

KAMALA D. HARRIS  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



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January 29, 2013

Sent via Internet and U.S. Mail

Robert Heath, Esq.  
Vice President of Legal Affairs  
St. Rose Hospital  
27200 Calaroga Ave.  
Hayward, CA 94545

RE: Proposed St. Rose Hospital Transaction

Dear Mr. Heath:

The Attorney General hereby conditionally consents, pursuant to Corporations Code section 5920 *et seq.*, to the Amended Management Services Agreement and Asset Purchase Agreement by and between Hayward Sisters Hospital, a California nonprofit public benefit corporation, Saint Rose Medical Building, Inc., a California nonprofit public benefit corporation, and Alecto Healthcare Services Hayward LLC, a Delaware limited liability company, as set forth in the Notice filed on November 1, 2012. Corporations Code section 5917 and section 999.5, subdivision (f), of title 11 of the California Code of Regulations, set forth factors that the Attorney General must consider in determining whether to consent to a proposed transaction between a nonprofit corporation and a for-profit entity. The Attorney General has considered such factors and consents to the proposed transaction subject to the attached conditions, which are incorporated by reference herein.

Thank you for your cooperation and the purchasers throughout the review process.

Sincerely,

[Original Signed]

WENDI A. HORWITZ  
Deputy Attorney General

For KAMALA D. HARRIS  
Attorney General

Attachment

cc: Craig Garner, Esq.  
Michael Sarrao, Esq.

**Conditions to Approval of Amended Management Services Agreement and Asset Purchase Agreement by and between Hayward Sisters Hospital, Saint Rose Medical Building, Inc., and Alecto Healthcare Services Hayward LLC**

**I.**

For the purposes of these conditions, and unless the context indicates otherwise, the term “Managers” and “Buyers” shall mean Alecto Healthcare Services LLC, a Delaware limited liability corporation, and Alecto Healthcare Services Hayward LLC, a Delaware limited liability corporation, the proposed managers and acquirers of Hayward Sisters Hospital (doing business as St. Rose Hospital)<sup>1</sup>, a California nonprofit public benefit corporation, and Saint Rose Medical Building, Inc., a California nonprofit public benefit corporation, any other subsidiary, parent, general partner, manager, member, affiliate, successor, or assignee of Alecto Healthcare Services LLC or Alecto Healthcare Services Hayward LLC, any entity succeeding thereto as a result of consolidation, merger or acquisition of all or substantially all of the assets of St. Rose Hospital and/or Saint Rose Medical Building, Inc. or the real property on which St. Rose Hospital is located or that Saint Rose Medical Building, Inc. owns, any entity owned by the Managers or Buyers that subsequently becomes the owner, manager, or licensed operator of St. Rose Hospital or owner of the real property on which St. Rose Hospital is located or that Saint Rose Medical Building, Inc. owns, any entity that owns Managers or Buyers that subsequently becomes the owner, manager, or licensed operator of St. Rose Hospital or owner of the real property on which St. Rose Hospital is located or that Saint Rose Medical Building, Inc. owns, any future entity that purchases St. Rose Hospital or the real property on which St. Rose Hospital is located or that Saint Rose Medical Building, Inc. owns from the Managers or Buyers, and any entity owned by a future purchaser that subsequently becomes the owner, manager, or licensed operator of St. Rose Hospital or owner of the real property on which St. Rose Hospital is located or that Saint Rose Medical Building, Inc. owns. These conditions shall be legally binding on any and all current and future owners, managers, lessees, and operators of St. Rose Hospital and owners of the real property on which St. Rose Hospital is located or that Saint Rose Medical Building, Inc. owns. The term “Owners” and “Sellers” shall mean Hayward Sisters Hospital (doing business as St. Rose Hospital), a California nonprofit public benefit corporation, and Saint Rose Medical Building, Inc., a California nonprofit public benefit corporation.

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<sup>1</sup>Throughout this document, the term St. Rose Hospital shall mean the general acute care hospital currently called St. Rose Hospital (located at 27200 Calaroga Avenue, Hayward, California, 94545) and any other clinics, laboratories, units, services, or beds included on the license issued to Hayward Sisters Hospital by the California Department of Public Health to operate St. Rose Hospital, effective November 1, 2012, unless otherwise indicated.

## II.

The transaction approved by the Attorney General between Managers, Buyers, Owners, and Sellers consists of the Amended Management Services Agreement dated October 29, 2012, Asset Purchase Agreement dated October 26, 2012, Amendment No. 1 to Asset Purchase Agreement dated November 8, 2012, Operating Agreement of Alecto Healthcare Services LLC, a Delaware limited liability company, dated August 22, 2012, Operating Agreement of Alecto Healthcare Services Hayward LLC, a Delaware limited liability company, dated September 6, 2012, and any other documents referenced in Sections 12.3 and 12.4 in the Asset Purchase Agreement.

