; (iii) any school in DISTRICT has its educational accreditation suspended or revoked; (iv) JMH determines, in its sole and absolute discretion, that this Agreement or the continuation of this Agreement: (A) violates or presents risk of violation of applicable federal, state or local law; (B) jeopardizes the mental or physical health or well-being of its employees; or (C) damages or may damage the reputation of JMH or any Affiliate (as defined below).

(b) Termination by DISTRICT. DISTRICT may terminate this Agreement immediately upon breach of this Agreement by JMH which is not cured to the satisfaction of DISTRICT, within thirty (30) days after JMH's receipt of written notice of such breach from DISTRICT.

(c) Termination Without Cause. Either Party may terminate this Agreement without cause, expense or penalty upon thirty (30) days' prior written notice to the other Party.

ARTICLE III INSURANCE AND INDEMNIFICATION

3.1. DISTRICT Insurance. DISTRICT shall provide and maintain, at its sole cost and expense, the following insurance coverage during the term of this Agreement:

(a) General Liability Insurance. DISTRICT shall provide and maintain general liability coverage using Insurance Services Office occurrence form CG 00 01 with an edition date prior to 2004 (bodily injury, property damage, personal and advertising injury, and products and completed operations coverage), or an equivalent form that is as broad with no limiting endorsements, in an amount not less than Three Million Dollars (\$3,000,000) per occurrence or

claim and Three Million Dollars (\$3,000,000) in the annual aggregate. DISTRICT's General Liability Insurance policy shall name JMH as an additional insured by causing endorsements to be attached to the insurance policy.

(b) JMH shall maintain insurance against claims for injuries to persons or damages to property which arise from or in connection with the performance of the services by the Community Nurse or Resident Physician.

(c) DISTRICT shall supply JMH with ongoing evidence, consisting of certificates of insurance and endorsements, that all of the required insurance policies under this Agreement are in force including certificates of insurance evidencing the annual renewal of each policy throughout the life of this Agreement. The evidence of coverage shall designate the "certificate holder" as the addressee for notices pursuant to Section 4.13 of this Agreement and provide that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice has been given or ten (10) days' prior written notice for non-payment of premium.

3.2. Indemnification.

(a) Indemnification by JMH. JMH shall indemnify and hold harmless DISTRICT against: (i) any and all liability arising out of JMH's failure to comply with the terms of this Agreement, and any injury, loss, claims, or damages arising from the negligent operations, acts, or omissions of JMH, its employees or agents arising out of the performance of this Agreement; and (ii) any and all costs and expenses, including reasonable legal expenses, incurred by DISTRICT in connection with the defense of such claims.

Indemnification by DISTRICT. DISTRICT shall indemnify and hold harmless JMH against: (i) any and all liability arising out of DISTRICT's failure to comply with the terms of this Agreement, and any injury, loss, claims, or damages arising from the negligent operations, acts, or omissions of DISTRICT, its employees or agents arising out of the performance of this Agreement; and (ii) any and all costs and expenses, including reasonable legal expenses, incurred by JMH in connection with the defense of such claims.

(b) Indemnification Process. All indemnification rights described in this Section 3.2 are expressly conditioned upon the Party seeking indemnification giving to the other Party: (i) prompt and timely notice of the claim for which indemnification is sought, (ii) sole authority to conduct the defense of the claim (including, without limitation, choice of legal counsel and settlement authority), provided, however, that indemnitor shall not without indemnitee's express prior written consent enter into any settlement that requires indemnitor to provide anything other than the payment of money, including without limitation to make an admission of guilt or wrongdoing, and (iii) all rights under counterclaims and defenses accruing to the Party seeking indemnity.

3.3. Survival. The provisions of this ARTICLE III shall expressly survive the expiration or earlier termination of this Agreement.

ARTICLE IV GENERAL PROVISIONS

4.1. Amendment. This Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated, signed by the Parties and attached to this Agreement.

4.2. Assignment. Except for assignment by JMH to an entity owned, controlled by, or under common control with JMH (each, an “Affiliate”), neither Party may assign any interest or obligation under this Agreement without the other’s prior written consent. Any attempted assignment in contravention of this Section shall be voidable at the option of JMH. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

4.3. Authority. This Agreement constitutes the legal, valid and binding obligation of the Parties. Each Party represents and warrants that it has the right, power, authority and capacity to execute and deliver this Agreement and to perform its respective obligations under this Agreement.

4.4. Choice of Law; Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the State of California, without regard to the conflicts of laws principles of California or any other jurisdiction. Each Party consents to the exclusive personal jurisdiction and venue of the state and federal courts located in Contra Costa County.

4.5. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Faxed or scanned copies shall be deemed originals for purposes of this Agreement.

