

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Health Services Agency *mst*

BOARD AGENDA # *B-6

Urgent

Routine

AGENDA DATE December 18, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Chief Executive Officer or her Designee to enter into Amendment Four of the Master Participation Agreement with Doctors Medical Center, Memorial Medical Center and the County for the addition of an Orthopedic Physician Residency Program to be funded by Doctors Medical Center as part of the Valley Consortium for Medical Education Physician Training

STAFF RECOMMENDATIONS:

Authorize the Chief Executive Officer or her Designee to enter into Amendment Four of the Master Participation Agreement with Doctors Medical Center, Memorial Medical Center and the County for the addition of an Orthopedic Physician Residency Program to be funded by Doctors Medical Center as part of the Valley Consortium for Medical Education Physician Training.

FISCAL IMPACT:

The recommendation to support the expansion of the Valley Consortium for Medical Education (VCME) through the addition of an Orthopedic Physician Residency program would not have a fiscal impact to the Health Services Agency (HSA), as Doctors Medical Center (DMC) would bear the financial risk directly associated with this program's operations. Currently, the fiscal impact of the participation in the VCME is

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2012-627

On motion of Supervisor Monteith, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

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FISCAL IMPACT (Continued):

related to the Family Medicine Residency program. The three participant organizations in the VCME are Doctors Medical Center, Memorial Medical Center and Stanislaus County. The VCME is a non profit corporation for the purpose of physician training. The three partners share equally in the net cost of the overall program, its indirect costs after subtracting Graduate Medical Education (GME) and Indirect Medical Education (IME) revenues and other program revenues for the Residency Program are provided. The current Fiscal Year 2012-2013 Health Services Agency Clinic and Ancillary division budget is \$43.6 million and includes the Residency program budget of approximately \$1 million, an amount roughly equivalent to the cost to the HSA prior to the development of the VCME.

On May 5, 2009, the Board of Supervisors approved the County's participation in the non-profit corporation for VCME. As reported to the Board of Supervisors on May 5, 2009 when proposing the VCME development in order to preserve residency training following a detrimental funding decision by the federal government, it was anticipated that other speciality residency programs beyond Family Medicine would be explored; however, the sharing of anticipated shortfalls related to new programs would be determined according to the benefit to the participating organizations. The Family Medicine Residency program is a significant element of the HSA's clinic operations and enables the delivery of State mandated and contractually required health care. While the County is supportive of the addition of an Orthopedic Residency Program, it is being recommended due to the actions of Doctors Medical Center to pay the direct cost of this new residency program, as DMC is the partner hospital in which the inpatient Orthopedic inpatient training is planned.

DISCUSSION:

Background

Stanislaus County has provided health services to its underserved communities since 1893 when the first Stanislaus County hospital was built. The focus of the County government health system was compassionate, quality care to those in need.

The County's first physician residency training program was formed in 1935 and was affiliated with Stanford University. In 1975, the county's previous Family Medicine Residency Program was established in affiliation with the University of California, Davis system. The Residency Program was a three year training program in the primary care area of Family Medicine. Completion of the Residency Program enabled a licensed physician to take the Family Medicine Board exam to become "Board Certified." The program, called the Stanislaus Family Medicine Residency Program, was a fully

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accredited program with the Accreditation Council for Graduate Medical Education (ACGME) and was noted for its gifted, diverse and culturally sensitive physicians. A critical component of the County's 1975 decision to participate in a family medicine residency program was to meet the ever-increasing local demand for obstetrical care for Medicaid (Medi-Cal) patients. The Residency Program also focused on providing well-rounded training for residents to facilitate their operating independently in medically underserved areas, which included delivering babies. The Residency Program graduated 260 new primary care physicians since 1975, of which approximately one-third have remained in the area to practice, making the program a critical source of physicians for our entire community's residents.

Funding Issue, Development of New Program and Consortium

Prior to the closure of Stanislaus Medical Center in 1997, the County received federal Graduate Medical Education (GME) funding to support the Residency Program. GME funding is based upon a complicated formula which, among other components, considers the number of resident physicians and the volume of Medicare services provided by the respective hospital. GME payments flow from a Center for Medicare and Medicaid Services (CMS) contracted fiscal intermediary to the hospitals, based on interim payments and are subsequently reconciled through a hospital cost report submittal and reconciliation process between the hospital and the fiscal intermediary. Federal GME funding continued, albeit at a lower rate, as the inpatient training function transferred to DMC in late 1997.

During this time period, Congress enacted the Balanced Budget Act of 1997, which included Full-time Equivalency (FTE) caps for residency training programs, but did not include clear guidance on how to determine if a program was "new" for the purposes of claiming GME funding. The fiscal intermediary, a private insurance company used by CMS to perform audit and payment functions under Medicare, did determine the program at DMC to be "new," thereby generating a lower per resident rate of reimbursement. DMC claimed the cost of providing graduate medical education for the Residency Program once the transfer occurred, and until 2008 received federal GME funds that were then passed through to the Health Services Agency to cover the majority of the costs of the program, with DMC and the County sharing equally in overpayments or underpayments.

In 2008, DMC was notified by CMS that cost reports back to 2001 would be re-opened for review and that all current and future GME payments would stop, as CMS had preliminarily determined that the program was ineligible for GME funding. At the end of January 2009, DMC was notified by CMS that due to a determination of funding ineligibility, the recoupment of federal GME funding for the years 2001 through 2007 had begun. Subsequently, DMC repaid to CMS a total of \$19 million, half of which under

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the contractual terms of the Amended and Restated Affiliation Agreement approved by the Board of Supervisors on October 10, 2000, was reimbursed to DMC by Stanislaus County. Note: Although DMC, through its parent company, Tenet, pursued an appeal of this unreasonable decision by CMS, the appeal outcome learned earlier in 2012, was unfavorable. After conferring with counsel experienced in these matters, it was determined that further appeals would take years and considerable expense, and were unlikely to produce a favorable result.