Managers, Buyers, Owners, and Sellers shall fulfill the terms and conditions of the transaction. Managers, Buyers, Owners, and Sellers shall notify the Attorney General in writing of any proposed modification of the transaction, including a proposed modification or rescission of any of the above-enumerated agreements. Such notification shall be provided at least thirty (30) days prior to the effective date of such modification in order to allow the Attorney General to consider whether the proposed modification or rescission affects the factors set forth in Corporations Code section 5917.

## III.

From the effective date of the Amended Management Services Agreement through and including twenty (20) years from the closing date of the Asset Purchase Agreement, Managers, Buyers, Owners, Sellers, and all future owners, managers, lessees, or operators of St. Rose Hospital shall be required to provide written notice to the Attorney General and obtain the Attorney General's approval at least ninety (90) days prior to entering into any agreement or transaction to do any of the following:

(A) Sell, transfer, lease, exchange, option, convey, manage, or otherwise dispose of St. Rose Hospital;

(B) Encumber any assets of St. Rose Hospital, obtain any financing or line(s) of credit, or incur any debt, other than insured by the California Office of Statewide Health Planning and Development, and in an amount greater than \$6 million;

(B) Transfer control, responsibility, management, or governance of St. Rose Hospital. The substitution or addition of a new corporate member or members of Managers, Buyers, and all future owners, managers, lessees, or operators of St. Rose Hospital, that transfers the control of, responsibility for or governance of Managers, Buyers, and all future owners, managers, lessees, or operators of St. Rose Hospital, shall be deemed a transfer for purposes of this condition. The substitution or addition of one or more members of the governing body of Managers, Buyers, and all future owners, managers, lessees, or operators of St. Rose Hospital or any arrangement, written or oral, that would transfer voting control of the members of the governing body of Managers, Buyers, and all future owners, managers, lessees, or operators of St. Rose Hospital, shall also be deemed a transfer for purposes of this Condition.

#### IV.

From the effective date of the Amended Management Services Agreement until it is terminated, Owners and Sellers shall operate and maintain St. Rose Hospital as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250) and shall maintain and provide the following health care services:

- a) Twenty-four hour emergency medical services as currently licensed (minimum of 17 Emergency beds/stations) with the same types and levels of services as currently provided<sup>2</sup>;
- b) Critical Care (Intensive Care Unit/Coronary Care Unit) as currently licensed (minimum of 9 Intensive Care and 6 Coronary Care beds) with the same types and levels of services as currently provided;
- c) Obstetrical services as currently licensed (minimum of 17 beds) with the same types and levels of services as currently provided;
- d) Cardiac services, including the comprehensive cardiovascular lab, with the same types and levels of service including, but not limited to, maintaining the designation as a STEMI Receiving Center, and participating in the Elective PCI Research Project (if continued by the State of California);
- e) Mammogram and other diagnostic services with the same types and levels of services currently provided at The Women's Imaging Center in St. Rose Hospital's Radiology Department.

Owners and Sellers shall not place all or any portion of its above-listed licensed-bed capacity in voluntary suspension or surrender its license for any of these beds.

#### V.

For five years from the closing date of the Asset Purchase Agreement, Buyers shall operate and maintain St. Rose Hospital as a licensed general acute care hospital (as defined in California Health and Safety Code Section 1250) and shall maintain and provide the following health care services:

- a) Twenty-four hour emergency medical services as currently licensed (minimum of 17 Emergency beds/stations) with the same types and levels of services as currently provided;
- b) Critical Care (Intensive Care Unit/Coronary Care Unit) as currently licensed (minimum of 9 Intensive Care and 6 Coronary Care beds) with the same types and levels of services as currently provided;
- c) Obstetrical services as currently licensed (minimum of 17 beds) with the same types and levels of services as currently provided;

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<sup>2</sup> The term "currently provided" means types and levels of services provided as of January 1, 2012.

d) Cardiac services, including the comprehensive cardiovascular lab, with the same types and levels of service including, but not limited to, maintaining the designation as a STEMI Receiving Center, and participating in the Elective PCI Research Project (if continued by the State of California);

e) Mammogram and other diagnostic services with the same types and levels of services currently provided at The Women's Imaging Center in St. Rose Hospital's Radiology Department.

Buyers shall not place all or any portion of its above-listed licensed-bed capacity in voluntary suspension or surrender its license for any of these beds.