4.6. Dispute Resolution. In the event of any controversy or dispute related to or arising out of this Agreement, the Parties agree to meet and confer in good faith to attempt to resolve the controversy or dispute without an adversary proceeding. If the controversy or dispute is not resolved to the mutual satisfaction of the Parties within ten (10) business days of notice of the controversy or dispute, the Parties agree to waive their rights, if any, to a jury trial and pre-trial discovery, and to submit the controversy or dispute to arbitration in Contra Costa County, State of California, in accordance with the rules and procedures of JAMS, The Resolution Experts. The Parties reserve the right to contest the arbitrator’s decision and to appeal from any award. This agreement to arbitrate shall be specifically enforceable. The non-prevailing party shall pay to the prevailing party the actual and reasonable attorneys’ fees and costs incurred in bringing any action or proceeding, declaratory or otherwise, arising out of or relating to this Agreement.

4.7. Rules and Regulations. Each Party shall comply with all applicable laws and regulations of the State of California related to the services hereunder, and the policies and rules of the District related to such services which are made known by the District to the Community Nurse and Resident Physician, which include: submitting accurate forms, reports and other required documents, complying with mandatory child abuse reporting laws, and adhering to California adopted curriculum and standards as they relate to such services.

4.8. Entire Agreement. This Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions between the Parties regarding the same. No other understanding between the Parties shall be binding on them unless set forth in writing, signed and attached to this Agreement. Without limiting the generality of the foregoing, this Agreement expressly supersedes any and all prior education affiliation agreements between the Parties.

4.9. Exhibits. Any attached exhibits, together with all documents incorporated by reference in the exhibits, form an integral part of this Agreement and are incorporated into this Agreement wherever reference is made to them to the same extent as if they were set out in full at the point at which such reference is made.

4.10. Master List. The Parties acknowledge that this Agreement, together with any other contracts between JMH and DISTRICT, will be included on the master list of contracts maintained by JMH.

4.11. Nondiscrimination. DISTRICT shall ensure that it shall not differentiate or discriminate on the basis of race, color, national origin, ancestry, religion, sex, marital status, sexual orientation, gender identity, age, medical condition, medical history, genetics, evidence of insurability, or claims history, in violation of any applicable state, federal or local law or regulation, or JMH Rules, including, without limitation, the Age Discrimination Act of 1975, the Americans with Disabilities Act and all regulations issued pursuant thereto and as may be amended from time to time.

4.12. No Third Party Beneficiary Rights. The Parties do not intend to confer and this Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.

4.13. Notices. All notices or communications required or permitted under this Agreement shall be given in writing and delivered personally or sent by United States registered or certified mail with postage prepaid and return receipt requested or by overnight delivery service (e.g., United Parcel Service, Federal Express, DHL). In each case, notice shall be delivered or sent to the Parties at their respective addresses set forth on the signature page hereto.

4.14. Recitals. The recitals above form an integral part of this Agreement and are incorporated into this Agreement by this reference.

4.15. Relationship of the Parties; Independent Contractors. Relationship of the Parties. Each Party is and shall at all times be an independent contractor with respect to the other Party in meeting such Party's responsibilities under this Agreement. Nothing in this Agreement is intended nor shall be construed to create a partnership, employer-employee or joint venture relationship between JMH and District. Under no circumstances shall the Community Nurse or Resident Physician and/or JMH be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers' compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall Community Nurse or Resident Physician and/or JMH look to District as his/her employer, or as a partner, agent, or principal. Neither

Community Nurse or Resident Physician nor JMH shall be entitled to any benefits accorded to District's employees, including, without limitation, workers' compensation, disability insurance, vacation, or sick pay. JMH shall be responsible for providing, at JMH's expense and in the JMH's name, disability, workers' compensation or other insurance, as well as licenses and permits usual or necessary for the Community Nurse or Resident Physician in conducting the services hereunder.

4.16. Remedies. The various rights, options, elections, powers, and remedies of the respective Parties hereto contained in, granted, or reserved by this Agreement, are in addition to any others that said Parties may be entitled to by law, shall be construed as cumulative, and no one of them is exclusive of any of the others, or of any right or priority allowed by law.

4.17. Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement and such severance shall have no effect upon the enforceability of the remainder of this Agreement.

4.18. Waiver. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a Party must be in writing to be effective, and shall apply solely to the specific instance expressly stated.

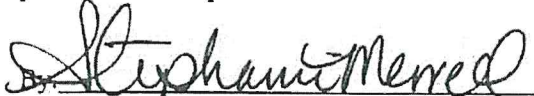
[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

"JMHS":

JOHN MUIR HEALTH, a California nonprofit public benefit corporation

By: 

Stephanie Merrell

Title: Director, Community Health Improvement

By: 

Jamie Elmasu

Title: Manager, Community Health Improvement

By: 

Jeremy Fish, M.D.