The County, the local medical community and the community at large place great value on the Residency Program. The Residency Program keeps the local hospital emergency departments from becoming completely overburdened. The faculty and resident physicians are a crucial component of the safety net health care available to Stanislaus County residents. If the training had ended, access to health care services for indigent and low-income residents of the County would have been jeopardized, as the resident physicians and faculty are critical to meeting the needs of the County's Medi-Cal and indigent patients. Additionally, the Residency Program helps to address the shortage of primary care physicians in our underserved area. Given these acknowledgements, strenuous efforts were undertaken by the County and by DMC/Tenet, to develop a model which would meet the federal funding requirements. With the assistance of legislative advocacy, a clarification of the 1997 rules was issued by CMS in mid- 2009, which included a convoluted means to avoid the interruption of training for our community. Essentially, the long-standing program had to be closed and a new program developed which necessarily had to be sufficiently different from the then existing program in order to be determined "new" and be eligible for accreditation and federal funding.

On May 5, 2009, the Board of Supervisors authorized the development of and County participation in a non-profit organization which would be the sponsor of the new Family Medicine Residency Program, including the entering of affiliation agreements for the purposes of accreditation, funding and expense sharing arrangements and management and employment arrangements. While both Kaiser Permanente and Emanuel Medical Center initially considered participation in this new consortium (VCME) organization, the established participants are DMC, Memorial Medical Center and Stanislaus County. The parties executed the Master Participation Agreement in November of 2009.

The former program, Stanislaus Family Medicine Residency Program, was officially closed on June 30, 2010, and the new accredited and funding eligible program, Valley Family Medicine Residency Program of Modesto, was launched on July 1, 2010, providing uninterrupted training for eligible resident physicians. Federal funding was restored effective upon the new program start, and due to the consortium model and the

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county's Federally Qualified Health Center status, the consortium has enjoyed a Teaching Health Center grant that has further offset funding shortfalls.

Proposed Orthopedics Physician Residency Program

Since the launch of the VCME, its board has supported continued exploration of additional residency programs based upon the concerning and expected worsening of specialty physician capacity in our community. To date, some consideration has been given to the specialties of Emergency Medicine, General Surgery, Orthopedics, and Psychiatry. Given the federal restriction on the number of resident positions eligible for federal funding, which such cap will set at the close of the third year of the new program, or June 30, 2013, the VCME temporarily expanded the Family Medicine Residency program in order to build flexibility for the possible new specialty training.

The federal funding cap on resident positions per hospital is not tied to a particularly specialty. This temporary expansion was financially supported by the additional grant funding awarded to the VCME.

To date, the VCME has taken steps to launch an Orthopedic residency program, accredited by the American Osteopathic Association, on July 1, 2013. In contrast to the Family Medicine Residency program which provides the required three-year curriculum, Orthopedic training is a five-year program. Some of the curriculum is anticipated to be provided within the Health Services Agency clinics. The Orthopedic program would be established at the required minimum of two residents per year, such that during the 2013-2014 academic year, there would be two Orthopedic first-year resident positions, and in the 2014-2015 academic year there would be two first-year positions and two second-year positions, and so on, until in the program's fifth year of operation, there would be 10 Orthopedic resident positions, two in each academic training year. Note: There is a possibility of accepting candidates for both the first and second year of training curriculum during the initial program year, which could move the full build-out and first graduating class one year earlier. At full build-out, it is anticipated that through reducing the Family Medicine program positions back to its original 27 positions (9 per academic training year), and using the expanded positions for the Orthopedic residency program, there would be two Orthopedic positions without attached federal funding. DMC/Tenet and VCME have developed financial proformas, and DMC has proposed to the VCME board, it's willingness to absorb without the other participant organization contribution, the direct costs of this new Orthopedic Residency Program. The current five-year term of the Master Participation Agreement would be extended to accommodate the Orthopedics program.

The VCME counsel has been preparing the necessary language for an amendment to the Master Participation Agreement to memorialize these terms. County Counsel is

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assisting the Chief Executive Office and the Health Services Agency to complete the proposed amendment. The Amendment will provide for the addition of the Orthopedic Residency Program at the direct cost of DMC.

It is recommended that the Board of Supervisors authorize the completion of this amendment and join DMC and MMC in welcoming a new Orthopedic Residency Program.

POLICY ISSUE:

Approval of this recommendation is consistent with the Board of Supervisors' priorities of A Healthy Community and Effective Partnerships by enabling the implementation of an additional physician residency training program under the existing multi-organizational model for Graduate Medical Education, as an efficient means of expanding physician workforce capacity for our community.

STAFFING IMPACT:

The Chief Executive Office Chief Operations Officer and the Health Services Agency Managing Director sit on the Non-Profit Governing Board of the VCME representing the County of Stanislaus. Existing staff perform functions to support the participation in VCME.

CONTACT PERSON:

Mary Ann Lee, Managing Director. 209-558-7163
Patricia Hill Thomas, Chief Operations Officer. 209-525-6333

**FOURTH AMENDMENT TO MASTER PARTICIPATION AGREEMENT
AS AMENDED EFFECTIVE JANUARY 4th, 2013**

THIS Fourth Amendment ("Amendment") to Master Participation Agreement ("Agreement"), as such Agreement has been previously amended by the First, Second, and Third Amendments previously approved by the Participants (as defined therein) who are the parties to such Agreement, is entered effective as of January 4, 2013 ("Agreement") by and among Valley Consortium for Medical Education, a California nonprofit public benefit corporation ("Consortium"), and each of the Participants that have executed the Agreement to supplement the Agreement for use as the Master Affiliation Agreement for an Orthopaedic Surgery Residency Program ("Orthopaedic Program") to be sponsored by the Consortium by the addition of the Sections below.

