



County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

March 1, 2011

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

Dear Supervisors:

**APPROVAL OF THE SERVICES PLEDGE AND FUNDING AGREEMENT WITH THE
MARTIN LUTHER KING, JR. HEALTHCARE CORPORATION FOR THE NEW
PRIVATE, NONPROFIT MARTIN LUTHER KING, JR. HOSPITAL
(SECOND DISTRICT AFFECTED) (3 VOTES)**

SUBJECT

Approval of the Services Pledge and Funding Agreement with the Martin Luther King, Jr. Healthcare Corporation for the new private, nonprofit hospital.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and delegate authority to the Chief Executive Officer to execute the Services Pledge and Funding Agreement with the Martin Luther King, Jr. Healthcare Corporation in the amount of up to \$10 million to maintain and fund the necessary account to be used for expenses related to the new private, nonprofit Martin Luther King, Jr. Hospital (Exhibit I). The total maximum start-up fund amount will be \$50 million to be budgeted, \$10 million for each of the five consecutive fiscal years, beginning July 1, 2010.
2. Delegate authority to the Chief Executive Officer to prepare and execute amendments to the Services Pledge and Funding Agreement with the Martin Luther King, Jr. Healthcare Corporation for the next four consecutive years (fiscal years 2011-12 thru 2014-15), provided that: 1) funds, in \$10 million annual payment amounts, are approved by your Board through the County's budget process; 2) approval by County Counsel is obtained prior to any such amendment; and 3) the Chief Executive Officer notifies your Board in writing within 30 days after execution of each amendment.

"To Enrich Lives Through Effective And Caring Service"

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PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On July 13, 2010, your Board approved the Coordination Agreement which defines the County and the Regents of the University of California (UC) commitments regarding their respective roles in the opening of the new private, nonprofit Martin Luther King, Jr. (MLK) Hospital. Additionally, on August 10, 2010, your Board approved the appointment of the MLK Hospital Board of Directors. They have established the Martin Luther King, Jr. Healthcare Corporation (MLK Healthcare) as a private, nonprofit California corporation.

The recommended actions will allow the Chief Executive Officer (CEO) to execute the Services Pledge and Funding Agreement (Funding Agreement) with MLK Healthcare to provide the first of five annual payments in accordance with the Coordination Agreement. Additionally, authority is delegated to the CEO to prepare and execute amendments to provide for the second through fifth annual payments provided that funds, in \$10 million annual payment amounts, are approved by your Board through the County's annual budget process. County Counsel approval and written notification to your Board is required.

Implementation of Strategic Plan Goals

The recommended actions support Goal 4, Health and Mental Health of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

The maximum obligation under this agreement for Fiscal Year 2010-11 is \$10 million, which was previously approved by your Board in the 2010-11 Final Budget. Start-up funding of \$10 million will be requested annually in future fiscal years, up to a total maximum amount of \$50 million, in accordance with the Coordination Agreement.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

As noted, on July 13, 2010, your Board approved the Coordination Agreement with the UC for the establishment of the new private, nonprofit MLK Hospital, which identified the County and UC commitments regarding their respective roles in the opening of the hospital. Specifically, the Coordination Agreement includes certain funding commitments by the County and a commitment by the UC to provide physician leadership.

The Funding Agreement memorializes the important terms, previously approved by your Board, and includes other minor provisions necessary to effectuate those terms between the County and MLK Healthcare to establish start-up funding necessary for operating expenses related to the opening of the new private, nonprofit MLK Hospital. Operating expenses include the hiring of consultant services and staff, as well as purchasing of equipment and supplies.

Under the terms of the Coordination Agreement, the County will provide to MLK Healthcare one time start-up funding in the total amount of \$50 million, to be provided annually in the amount of up to \$10 million per year, subject to the County's annual budget process, over five consecutive fiscal years. Access to the available funds will be provided to MLK Healthcare within ten (10) days of written receipt of request to the County for specified amounts until the funds are exhausted. Any unspent or unencumbered funds will be available in the subsequent fiscal year(s).

The Funding Agreement is effective upon execution by both parties, with the funding commitment continuing until MLK Healthcare has requested and the County has disbursed all start-up funds approved by your Board through the County's budget process or until expiration or termination of the Coordination Agreement. Upon early termination of the Funding Agreement, any unspent or unencumbered start-up funds must be returned to the County.