Title: Director, John Muir Health Family Medicine Residency Program

"DISTRICT":

Mt. Diablo Unified School District

By: 

Superintendent

Print Name: Robert M. Martinez

By: 

Director, Student Services

Print Name: Felicia Spuckey-Smith

Address for Notices:

John Muir Health
1400 Treat Boulevard
Walnut Creek, CA 94597
Attn: Jamie Elmasu,
Manager,
Community Health
Improvement

Address for Notices:

Student Services
Mt. Diablo Unified School District
1936 Carlotta Drive Address:
Concord, CA 94519-1397
Attn: Linda Pete
Phone: (925) 682-8000

With a Copy to:

John Muir Health
1400 Treat Boulevard
Walnut Creek, CA 94597
Attn: Legal Services

EXHIBIT A

SERVICES TO BE PERFORMED BY COMMUNITY NURSE AND QUALIFICATIONS OF COMMUNITY NURSE

GENERAL DESCRIPTION OF DUTIES: Responsible to assist and support School Nurses in functions including but not limited to assessing student's health status, identifying health problems that may create a barrier to educational progress, and developing a health care plan for management of the problems in the school setting.

ESSENTIAL JOB FUNCTIONS INCLUDE:

Ensure Access to Primary Health Care

1. Coordinate with Medi-Cal and CHDP representatives to facilitate applications for Healthy Families.
2. Consult with primary care providers/specialist MD's as necessary to effect student health status.

Assist in Provision of System for Dealing with Crisis Medical Situations

1. Assist District personnel to develop and implement emergency/disaster plans.
2. Assist District staff or contracted personnel who perform specialized health care procedures with students requiring such services.
3. Assist in planning for emergency care for illness or injury of pupil(s) on school premises.
4. Report promptly to the principal (or an individual designated by the principal) any serious accident or illness affecting students.

Assist with Mandated Screening and Immunization Monitoring

1. Assist District School Nurses in vision screening with kindergarten, 2nd and 5th grade students and with other students receiving special education services.
2. Assist District School Nurses in hearing screening with kindergarten, 2nd and 5th grade students and with other students receiving special education services.
3. Assist District School Nurses in reviewing student immunizations for compliance as required by state law for entrance in California Public Schools and follow up in cases of non-compliance.
4. Assist District School Nurses in reviewing first grade student physical examinations for compliance as required by the CHDP program and follow up in cases of non-compliance.

Provide a Process for Identification and Resolution of Student's Health Care that affect Educational Achievement

1. Assist District School Nurses in health assessments for referred general education students and students being evaluated and/or reevaluated for special education who suspected or actual health concerns.
2. Consult with families, staff and health care providers regarding students receiving health care and to monitor students as appropriate.
3. Evaluate and interpret (to student, parents, school personnel) the health status of students.
4. Identify and follow up on chronic, acute, or latent health problems which may impair the learning process.
5. Recommend to the appropriate school personnel needed modification in the educational program.
6. Partner with community agencies to obtain needed resources for students identified needs.
7. Actively participate in school based Coordinated Care Teams.

Other School Related Responsibilities

1. While on site be responsible to the site administrator for the care, control, and instruction of the students in his/her charge.
2. Provide information and present staff development activities on health-related matters in the school setting (e.g. communicable disease, medication administration, etc.).
3. Strengthen the educational process through improvement of the health status of students.
4. Assist in the coordination of the school and community health programs.
5. Promote a healthful and safe school environment by reporting to the administrator any condition of health and/or sanitation that may need correction.
6. Assist District School Nurses in reviewing statistics and health records of pupils on such forms as are approved by the District.

Qualifications

License: Valid California Registered Nursing license.

Education: BSN degree from a regionally accredited college or university (eligible for Preliminary School Nurse Credential)

Experience: Minimum 2 years nursing experience; preferably in Public Health/Community Nursing.

Fingerprinting: In compliance with the Department of Justice fingerprinting standards

Exhibit B

SERVICES TO BE PERFORMED BY FIRST YEAR FAMILY PRACTICE RESIDENT AND QUALIFICATIONS

Role

- As a physician learner, the goal is for the Resident to gain exposure to common pediatric ailments and issues in the elementary school aged child, as well as the impact of the social determinants of health in the community for children and families.

General Description of Duties:

- Under the direction of the Community Nurse, the Resident will assist the school nurse with identification, assessment and resolution of student's health care needs; provide first aide as directed; provide health education for students, staff and parents as requested; and assist with mandated screenings.

Qualifications

- First Year Physician Resident enrolled in the John Muir Health Family Medicine Residency Program in Walnut Creek, CA
- Fingerprinting: In compliance with the Department of Justice fingerprinting standards