The Consortium and each of the Participants agree as follows:

33. The Consortium and each of its Participants agree to seek the establishment of an Orthopaedic Surgery Residency Orthopaedic Program ("Orthopaedic Program") with the Consortium to serve as the organizer and coordinator of such Orthopaedic Program, and it is the intention and commitment of the parties and other entities which are involved with the formation and implementation of the Orthopaedic Program to initiate the operation of the Orthopaedic Program, subject to obtaining required CMS and orthopaedic residency accrediting organization approvals, on July 1, 2013 with Doctors Medical Center of Modesto, Inc. ("DMC") as the initial Participant hospital. Other Participants shall have no financial obligation or responsibility for (a) the direct costs of the Orthopaedic Program, as determined herein, or (b) any overhead or other indirect costs incurred related to the Orthopaedic Program which exceed such costs required to operate the Consortium Family Medicine residency.
34. DMC has committed to bear the costs of the Orthopaedic Program incurred on or after January 4, 2013, both as to those costs directly incurred by DMC, and as to the expenses incurred by the Consortium related to the Orthopaedic Program, as detailed in Exhibit 1, and to fulfill a number of other obligations and responsibilities as provided for in the Agreement and this Amendment. DMC, and any other Participants who in the future agree to bear these costs via an amendment to this Agreement, shall be known herein as "Orthopaedic Financial Participants."
35. The Consortium has been organized to pursue certain objectives set forth in Article 1.1 of its corporate bylaws within the community described in Section 1.1(a) thereof as "Stanislaus County and adjacent communities," hereinafter the "Community," including, consistent with such objectives, the Consortium becoming the sponsor ("Sponsor") of an Orthopaedic Residency Program. As the Sponsor, Consortium will organize, coordinate and administer the Orthopaedic Program including the assumption of primary responsibility for establishing and

maintaining contractual and other relationships with physicians who will act as the "core" faculty for the Orthopaedic Program and the medical school(s) which will participate in providing academic oversight for the Orthopaedic Program. Consortium will also have approval authority regarding and shall provide appropriate assistance in coordinating the arrangements for rotation of residents enrolled in the Orthopaedic Program ("Orthopaedic Residents") among the Participants and with respect to rotations of Residents to rotation sites operated by other qualified institutions ("Affiliate Sites").

36. It is necessary for the implementation of the Orthopaedic Program that it meet all requirements for accreditation of the Orthopaedic Program by the American Osteopathic Academy of Orthopaedics ("AOAO"), including compliance with the policies, interpretations and standards established by the AOAO, as may be revised from time to time (collectively referred to as "AOAO Accreditation Standards").
37. The parties intend to use their best efforts to qualify the Orthopaedic Program to allow the Orthopaedic Financial Participant(s) to receive Medicare, Medi-Cal and other government program payments, including such payments that may be available under Medicare Advantage and other Medicare and Medi-Cal managed care programs that may be made for certain graduate medical education expenses (collectively, the "GME Payments") and other GME related costs as a result of the participation of the Orthopaedic Financial Participant(s) in the Orthopaedic Program. The decision on such qualification will be within the discretion of the Centers for Medicare & Medicaid Services ("CMS"). Both the accreditation and CMS determinations will be made following submittal of the Agreement, as amended by this Amendment, and certain related documentation for review by CMS and the AOAO.
38. As of the date this Amendment is being submitted for execution, it is the intention and commitment of the parties and other entities which have been involved with the formation and implementation of the Consortium and/or which expect to be a part of the implementation of this Amendment and of the Orthopaedic Program, to initiate the operation of the Orthopaedic Program, subject to obtaining required CMS and AOAO approvals, on July 1, 2013.
39. To achieve the implementation of the Orthopaedic Program consistent with the terms of this Fourth Amendment, both the Consortium and the Orthopaedic Financial Participant(s) will need to undertake their best efforts to organize and operate the Orthopaedic Program and conduct their activities with respect thereto consistent with the requirements of CMS and the AOAO and to expeditiously carry out their responsibilities under the Agreement and this Amendment.
40. The Consortium has also been vested with the responsibility, on behalf of the Orthopaedic Financial Participant(s), to investigate and to serve as a coordinating and sponsoring organization for additional residency training and/or other medical

education that may be developed in the Community served by the health facilities listed in Schedule A, and now accepts that responsibility via this Amendment as to the Orthopaedic Program.

41. Actions by Consortium. The Consortium shall conduct its operations as to the Orthopaedic Program under the Agreement, as supplemented by this Amendment, including the exercise of the rights and satisfaction of the obligations that are provided for or arise hereunder, consistent with its Articles and Bylaws, and any duly adopted governance and operational policies thereunder, including but not limited to the appropriate and duly approved delegation and assignment of authority and responsibility to its officers, representatives, agents, and contractors to take certain actions on behalf of the Consortium, as supplemented by this Amendment.
42. Details of the Orthopaedic Program. The Orthopaedic Program to be operated under this Amendment will consist of a minimum of five (5) annual classes of 2 residents approved training "slots" in orthopaedic surgery. The Orthopaedic Program will be affiliated with and subject to academic oversight by the Midwestern University/AZCOM ("MWU") and its Midwestern Osteopathic Post-Graduate Training Institute ("OPTI"). The relevant agreement(s) with MWU and its OPTI establishing the terms of such affiliation and oversight shall be attached as Exhibit 2 hereto. The planned primary training sites and rotations for the residents are set forth in Exhibit 3 hereto, which shall be subject to revision in accordance with review and approval procedures adopted by the Consortium with respect thereto.
43. "Affiliated Sites." This term refers to training sites that may be operated by an entity other than the Orthopaedic Financial Participant(s) (an "Affiliate") as part of the Orthopaedic Program. Such Affiliates will contract directly with the Consortium to establish the terms and conditions governing the Affiliate's operation of such Affiliated Site(s). Each contract with an Affiliate operating one or more Affiliated Sites (the "Affiliate Agreement") shall include any terms that are required pursuant to the provisions of this Agreement, and/or under the Accreditation Standards, as well as any other terms and conditions that are mandated by action of the Consortium from time to time and, to the extent practicable, shall utilize standard forms and provisions approved for such purpose by the Consortium. Each Affiliate Agreement shall set forth any financial obligations arising thereunder between the Affiliate and any Orthopaedic Financial Participant and/or the Consortium and shall generally be expected, in the case of a nonhospital training site, to be in compliance with the CMS requirements applicable to GME payments for resident rotations conducted at a nonhospital site.
44. "Orthopaedic Clinical Faculty." Clinical faculty for the Orthopaedic Program ("Orthopaedic Clinical Faculty"), will serve on a full or part time basis, will be required to meet standards to be established by the Consortium consistent with the