County Counsel has reviewed and approved Exhibit I as to form.

Once your Board has approved, through the County's annual budget process, the four remaining subsequent payments for fiscal years 2011-12 thru 2014-15, the CEO will prepare and execute amendments to the Funding Agreement. Such amendments will require the review and approval by County Counsel, as well as written notification to your Board within 30 days after execution of each amendment.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

MLK Healthcare intends to open, establish, license, and operate a general acute care hospital on the campus of the previously closed Martin Luther King, Jr.-Harbor Hospital.

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Start-up funds will assist MLK Healthcare with the resources necessary to fulfill the terms of the Coordination Agreement, for the purpose of establishing the new private, nonprofit MLK Hospital, to serve the residents of the South Los Angeles community, including the indigent, Medi-Cal and other needy and underserved populations.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:SAS
MLM:AMT:gl

Enclosure

c: Executive Office, Board of Supervisors
County Counsel
Auditor-Controller
Health Services

030111_HMHS_BL_MLK HEALTHCARE SERVICES PLEDGE AND FUNDING AGRMT

**SERVICES PLEDGE AND FUNDING AGREEMENT
REGARDING
THE NEW PRIVATE, NONPROFIT, MARTIN LUTHER KING, JR., HOSPITAL**

THIS AGREEMENT is made and entered into this ____ day of ____, 2011.

BY COUNTY OF LOS ANGELES, a body corporate and politic, and a subdivision of the State of California, (hereinafter "County"),

AND Martin Luther King, Jr. Healthcare Corporation, a nonprofit public benefit corporation (hereinafter "MLK Healthcare").

WHEREAS, on or about July 13, 2010, the County and the Regents of the University of California, a Constitutional corporation authorized in Article IX, section 9 of the California Constitution (hereinafter "UC") entered into a Coordination Agreement for the Establishment of an Acute Care Hospital (hereinafter "Coordination Agreement");

WHEREAS, under the terms of the Coordination Agreement, the County desires to have healthcare provided to the indigent, needy and underserved populations of the County and in consideration for the performance by the UC of certain obligations, the County agreed, among other things, to provide funding to a private non-profit corporation that would be capable to provide such services through such non-profit's establishing and maintaining an acute care hospital with an emergency department on the campus of the closed Martin Luther King, Jr.-Harbor Hospital;

WHEREAS, the funding obligations of the County under the Coordination Agreement include the promise to provide one time start up funding in the total amount of Fifty Million Dollars (\$50,000,000) to be funded to the non-profit corporation on an annual basis in the amount of Ten Million Dollars (\$10,000,000) each of the five consecutive fiscal years beginning in July 1, 2010, for the necessary expenses related to opening the hospital;

WHEREAS, MLK Healthcare is a non-profit public benefit corporation with its primary purpose to provide high quality hospital inpatient, outpatient, and emergency health care and such additional health care services as are desirable to meet the needs of the South Los Angeles community, which includes indigent, Medi-Cal, needy, and underserved populations, among others;

WHEREAS, MLK Healthcare intends to open, establish, license and operate a general acute care hospital on the campus of the previously closed Martin Luther King, Jr.-Harbor Hospital, which will provide healthcare services and community outreach and education to the South Los Angeles community;

WHEREAS, pursuant to Government Code section 26227, the County is authorized to provide annual funding in the amount of Ten Million Dollars (\$10,000,000) in accordance with and subject to the terms of this Agreement for the purpose of establishing an acute care hospital with an emergency department to serve indigent, Medi-Cal and other needy populations for the South Los Angeles community; and

WHEREAS, MLK Healthcare desires to accept such funding, understanding that it is conditioned on its agreement to meet certain conditions relating to providing care for the South Los Angeles community, which includes indigent, Medi-Cal, and underserved populations as set forth in this Agreement.