## VI.

From the effective date of the Amended Management Services Agreement until it is terminated, Owners and Sellers shall:

a) Be certified to participate in the Medi-Cal program.

b) Maintain a contract with the California Medical Assistance Commission or an agreement under any successor program that extends, modifies, or otherwise replaces the Selective Provider Contracting Program for the State of California to provide the same types and levels of emergency and non-emergency services at St. Rose Hospital to Medi-Cal beneficiaries (Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions. If such a contract or agreement is no longer available after January 1, 2014, Owners and Sellers shall provide the same types and levels of emergency and non-emergency services at St. Rose Hospital to Medi-Cal beneficiaries (Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions.

c) Maintain a contract with Alameda Alliance for Health and Alameda Alliance Joint Powers Authority to provide the same types and levels of emergency and non-emergency services at St. Rose Hospital to members/beneficiaries of the Alameda Alliance Programs as required in these Conditions and without any loss, interruption, or gap in contracted hospital coverage at St. Rose Hospital.

d) Have a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at St. Rose Hospital to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care) as required in these Conditions.

## VII.

For five years from the closing date of the Asset Purchase Agreement, Buyers shall:

a) Be certified to participate in the Medi-Cal program.

b) Maintain a contract with the California Medical Assistance Commission or an agreement under any successor program that extends, modifies, or otherwise replaces the Selective Provider Contracting Program for the State of California to provide the same types and levels of

emergency and non-emergency services at St. Rose Hospital to Medi-Cal beneficiaries (Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions. If such a contract or agreement is no longer available after January 1, 2014, Buyers shall provide the same types and levels of emergency and non-emergency services at St. Rose Hospital to Medi-Cal beneficiaries (Traditional Medi-Cal and Medi-Cal Managed Care) as required in these Conditions.

c) Maintain a contract with Alameda Alliance for Health and Alameda Alliance Joint Powers Authority to provide the same types and levels of emergency and non-emergency services at St. Rose Hospital to members/beneficiaries of the Alameda Alliance Programs as required in these Conditions and without any loss, interruption, or gap in contracted hospital coverage at St. Rose Hospital.

d) Have a Medicare Provider Number to provide the same types and levels of emergency and non-emergency services at St. Rose Hospital to Medicare beneficiaries (both Traditional Medicare and Medicare Managed Care) as required in these Conditions.

### **VIII.**

From the effective date of the Amended Management Services Agreement until it is terminated, Owners and Sellers shall maintain the following contracts and amendments, without interruption of service or diminution in quality, unless terminated for cause, and shall provide the same services specified therein:

a. County of Alameda Standard Services Agreement to provide medically necessary inpatient and emergency services to individuals eligible or enrolled in the Health Program of Alameda County;

b. "Memorandum of Understanding Alameda County Health Services Agency and St. Rose Hospital" to increase enrollment in disability benefit programs, especially Medi-Cal, and to improve health outcomes for disabled residents of Alameda County; and

c. City of Hayward Blood Draws for Law Enforcement Agencies contract to draw blood for drug tests.

### **IX.**

For five years from the closing date of the Asset Purchase Agreement, Buyers shall maintain the following contracts and amendments, without interruption of service or diminution in quality, unless terminated for cause, and shall provide the same services specified therein:

a. County of Alameda Standard Services Agreement to provide medically necessary inpatient and emergency services to individuals eligible or enrolled in the Health Program of Alameda County;

b. "Memorandum of Understanding Alameda County Health Services Agency and St. Rose Hospital" to increase enrollment in disability benefit programs, especially Medi-Cal, and to improve health outcomes for disabled residents of Alameda County; and

c. City of Hayward Blood Draws for Law Enforcement Agencies contract to draw blood for drug tests.

## X.

From the effective date of the Amended Management Services Agreement until it is terminated, Owners and Sellers shall provide an annual amount of Charity Care (as defined below) at St. Rose Hospital equal to or greater than \$6,200,000 (the "Minimum Charity Care Amount"). For purposes hereof, the term "Charity Care" shall mean the amount of charity care costs (not charges) incurred by Owners and Sellers in connection with the operation and provision of services at St. Rose Hospital. The definition and methodology for calculating "charity care" and the methodology for calculating "cost" shall be the same as that used by the California Office of Statewide Health Planning and Development (OSHPD) for annual hospital reporting purposes.<sup>3</sup> Owners and Sellers shall use charity care and collection policies that comply with Federal and California law. Creation of, and any subsequent changes to, the charity care and collection policies and charity care services provided at St. Rose Hospital shall be decided upon by the St. Rose Hospital Board of Directors.