requirements for certification of the Orthopaedic Program, will be appointed by the Orthopaedic Financial Participant(s) and/or, with the approval of the Consortium, the Orthopaedic Program Director, MWU, and by any Affiliate operating an Affiliated Site, and are identified in Exhibit 4 to this Amendment. As of the date of this Amendment, the term "Faculty Medical Group" refers to the Scenic Faculty Medical Group, Inc., a California professional corporation which currently is contracted by Consortium to provide some portion of the core Faculty for the Family Medicine Program and is expected to provide some portion of the core faculty for PGY-1 and PGY-2 of the Orthopaedic Program as part of the Orthopaedic Clinical Faculty. The appointment of the Orthopaedic Clinical Faculty shall also be subject to appropriate review and any necessary approval of the Orthopaedic Program Director and/or the medical school which provides the academic oversight for the Orthopaedic Program. To the extent reasonably feasible, the contracts utilized by Orthopaedic Financial Participants or any Affiliate which employs or contracts with Orthopaedic Clinical Faculty shall be similar in form and structure, including, but not limited to, term and termination issues, documentation and record keeping requirements, and other elements of performance that are related to and could materially impact the continuing certification of the Orthopaedic Program and the qualification of Orthopaedic Financial Participants for GME Payments. A copy of each such contract shall be provided to the Consortium, and the Orthopaedic Program Director for his/her use, subject to appropriate confidentiality limitations, in verifying and documenting such contract's compliance with Orthopaedic Program standards. The Orthopaedic Financial Participant(s) shall be responsible for the costs related to the Orthopaedic Clinical Faculty, including any additional costs related to the Faculty Medical Group on account of the Orthopaedic Program.

45. **"Orthopaedic Program Director."** The Orthopaedic Program Director is the person appointed by the Board of Directors of Consortium to assume the role and perform the responsibilities of the Orthopaedic Program Director for an accredited Residency Orthopaedic Program. The Orthopaedic Program Director shall act as coordinator between and among Orthopaedic Financial Participant(s), Affiliates, and Orthopaedic Clinical Faculty in implementing the accredited residency training Orthopaedic Program that is to be operated pursuant to the Agreement and this Amendment, and, in such capacity shall assist in designing the Orthopaedic Program, determining its scope of training, selecting teaching staff, recruiting and appointing Orthopaedic Residents, and evaluating Orthopaedic Residents and faculty and performing such other duties as are allocated to the responsibility of the Orthopaedic Program Director consistent with the AOA Accreditation Standards and/or under Consortium policies and procedures. The Orthopaedic Program Director and the Family Medicine Program Director shall coordinate as to the rotations of the PGY-1 and PGY-2 Orthopaedic Residents.
- (a) The Orthopaedic Program Director may be employed by one of the Orthopaedic Financial Participants, or by the Consortium, and/or his/her services may be obtained on a leased or contracted basis from another

appropriate entity. The employment or other contractual arrangements with the Orthopaedic Program Director shall be subject to approval by the Consortium and shall be in compliance with the standards set forth in this Amendment and other applicable provisions of the Agreement. The Orthopaedic Financial Participant(s) shall be responsible for the salary, benefits, taxes and other costs related to performance of his/her duties as Orthopaedic Program Director.

46. Advance Funding and Reconciliation for Orthopaedic Program Operations. Initial funding by the Orthopaedic Financial Participant(s) for ongoing Consortium operations is to be provided on an advance basis in an amount consistent with Section 47 to assure that the Consortium has sufficient cash flow for its operations. Accordingly, if the Orthopaedic Program is initiated on July 1, 2013, initial funding for operations for the Orthopaedic Program during the 2013 – 2014 academic year will be due and payable commencing in May, 2013. Similar funding arrangements may also be applicable to Affiliates. A reconciliation to determine the actual costs of the Orthopaedic Program, including any costs incurred by the Consortium relating to the Orthopaedic Program in addition to those required to operate the Consortium's Family Medicine residency, will be conducted following the end of each academic year by the following April, using Exhibit 1 as a basis for determining the actual direct costs of the Orthopaedic Program.
47. Other Support for Orthopaedic Program and Participant Losses.
- (a) The Orthopaedic Financial Participants and the Consortium are committed to work on the development of policies and procedures to identify and seek available funding for the Orthopaedic Program. It is understood and agreed that any policies, procedures and financial arrangements to be established hereunder, and/or through agreements with any Affiliates, must be structured to be consistent with applicable CMS reimbursement policies and standards and other relevant legal constraints that may be applicable thereto.
- (b) The Consortium will establish an annual budget for the Orthopaedic Program conducted at the Rotation Sites and its administrative support activities and costs as to the Orthopaedic Program only. The Consortium Finance Committee and Board of Directors shall review and approve the budget at least three (3) months prior to the beginning of the upcoming fiscal year and the amount of the contribution required from each Orthopaedic Financial Participant(s) to support the Consortium education and supporting activities. The assessed preliminary contributions will be made in four (4) quarterly equal parts, on June 15, September 15, December 15 and March 15 per Exhibit 5, and any additional assessment will be identified after the reconciliation called for in Section 47 above is completed. The Consortium shall determine what amount of GME payments (GME includes both DGME and IME), or any other sources of funding received by the Orthopaedic Financial Participant, if any, relate to the

Orthopaedic Program and these amounts shall not be included in determining the contribution of the Orthopaedic Financial Participant(s) to the Consortium.