NOW, THEREFORE, as authorized by section 26227 of the Government Code and in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto agree as follows:

A. Approved Funding, Requests and Disbursements

1. Effective upon the execution of this Agreement, the County hereby agrees to provide MLK Healthcare start up funding in the amount of Ten Million Dollars (\$10,000,000), which shall be immediately available (collectively, "Start-Up Funds").
2. MLK Healthcare agrees that the Start-Up Funds shall be used for necessary expenses related to opening an acute care hospital with an emergency department located on the campus of the closed Martin Luther King, Jr.-Harbor Hospital. Such expenses may include, but are not limited to, purchasing consultant services, and acquiring staff, equipment and supplies. Such funding may also be used as supplemental funding for operating expenses incurred during the period before such hospital is operating at full capacity.
3. To receive Start-Up Funds, MLK Healthcare must submit a request in writing to County, which shall specify the amount requested (the aggregate of all such requests will not exceed the total Start Up Fund amount set forth in Section A. 1. above). The County shall disburse the requested amount to MLK Healthcare within ten (10) days of County's receipt of the written request, with the aggregate of all such disbursements not to exceed the total Start-Up Funds set forth in Section A.1. above. In order to ensure prompt access to necessary funds, MLK Healthcare shall have the express right to request and retain funds in a prior fiscal year that it has budgeted to use in a future fiscal year, subject to the provisions of section E below.
4. It is understood and agreed that any funds disbursed to MLK Healthcare under this Agreement may only be used for the purposes specified in this Agreement. In furtherance of this understanding, it is agreed that, should the County, in good faith, determine that any funds paid to the MLK

Healthcare under this Agreement have been used for purposes other than those so authorized, MLK Healthcare is required to promptly refund any such improperly used funds to the County; provided, however, if MLK Healthcare disputes such determination, the parties shall meet to mediate the dispute within fifteen (15) days of the County being informed that MLK Healthcare does not accept County's determination. If the County and MLK Healthcare are unable to resolve the dispute through mediation, the County and MLK Healthcare shall determine the issue through the following arbitration procedure (the "Arbitration Procedure"): the County and MLK Healthcare shall select a reputable and qualified arbitrator or arbitration company (the "Arbitrator") to make a final determination to resolve the dispute, which Arbitrator's determination shall be binding on both parties. If the parties are unable to agree to the Arbitrator to use for the review, each party shall select an arbitrator and those two arbitrators shall select a third arbitrator or arbitration company within ten (10) days, which third arbitrator shall serve as the Arbitrator and whose decision shall then be binding on both parties. The arbitration shall be private and confidential and the results of the arbitration shall be kept confidential to the extent permitted by law. Each party shall equally bear the costs of the Arbitrator, but shall be responsible for their own costs associated with the arbitration. Except as set forth in this Paragraph, discovery by the parties shall be conducted in accordance with Chapter 3 of Title 9 of Part 3 of the California Code of Civil Procedure.

B. Establishment of Acute Care Hospital with Services to the Underserved

MLK Healthcare agrees to undertake those efforts necessary to fulfill the terms of this Agreement for the purpose of establishing an acute care hospital with an emergency department on the campus of the closed Martin Luther King, Jr.-Harbor Hospital to serve the residents of the South Los Angeles community, including the indigent, Medi-Cal and other needy and underserved populations.

C. Effective Date and Agreement Term

Except as set forth below, this Agreement will become effective upon execution by the parties and remain in force until MLK Healthcare has expended all Start-Up Funds. Except as otherwise specified below, this Agreement shall terminate upon expiration or termination of the Coordination Agreement.

D. Financial Records

1. MLK Healthcare agrees to maintain satisfactory financial accounts, documents and records of expenditure of the Start-Up Funds. MLK Healthcare also agrees to retain such financial accounts, documents and records for five (5) years following termination of this Agreement.