Owners and Sellers' obligation under this condition shall be prorated on a daily basis if the effective date of the Amended Management Services Agreement is a date other than the first day of Owners and Sellers' fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the "12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, California Consolidated Metropolitan Statistical Area Base Period: 1982-84=100" (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of Charity Care provided by Owners and Sellers at St. Rose Hospital for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Owners and Sellers shall include in the Annual Report to the Attorney General a detailed explanation why a deficiency occurred.

## XI.

For six fiscal years from the closing date of the Asset Purchase Agreement, Buyers shall provide an annual amount of Charity Care (as defined below) at St. Rose Hospital equal to or greater than the Minimum Charity Care Amount required at St. Rose Hospital at the closing date of the Asset Purchase Agreement. For purposes hereof, the term "Charity Care" shall mean the amount of charity care costs (not charges) incurred by Buyers in connection with the operation and provision of services at St. Rose Hospital. The definition and methodology for calculating "charity care" and the methodology for calculating "cost" shall be the same as that used by the

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<sup>3</sup> OSHPD defines charity care by contrasting charity care and bad debt. According to OSHPD, "the determination of what is classified as ...charity care can be made by establishing whether or not the patient has the ability to pay. The patient's accounts receivable must be written off as bad debt if the patient has the ability but is unwilling to pay off the account."

OSHPD for annual hospital reporting purposes. Buyers shall use charity care and collection policies that comply with Federal and California law. Creation of, and any subsequent changes to, the charity care and collection policies and charity care services provided at St. Rose Hospital shall be decided upon in conjunction with input from the Local Governing Board referenced in Condition XV.

Buyers' obligation under this condition shall be prorated on a daily basis if the closing date of the Asset Purchase Agreement is a date other than the first day of Buyers' fiscal year.

For the second fiscal year and each subsequent fiscal year, the Minimum Charity Care Amount shall be increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the "12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, California Consolidated Metropolitan Statistical Area Base Period: 1982-84=100" (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of Charity Care provided by Buyers at St. Rose Hospital for any fiscal year is less than the Minimum Charity Care Amount (as adjusted pursuant to the above-referenced Consumer Price Index) required for such fiscal year, Buyers shall pay an amount equal to the deficiency to a tax-exempt entity for direct health care services to residents in St. Rose Hospital's service area (8 ZIP codes), as defined on page 33 of the Health Care Impact Report authored by Medical Development Specialists, dated December 6, 2012, and attached hereto as Exhibit 1. Such payment shall be made within four (4) months following the end of such fiscal year.

## **XII.**

From the effective date of the Amended Management Services Agreement until it is terminated, Owners and Sellers shall provide community benefit services at St. Rose Hospital at an annual cost of not less than \$470,000 (inclusive of in-kind services) (hereafter "the Minimum Community Benefit Services Amount"). Community benefit services' commitments shall be decided upon by the St. Rose Hospital Board of Directors.

The Minimum Community Benefit Services Amount shall be annually increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the "12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, California Consolidated Metropolitan Statistical Area Base Period: 1982-84=100" (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided by Owners and Sellers at St. Rose Hospital for any year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) for such year, Owners and Sellers shall include in the Annual Report to the Attorney General a detailed explanation why a deficiency occurred.



### **XIII.**

For five years from the closing date of the Asset Purchase Agreement, Buyers shall provide community benefit services at St. Rose Hospital equal to or greater than the Minimum Community Benefit Services Amount required by St. Rose Hospital at the closing date of the Asset Purchase Agreement. Community benefit services' commitments shall be decided upon in conjunction with input from the Local Governing Board referenced in Condition XV.

The Minimum Community Benefit Services Amount shall be annually increased (but not decreased) by an amount equal to the Annual Percent increase, if any, in the "12 Months Percent Change: All Items Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose, California Consolidated Metropolitan Statistical Area Base Period: 1982-84=100" (CPI-LA, as published by the U.S. Bureau of Labor Statistics).

If the actual amount of community benefit services provided by Buyers at St. Rose Hospital for any year is less than the Minimum Community Benefit Services Amount (as adjusted pursuant to the above-referenced Consumer Price Index) for such year, Buyers shall pay an amount equal to the deficiency to the St. Rose Hospital Foundation or a tax-exempt entity for community benefit services for residents in St. Rose Hospital's service area (8 ZIP codes), as defined on page 33 of the Health Care Impact Report authored by Medical Development Specialists, dated December 6, 2012, and attached hereto as Exhibit 1. Such payment shall be made within four (4) months following the end of such year.