(c) During the budget year, the Consortium will periodically review the budget and, at the request of any party to this Agreement, make appropriate adjustments to the contributions, which may include supplement contributions from the Participants and payments to an individual Participant to cover variances in expected revenues for Orthopaedic Program activities if and to the extent that any variances do not result from the provision of services or goods in a manner that did not comply with applicable Consortium, federal, state or local governmental requirements.

48. Employment of Residents; Rotations. It is the expectation of the parties that the Orthopaedic Residents will be employed by the Consortium. The employing entity shall assume the initial responsibility for payment of the salaries or other compensation and employment related benefits and taxes for all Orthopaedic Residents it employs ("Direct Residents Costs") and the Consortium will administer the obligations of the Orthopaedic Financial Participant(s) to reimburse such employer for their allocated responsibility for such costs as determined in accordance with the standards and methodologies for such allocations established pursuant to the relevant provisions of this Amendment. The Orthopaedic Financial Participant, initially DMC, shall be responsible for one hundred percent (100%) of the Direct Residents Costs, whether the Orthopaedic Residents are assigned to rotations within the hospital of the Orthopaedic Financial Participant or located at non-hospital sites operated by Affiliates or other operators ("Clinical Rotation Sites"). Future changes in such employment relationships may be made from time to time with the approval of the Board of Consortium and the affected Orthopaedic Financial Participant(s), and shall include appropriate "meet and confer" and other procedures as may be necessary or appropriate with respect to the contracts or other arrangements under which such employment relationships have been established. The Orthopaedic Program will be operated under a structure providing that:

- (a) Residents will receive clinical training consistent with applicable Accreditation Standards pursuant to a schedule of approved clinical rotations ("Clinical Rotations") for designated periods at qualifying Orthopaedic Financial Participant and/or Affiliate Rotation Sites.
- (b) Faculty offices will be located and it is expected that most of the associated lectures and other didactic training elements of the Orthopaedic Program will be primarily provided at the Orthopaedic Financial Participant(s), which initially is expected to be DMC. It is understood that this arrangement may be subject to review and modification during the term of the Agreement and shall be administered consistent with relevant CMS regulatory standards.

- (c) **Payments Related to Costs Incurred by Nonhospital Training Sites.** The costs of the Orthopaedic Program, as determined by considering at least the factors identified in Exhibit 1, and allocable to nonhospital training sites shall be borne by the Orthopaedic Financial Participant hospital which is assigned as the primary service site for the Residents and that is therefor eligible to receive CMS (and any other available government Orthopaedic Program) payments for its costs incurred for the Residents that are rotated to such nonhospital sites. Each Orthopaedic Financial Participant hospital shall coordinate with the Consortium and the nonhospital Rotation Site to assure that the costs related to such Residents will be documented and paid in accordance with the eligibility requirements for available CMS reimbursement and payments that may be made by other government programs that follow CMS rules in such regard.¹
- (d) **Exception.** Paragraph (d) may not be applicable to nonhospital Rotation Sites that are arranged for and supervised by any other Orthopaedic Financial Participant and/or Affiliate which is eligible to receive GME payments for GME Costs related to Residents at such sites if, with the Agreement of Consortium and the hospital which serves as the primary service site for the Residents assigned to such a Rotation Site such other Participant/Affiliate assumes full responsibility for payment of the Mandated GME Costs.
- (e) Contracts to be entered into with Affiliates or other operators of Rotation Sites described above in this Section shall set forth their responsibility to:
- (i) Cooperate with the Orthopaedic Financial Participant hospital(s) and the Consortium and provide such information as may reasonably be requested in order for the Orthopaedic Financial Participant hospital(s) and the Consortium to verify that such site meets all licensing, accreditation and participation requirements under the applicable CMS program standards necessary to maintain the Orthopaedic Program's accreditation and
 - (ii) (If the Orthopaedic Program has been so approved by CMS), to enable such Participating hospital(s) and the Consortium to

¹ The purpose of this provision and the Agreement is to maintain compliance with the requirements for GME reimbursement to hospitals that incur qualifying graduate medical education costs ("GME Costs") that are established under federal law, as set forth in 42 CFR §§ 412.105, 413.75, 413.78, and other related regulations and under other applicable federal laws and regulations for time spent by residents who are enrolled in qualifying training Orthopaedic Programs at such hospitals in "nonhospital" and "nonprovider" settings ("Off-site Payment Rules"). It is the understanding and intention of the parties that the designation of a training site as a "nonhospital" or "nonprovider site," as such terms are used in this Agreement, will be determined consistent with the regulatory definition of a "provider-based" facility set forth in 42 CFR § 413.65. The Agreement shall be interpreted and applied, insofar as practicable, to be in compliance with the Off-Site Payment Rules.

maintain the qualification of the Orthopaedic Program and of the Orthopaedic Financial Participant(s) to receive CMS payments for GME costs related to Residents while they are assigned to the nonhospital Rotation Site.

- (f) The Consortium, the Orthopaedic Financial Participant and any Affiliates or other operators of nonhospital Rotation Sites agree to develop and adopt, as soon as reasonably practicable, the Orthopaedic Resident Rotation Schedule called for under Section 42 (and to be incorporated herein as Exhibit 2) and any related documentation regarding the operations of the Orthopaedic Program that may be required to establish and maintain the continuing accreditation and qualification of the Orthopaedic Program under applicable AOA and CMS standards. To the extent practicable, such Resident Rotation Schedule shall address modifications that may be made therein in the event that the full roster of Residents projected for an academic year or any portion thereof is not reached or maintained during any such academic year. Exhibit 2 shall list the proposed Rotation Sites and schedules for the July 1, 2013 to June 30, 2014 academic year and shall include any changes thereto as may be approved from time to time by the Board of Consortium.