2. MLK Healthcare agrees to use a generally accepted accounting system for, and make available for County inspection at reasonable times, those documents to be maintained pursuant to this Agreement.
3. At any time during the term of this Agreement or at any time within five (5) years of the expiration or prior termination of this Agreement, authorized representatives of the County may conduct an audit of MLK Healthcare records for the purpose of verifying appropriateness and validity of expenditures of Start-Up Funds under the terms of this Agreement.
4. MLK Healthcare, within thirty (30) days of notification from the County of its audit findings, may dispute the audit findings in writing to the County and provide the County with records and/or other documentation to support the expenditure claims. If the County does not agree with MLK Healthcare's dispute of the audit findings, the parties shall meet to mediate the dispute within then fifteen (15) days of the County being informed that MLK Healthcare does not accept audit findings. If the County and MLK Healthcare are unable to resolve the dispute through mediation, the County and MLK Healthcare shall resolve the dispute under the Arbitration Procedure described above in Section A. 4.
5. MLK Healthcare will provide the County Chief Executive Office on an annual basis, and within one hundred twenty (120) days after the termination or early termination of this Agreement, a report itemizing all actual expenditures funded by monies received pursuant to this Agreement. This report shall include itemization and detail regarding any specific material expenditures in excess of \$50,000.00.
6. MLK Healthcare shall provide copies, as soon as reasonably possible following availability, of its filings relating to tax-exempt and charitable status to the County upon prior written request, which filings include the CT-1 Form (Initial Registration), RRF-1 (Renewal Report) or CT-694 (Annual Financial Solicitation Report) with the California Attorney General's Registry of Charitable Trusts and the Form 1023 (Application for Exemption) and Form 990 (Annual Return) with the IRS.
7. The provisions of this Paragraph D shall survive the expiration or termination of this Agreement.

E. Unspent Start- Up Funds

Upon expiration or early termination of this Agreement for whatever reason, if MLK Healthcare has not spent or encumbered any portion of the Start-Up Funds, MLK Healthcare shall return to the County those unspent or unencumbered funds. This Paragraph E shall survive the expiration or termination of this Agreement.

F. Indemnification

MLK Healthcare shall indemnify, defend and hold harmless County, its special districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including reasonable attorney and expert witness fees), arising from or connected to all acts and/or omissions of MLK Healthcare arising from or relating to this Agreement.

County shall indemnify, defend and hold harmless MLK Healthcare, its directors and officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including reasonable attorney and expert witness fees), arising from or connected to all acts and/or omissions of County arising from or relating to this Agreement.

This Paragraph F shall survive the expiration or termination of this Agreement.

G. Notices and Other Documents to be Delivered

All notices and all other documents to be provided from one party to the other party shall be directed to and made by the following representatives of the parties:

To the County:

Sheila A. Shima
Deputy Chief Executive Officer
726 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012
(213) 974-1160

To MLK Healthcare:

To its Board of Directors at:

12021 Wilmington Avenue (currently under construction)
Los Angeles, CA 90059

Mailing Address:

Box 323
310 N. Indian Hill Boulevard
Claremont, CA 91711

To its Agent of Service of Process as indicated in its latest Statement of Information (for any litigation matters)

With a Copy to:

David A. Hatch
Hooper, Lundy & Bookman, P.C.
1875 Century Park East, Suite 1600
Los Angeles, CA 90067

H. Severability

If any provision of this Agreement, or the application thereof, is held to be invalid, that invalidity shall not affect other provisions or applications of the Agreement that can be given effect without the invalid provision or application, and to this end the provisions of the Agreement are severable.

I. No Third Party Beneficiaries

There are no third party beneficiaries to this Agreement.

J. Governing Law and Jurisdiction

This Agreement shall be governed by, and construed in accordance with the laws of the State of California. The parties each agree and consent to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement.

K. Independent Contractors

The parties are and at all times shall be independent contractors with respect to each other and in meeting their duties and responsibilities under this Agreement. Nothing in this Agreement is intended nor shall be construed to create a delegated, partnership, employer-employee or joint venture relationship between

County and MLK Healthcare. MLK Healthcare is a fully independent entity and the County shall have no control over MLK Healthcare as result of this Agreement or otherwise.

L. Assignment

Neither party shall assign this Agreement without the other parties' prior written consent, which consent may be given or withheld in such party's sole discretion.

M. Amendments

This agreement may be amended upon mutual execution of an amendment by the parties.

IN WITNESS WHEREOF, MLK Healthcare has executed this Agreement, or caused it to be duly executed by its authorized representative, and the County of Los Angeles by order of its Board of Supervisors, has delegated to its Chief Executive Officer the authority to execute this Agreement on its behalf on the date and year written below.

“MLK Healthcare”

**Martin Luther King, Jr.–Los Angeles
Healthcare Corporation**

By _____ Date _____
Manuel Abascal
Chair

“COUNTY”

County of Los Angeles

By _____ Date _____
William T Fujioka
Chief Executive Officer

APPROVED AS TO FORM FOR THE COUNTY:
ANDREA SHERIDAN ORDIN
County Counsel

By _____
Principal Deputy