### **XIV.**

For five years from the closing date of the Asset Purchase Agreement, Buyers shall spend no less than \$5,000,000 for capital improvements, equipment, information technology, and infrastructure improvements at St. Rose Hospital. Buyers shall consult with the Local Governing Board, referenced in Condition XV, prior to spending funds for capital improvements, equipment, information technology, and infrastructure improvements.

### **XV.**

For five years from the closing date of the Asset Purchase Agreement, Buyers shall maintain a Local Governing Board. Said Board should include physicians from the medical staff at St. Rose Hospital, the Chief of Staff at St. Rose Hospital, and community representatives from St. Rose Hospital's service area, as defined on page 33 of the Health Care Impact Report authored by Medical Development Specialists, dated December 6, 2012, and attached hereto as Exhibit 1. The Local Governing Board shall be responsible for medical staff credentialing, quality assurance, and accreditation of St. Rose Hospital. Buyers shall consult with the Local Governing Board prior to spending funds for capital improvements, equipment, information technology, and infrastructure improvements. In addition, Buyers shall consult with the Local Governing Board prior to making any changes to medical services, community benefit programs, and the charity care and collection policies and charity care services provided at St. Rose Hospital. Such consultation shall occur at least thirty (30) days prior to the effective date of such changes or actions unless done so on an emergency basis. The Local Governing Board shall also approve all reports submitted to the Attorney General regarding compliance with these Conditions.

## **XVI.**

Within 30 days of the closing date of the Asset Purchase Agreement, any charitable funds held by St. Rose Hospital and any net proceeds from the sale of St. Rose Hospital shall be transferred to the St. Rose Hospital Foundation.

## **XVII.**

From the effective date of the Amended Management Services Agreement through and including six fiscal years from the closing date of the Asset Purchase Agreement, Managers, Buyers, Owners, and Sellers shall submit to the Attorney General, no later than four (4) months after the conclusion of each fiscal year, a report describing in detail compliance with each Condition set forth herein, including, but not limited to, an itemization and the actual costs of capital improvements, equipment, information technology, and infrastructure improvements made at St. Rose Hospital. The Chairman of the St. Rose Hospital Board of Directors and the Chief Executive Officer of St. Rose Hospital shall each certify that the report is true and correct and provide documentation of approval by the St. Rose Hospital Board of Directors (prior to the termination of the Amended Management Services Agreement) and by the Local Governing Board (after the closing date of the Asset Purchase Agreement).

## **XVIII.**

At the request of the Attorney General, Managers, Buyers, Owners, and Sellers shall provide such information as is reasonably necessary for the Attorney General to monitor compliance with the terms and conditions of the transaction as set forth herein. The Attorney General shall, at the request of a party and to the extent provided by law, keep confidential any information so produced to the extent that such information is a trade secret or is privileged under state or federal law, or if the private interest in maintaining confidentiality clearly outweighs the public interest in disclosure.

## **XIX.**

The Attorney General reserves the right to enforce each and every Condition set forth herein to the fullest extent provided by law. Pursuant to Government Code section 12598, the Attorney General's office shall also be entitled to recover its attorney fees and costs incurred in remedying each and every violation.

## **EXHIBIT 1**

## ST. ROSE HOSPITAL SERVICE AREA ANALYSIS

### *Definition of St. Rose Hospital's Service Area*

The Hospital's service area is composed of 8 ZIP Codes, from which approximately 80% of the Hospital's discharges originated in 2011. Almost 70% of the Hospital's discharges were from the top four ZIP Codes, located in Hayward and Union City. The Hospital's market share in the service area was 17.8%.

SERVICE AREA PATIENT ORIGIN MARKET SHARE BY ZIP CODE: 2011						
ZIP Codes	Community	SRH Discharges	% of Discharges	Cumulative % of Discharges	Total Discharges	Market Share
94544	Hayward	2,343	28.5%	28.5%	7,613	30.8%
94541	Hayward	1,604	19.5%	48.1%	7,008	22.9%
94545	Hayward	1,144	13.9%	62.0%	3,579	32.0%
94587	Union City	644	7.8%	69.8%	5,835	11.0%
94578	San Leandro	263	3.2%	73.0%	3,751	7.0%
94580	San Leandro	238	2.9%	75.9%	2,442	9.7%
94536	Fremont	207	2.5%	78.5%	5,661	3.7%
94542	Hayward	107	1.3%	79.8%	889	12.0%
<b>Sub Total</b>		<b>6,550</b>	<b>79.8%</b>	<b>79.8%</b>	<b>36,778</b>	<b>17.8%</b>
Other ZIPs		1,662	20.2%	100%		
<b>Total</b>		<b>8,212</b>	<b>100%</b>			

Source: OSHPD Patient Discharge Database

Note: Excludes Normal Newborns