49. Orthopaedic Resident Qualifications. Each of the Orthopaedic Residents shall meet such qualifications as are established by the Consortium in accordance with the AOA Accreditation Standards and such other requirements as may be established, consistent therewith and with any other applicable state or federal laws, by the entity acting as their employer and the Consortium. If another Participant or any other entity is acting as the employer of the Residents, the Consortium and such Participant shall cooperate and, where applicable, shall work with any such outside entity to implement the provisions of this Section.

50. Standards for Employer of Orthopaedic Residents. The Orthopaedic Financial Participant shall be responsible for the costs related to the Orthopaedic Residents as set forth below, including reimbursement to the Employer who initially incurs such costs, but the employer of the Orthopaedic Residents under the Orthopaedic Program shall initially be required to:

- (a) Coordinate its employment process, as well as any termination or other disciplinary process affecting an Orthopaedic Resident's continued employment status, with the Orthopaedic Program Director and, if the employer is the Consortium, with its Chief Executive Officer and/or such other corporate officers as shall have been delegated with the Consortium's authority with regard to such matters. If an entity other than the Consortium shall be the employer, such decisions and related procedures will be conducted in accordance with the applicable employment processes of such entity. In either case, the employer, insofar as practicable and in accordance with appropriate risk management

limitations and applicable employment laws, shall coordinate such actions with officers of the Consortium and/or with other Participants as may otherwise be appropriate to assure that the Orthopaedic Resident matching process and other elements of the management and evaluation of the Orthopaedic Residents are conducted in accordance with Consortium standards and policies, the AOA Accreditation Standards, and the other requirements referenced in this Amendment.

- (b) Enter into written employment contracts with the Orthopaedic Residents that meet (i) all labor law and related requirements and any other regulatory requirements under California and federal law (*e.g.* HIPAA, wage and hour/overtime, non-discrimination, tax withholding); (ii) applicable requirements under the Accreditation Standards and any CMS requirements; and (iii) any additional requirements adopted from time to time by the Consortium and, to the extent reasonably feasible, shall be consistent with any corporate compliance standards of any other Participant and as may be necessary with respect to Orthopaedic Residents assigned to Affiliate Rotation Sites, to be compliant with its ordinances and generally applicable employment rules and standards. The resident employment contracts shall require the Orthopaedic Residents to complete all training and related activities included in the Orthopaedic Program, and to perform the scope of practice at the various sites in which the Orthopaedic Program is conducted that is required of their training level. It shall include appropriate disclosures, waivers, and limitations, consistent with applicable AOA Accreditation Standards, with regard to the obligations of the Orthopaedic Financial Participant(s) to the Orthopaedic Residents and with respect to the rights of Orthopaedic Residents in the event of any termination, reorganization, or other material change in the Orthopaedic Program. It shall also include appropriate and adequate waivers by Orthopaedic Residents allowing for the sharing of information among the Orthopaedic Financial Participant(s) and the Orthopaedic Clinical Faculty, concerning the performance of Orthopaedic Residents in the Orthopaedic Program, including provision for shared participation, and protection for persons involved, in any disciplinary action concerning an Orthopaedic Resident as well as for reports made by such persons to other entities or persons in appropriate circumstances (*e.g.*, to the ABFM or a state licensing board).
- (c) Maintain required workers' compensation and other mandated employment related insurance and provide medical malpractice insurance coverage, including tail coverage (if the relevant coverage was provided using a claims-made coverage form), for the residents at levels no less than \$1 million per claim and \$3 million aggregate per year for each Orthopaedic Resident. The parties shall determine whether separate medical malpractice insurance coverage is required as to the Orthopaedic Program and its residents.

- (d) As the employer and unless otherwise agreed by any other Participant, be initially responsible to pay the salaries, FICA and other withholding taxes applicable thereto, and benefits of the Orthopaedic Residents.
 - (e) Be initially responsible, subject to possible indemnification or contribution from any lessee of such employed Orthopaedic Residents, for the defense and satisfaction of any financial or other claims made by or arising by or on behalf of or with respect to any obligations relating to the employment of the Residents, including such claims which are addressed in the provisions of Section 24 of the Agreement.
 - (f) Work cooperatively with other Participants, the Orthopaedic Clinical Faculty to provide initial orientation and appropriate compliance training to Residents on a coordinated and efficient basis.
 - (g) Establish and implement policies that will also be adhered to by other Participants that will meet standards established by law, AOA, and/or by the Consortium regarding moonlighting, vacation and time off, maximum hours of services and breaks and also be subject to standards for support services to be provided to Orthopaedic Residents and Orthopaedic Clinical faculty (*e.g.*) meals, laundry, uniforms, provision of emergency or other medical care required by Residents while on duty, telephones, and rest and recreational facilities that will be coordinated with the employer of the Orthopaedic Residents (“Additional Resident and Faculty Costs”).
 - (h) If housing assistance or other non-standard perquisites are provided to Residents, to coordinate such arrangements with other Orthopaedic Financial Participants in accordance with any policies in such regard as may be adopted from time to time by the Consortium.
51. Curricula. The curriculum for the Orthopaedic Program as well as any curriculum to be used in additional educational Orthopaedic Programs to be implemented by the Consortium shall meet all applicable requirements of the accrediting agencies and CMS. A copy of the curriculum for the Orthopaedic Program is available at <http://www.aoa.org/pdfs/residents/Basic-Standards-Orthopedic-Surgery-Eff-7-2012.docx>. Other standards and policies related to any such approved curriculum shall be collected and maintained by the Consortium with copies to be given to each Participant that participates in the Orthopaedic Program to which they relate.
52. Orthopaedic Clinical Faculty. To the extent they will have responsibility for the supervision of Orthopaedic Residents practicing at an Orthopaedic Financial Participant’s health facilities or otherwise be involved in the delivery of services to patients, members of the Orthopaedic Clinical Faculty shall be required to qualify for and be appointed to the Medical Staff of the health facility(ies) at which they will provide such services with appropriate credentials that must be maintained at all times during which they shall exercise such responsibility and shall be qualified to supervise the Orthopaedic Residents in a manner that meets

the requirements for the approval and ongoing operation of the Orthopaedic Program. It is the current understanding that any ancillary health providers who may assist in such teaching activities (e.g., dieticians, physician assistants, occupational or other therapists, etc.) will be contracted or provided by, and at the expense of, the Orthopaedic Financial Participant(s). The initial members of such faculty complement (including their projected monthly total of hours of participation in the Orthopaedic Program) to be so assigned to each Orthopaedic Financial Participant and to any other Affiliate Site shall be listed in Exhibit 6 to this Amendment and the Orthopaedic Financial Participant(s) shall be given reasonable advance notice of any changes in such staffing. Orthopaedic Clinical Faculty appointed by Participants or Affiliates shall meet the standards set forth in or to be established pursuant to Section 45. All faculty who bill for professional services that are rendered in a teaching setting shall be compliant, and shall receive appropriate training in such regard, with CMS and Medi-Cal standards for such billings.

53. Cost Reporting for Residents. Orthopaedic Financial Participants and Consortium will collaborate in the development of procedures to assure that each Orthopaedic Financial Participant and, as applicable, Orthopaedic Clinical Faculty, including Faculty Medical Group, Affiliates, and the Consortium are able to generate and maintain the documentation required by CMS for timely and complete reporting under the Intern and Resident Information System (IRIS) to properly determine the Orthopaedic Financial Participant's FTE Resident count for each cost reporting period as well as all documentation necessary to establish the "Per Resident Amount" qualified for reimbursement by CMS pursuant to 42 USC §1395ww(h) and other applicable federal laws and regulations; and, in connection therewith, to accurately report all items required to be included in each Participant's cost report. Should the clinics of Stanislaus County become Affiliated Sites, this provision shall only be applicable to Stanislaus County to the extent that information that would be reported by it hereunder is required for the filing of an accurate cost report by the Orthopaedic Financial Participant which has financial responsibility for the costs of the Orthopaedic Program at Stanislaus County's facilities. The Consortium shall establish procedures to review and resolve issues that may arise where there is any conflict or inconsistency between cost and other relevant reports prepared by the Orthopaedic Financial Participant(s). Each Orthopaedic Financial Participant understands and agrees that it has an obligation to file claims related to the Orthopaedic Program implemented hereunder in accordance with all applicable CMS rules and regulations, and to advise the Consortium of any claim which it has reason to believe may be inconsistent or in conflict with the position that may be taken by the Consortium or any other Participant with respect to the determination/allocation of Orthopaedic Program costs.

54. Payments to Orthopaedic Program Teaching Faculty.

- (a) Faculty Medical Group for PGY-1 and PGY-2 Orthopaedic Residents. Except as provided below, any payments due to the Faculty Medical Group ("FMG Payments") shall initially be paid by the Consortium in accordance with Section 17 of the Agreement except the Consortium shall determine the amount of payments, if any, related to the Orthopaedic Program based on any increases in the payments to FMG on account of the Orthopaedic Program and the supervision of the Orthopaedic Residents, including, but not limited to, increases in FMG staff or staff time to accommodate the Orthopaedic Program. The Consortium shall determine whether the FMG Payments for teaching services at Stanislaus County Sites shall be made directly to the Faculty Medical Group by the Orthopaedic Financial Participant(s), or whether such payments will be made from the Consortium or the County, using funding advanced by the Orthopaedic Financial Participant(s) for such purposes. The parties shall establish a mechanism for evaluating, negotiating and periodic review of the staffing for and amount of compensation to be paid to Faculty Medical Group for its teaching services to the Orthopaedic Program.
- (b) Orthopaedic Clinical Faculty. The Consortium shall determine whether payments due to Orthopaedic Clinical Faculty, which at the time of execution of this Amendment is expected to be the Stanislaus Orthopedic and Sports Medicine, Inc. ("SOSM"), shall be paid by the Consortium, with the Orthopaedic Financial Participant(s) reimbursing the Consortium within 45 business days of each payment to Other Clinical Faculty, or whether the Orthopaedic Financial Participant(s) shall make the payments directly to Other Clinical Faculty.

55. Maintenance of Accreditation for Orthopaedic Program. In addition to the other obligations in such regard identified in the other provisions of this Agreement, each Orthopaedic Financial Participant and Consortium shall take all reasonably necessary steps (including the payment of requisite fees) to maintain accreditation of the Orthopaedic Program by the Accrediting Organization, AOA. In furtherance of this obligation, the Consortium and the Orthopaedic Financial Participant acknowledge their commitment to establish and maintain the following:

- (a) Compliance with the AOA Accreditation Standards, including assurance of adequate professional qualifications/credentials of participating physicians and any other staff who are subject to such standards as may be provided by Faculty Medical Group or by the Orthopaedic Clinical Faculty arranged or provided by any Orthopaedic Financial Participant.
- (b) Procedures, consistent with any other rights and obligations of the Orthopaedic Financial Participants, for the review of, and any appropriate

disciplinary actions regarding Orthopaedic Residents participating in the Orthopaedic Program (or any other residency Orthopaedic Program to which this Agreement is applicable) who may have practice rights at an Orthopaedic Financial Participant's facilities and with respect to any personnel decisions respecting such Orthopaedic Residents as may be related thereto.

56. Term and Termination. The parties agree that the original effective date of the Agreement was November 10, 2009 and hereby extend the term of the Agreement until June 30, 2016, subject to earlier termination or modification in accordance with the provisions set forth below.
- (a) Orthopaedic Program Not Approved. If, on or after February 15, 2013 the Orthopaedic Program has not been approved for operation as an accredited Orthopaedic Program for the academic year commencing on July 1, 2013, and/or there is substantial doubt as to the eligibility for the Orthopaedic Financial Participant(s) in the Orthopaedic Program to qualify for GME payments during such academic year, any Orthopaedic Financial Participant may terminate its participation in the Orthopaedic Program hereunder, by notice given to the Consortium.
57. Modifications of Orthopaedic Program. Each party shall also have the right to implement changes in the Orthopaedic Program from time to time that are consistent with applicable accreditation, licensing, and CMS participation requirements. If any such change would materially adversely affect the interests of the Consortium or of any other Orthopaedic Financial Participant with respect to its participation therein, the party intending to make such change shall give the Consortium and the other affected Orthopaedic Financial Participant at least six (6) months advance notice thereof unless an earlier date for such implementation is required in order to maintain accreditation, or to comply with licensing or CMS participation requirements. In all events, the parties shall use their best efforts to avoid or limit any disruption to the Orthopaedic Program that might result from such modification.

Unless expressly amended herein or by subsequent amendments agreed to by the parties in a signed written amendment, all other terms of the Agreement, including but not limited to, terms related to definition, interpretation and enforcement of the Agreement and its amendments, shall remain in full force as originally agreed to in the Agreements and any amendments, and shall apply equally to the terms of this Amendment.

Notice shall be given in keeping with the legal notice addresses identified in the Master Affiliation Agreement.

This Amendment shall be effective following Board approval and execution hereof by each of the Participants.

Executed as of the date set forth below by its duly authorized representative:

Party: Valley Consortium for Medical Education

Date: 1/14, 2013

By: *Peter Broderick, MD MEd*

Typed Name: PETER BRODERICK

Its: CEO/DIO
[Office Held]

Party: Doctors Medical Center of Modesto, Inc.

Date: 1/14, 2013

By: *Wamen Kirk*

Typed Name: Wamen Kirk

Its: CEO
[Office Held]

Party: Sutter Central Valley Hospitals dba Memorial Medical Center

Date: 1/14, 2013

By: *Daryn J Kumar*

Typed Name: Daryn J Kumar

Its: CEO
[Office Held]

Party: County of Stanislaus

Date: 1/14, 2013

By: *Patricia Hill Thomas*

Typed Name: Patricia Hill Thomas

Its: Chief Operations Officer
[Office Held]

APPROVED AS TO FORM

Date: 1/14/13, 2013

By: *John P. Doering*

Typed Name: John P. Doering

Its: County Counsel

EXHIBITS, APPENDICES AND SCHEDULES

Schedule A. Orthopaedic Financial Participant's Facilities Utilized as Part of Residency Training Orthopaedic Program

- Exhibit 1. Costs of the Orthopaedic Program**
- Exhibit 2. Affiliation Agreement with MWU**
- Exhibit 3. Listing/Description of Planned Primary Training Sites and Rotations for Initial Residency Training Orthopaedic Program**
- Exhibit 4. Orthopaedic Clinical Faculty**
- Exhibit 5. Payment Schedule for Orthopaedic Financial Participant Contributions to Consortium**
- Exhibit 6. List of Clinical Faculty and Assigned Teaching Hours**

SCHEDULE A

**LISTINGS OF FINANCIALS PARTICIPANTS FACILITIES UTILIZED
AS PART OF RESIDENCY TRAINING ORTHOPAEDIC PROGRAM**

EXHIBIT 1

COSTS OF THE ORTHOPAEDIC PROGRAM

The costs of the Orthopaedic Program that are to be borne or reimbursed to other Participants or to the Consortium by the Orthopaedic Financial Participant(s), initially DMC, will be determined in keeping with the Fourth Amendment and will include, but not be limited by the following:

- a. The Direct Residents Costs, e.g., the Orthopaedic Residents' salaries and employment-related benefits and taxes, medical malpractice insurance, housing assistance or other non-standard perquisites provided to Orthopaedic Residents, and any additional employee costs related to the Orthopaedic Residents, such as Workers Compensation insurance;
- b. Orthopaedic Program Director salaries and benefits and any other amounts incurred on behalf of or for that Director's performance of duties as Orthopaedic Program Director, including, but not limited to, any contractual obligation to provide such Director with malpractice or other insurance coverage;
- c. Costs of teaching faculty, including any payments to the Orthopaedic Clinical Faculty;
- d. Additional Faculty Costs;
- e. Costs of any attorneys, accountants, or other consultants to assist in the establishment, operation and defense of the Orthopaedic Program;
- f. Subject to prior written approval of the Orthopaedic Financial Participants, costs of space to be leased or purchased for use in the Orthopaedic Program, e.g., for call rooms or Orthopaedic Program workspace separate from areas used by the Family Medicine Program; and
- g. Subject to prior written approval of the Orthopaedic Financial Participants, any other costs of operating the Orthopaedic Program that require hiring staff, leasing or purchasing additional premises, equipment and/or supplies, other Consortium office expenditures, travel, CME/Professional development conferences, other educational expenses, and recruitment expenses in addition to those required to operate the Family Medicine Program.

EXHIBIT 2
AFFILIATION AGREEMENT WITH MWU

EXHIBIT 3
LISTING/DESCRIPTION OF:
PLANNED PRIMARY TRAINING SITES
&
ROTATIONS FOR INITIAL RESIDENCY TRAINING ORTHOPAEDIC PROGRAM

EXHIBIT 4
ORTHOPAEDIC CLINICAL FACULTY

EXHIBIT 5
PAYMENT SCHEDULE FOR ORTHOPAEDIC FINANCIAL PARTICIPANT
CONTRIBUTIONS TO CONSORTIUM

EXHIBIT 6

LIST OF CLINICAL FACULTY AND ASSIGNED TEACHING HOURS