SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made by and among (1) the Centers for Medicare & Medicaid Services ("CMS"), a division of the United States Department of Health & Human Services ("DHHS"); (2) the California Health and Human Services Agency ("CHHS"), the California Department of Developmental Services ("CDDS"), the California Department of Health Care Services ("CDHCS"), and the Sonoma Developmental Center ("SDC") (collectively, the "California Parties"); and (3) the California Department of Public Health ("CDPH"). This Agreement is entered into to further the objectives of Title XIX of the Social Security Act and to facilitate the delivery of quality health care and rehabilitative services to clients residing in the Medicaid-certified units of SDC that were decertified by CDPH, acting on behalf of CMS, during their transition to a better future.

WHEREAS, CMS is the Federal agency with pertinent responsibilities and authority for the Medicaid program pursuant to Title XIX of the Social Security Act (hereinafter, the "Act");

WHEREAS, CHHS is the agency for the State of California that oversees CDHCS and CDDS, among other departments and offices;

WHEREAS, CDHCS is the California State Medicaid agency that oversees California's Medicaid program, known as Medi-Cal;

WHEREAS, CDDS is the agency for the State of California that provides services to individuals with significant intellectual and developmental disabilities in state-operated developmental centers, including SDC;

WHEREAS, CDPH is the agency of the State of California designated under 42 C.F.R. § 431.610 to conduct onsite surveys of CDDS facilities in accordance with Federal requirements, forms, and procedures;

WHEREAS, SDC maintains an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) located in Eldridge, California that provides services for which CMS provides Federal Financial Participation under Title XIX of the Act ("FFP") and that entered into a Medicaid Provider Agreement for its ICF/IID (the "ICF/IID Provider Agreement"), which requires compliance with Federal regulations, including, without limitation, the Conditions of Participation found at 42 C.F.R. Part 483 subpart I (the "CoPs");

WHEREAS, on July 3, 2012, CDPH completed a Medicaid compliance survey at SDC which found noncompliance with six (6) of the applicable CoPs, including deficiencies negatively affecting the health and safety of SDC's clients;

WHEREAS, on December 12, 2012, CDPH completed a follow-up Medicaid compliance survey at SDC which found noncompliance with four (4) of the applicable CoPs, including deficiencies negatively affecting the health and safety of SDC's clients;

WHEREAS, on December 22, 2012, CDPH notified SDC that, based on the findings from the December 12, 2012 survey, CDPH intended to terminate SDC's ICF/IID Provider Agreement, pending the results of a revisit survey; and on January 22, 2013, CDPH extended the termination date to March 12, 2013, based on the results of a January 22, 2013 revisit survey;

WHEREAS, on March 13, 2013, CDDS, on behalf of SDC, and CDPH entered into a Performance Improvement Plan ("PIP") pursuant to which CDPH allowed SDC a further opportunity to achieve and maintain compliance with the CoPs, SDC committed to undertaking comprehensive action to eliminate the underlying deficiencies and make sustainable improvements, and the State of California committed to providing financial and human resources to help SDC achieve compliance with all applicable CoPs and Medi-Cal requirements and, thereby, ensure the health and safety of SDC's clients;

WHEREAS, on July 25, 2014, CDPH completed a Medicaid compliance survey at SDC which found noncompliance with four (4) of the applicable CoPs, including deficiencies negatively affecting the health and safety of SDC's clients, and based on the findings from that survey SDC's ICF/IID Provider Agreement was terminated effective October 23, 2014;

WHEREAS, until SDC's ICF/IID Provider Agreement was terminated effective October 23, 2014, the Stoneman, Brent, Roadruck, Bentley, Malone, Cohen, and Poppe units of SDC were certified to participate in Medicaid (the "SDC Units");

WHEREAS, SDC appealed the termination of its ICF/IID Provider Agreement pursuant to the California Code of Regulations, title 22, section 51048.1 et seq., the appeals procedures provided by the State of California in accordance with the requirements in 42 C.F.R. Part 431, subpart D;

WHEREAS, SDC's appeal before the CDHCS has been stayed pending discussions with CMS regarding the continuation of FFP;

WHEREAS, as of March 20, 2015, approximately 154 clients remained in the SDC Units;

WHEREAS, some of the clients remaining in the SDC Units may have enduring and complex medical needs, lack safety awareness, or have challenging behaviors, such as self-injurious behavior, and, therefore, would require extensive care and supervision while residing in the community;

WHEREAS, the California Parties are committed to finding appropriate community or other placements for clients currently residing in the SDC Units;

WHEREAS, pursuant to 42 C.F.R. § 442.40(b)(2)(ii), FFP has been continued for SDC through and including July 1, 2015;

WHEREAS, the State of California has made substantial and on-going efforts to reduce its reliance on developmental centers, and has placed a moratorium on admissions to developmental

centers except pursuant to court order, and has continued to make substantial, ongoing efforts to provide services to individuals with significant intellectual and developmental disabilities in home and community-based or other appropriate alternate settings;

WHEREAS, the State of California, in its discretion, has decided to close SDC as it presently exists and transition its clients to home and community-based or other appropriate alternate settings;

WHEREAS, the highest priority of CMS, CDPH, and the California Parties (collectively, the "Parties") is the health, safety, and successful transition of each SDC client;

WHEREAS, the California Parties are reaffirming their commitment to meet the needs of each SDC client in compliance with the CoPs while they reside at SDC and through all phases of the clients' respective transitions to home and community-based or other appropriate alternate settings and will focus their efforts on identifying and developing services and supports to meet the specific needs of each client and on ensuring the quality of ongoing services at SDC, and CDPH will continue its monitoring and oversight functions;

WHEREAS the California Parties have each committed to undertake substantial efforts to develop new and enhanced infrastructure to assist in the transition and support of SDC clients in home and community-based or other appropriate alternate settings by developing a closure plan for SDC using priorities and recommendations learned from prior closures of California Developmental Centers;

WHEREAS, CMS believes that, provided the terms of this Agreement, including the Statement of Tasks, are met, it is in the best interests of the Medicaid enrollees currently residing in the SDC Units that FFP continue for a period of time not to exceed two (2) years from the date of execution of this Agreement while the State of California strengthens its community care system and provides for choices and timely transition of these clients to home and community-based or other appropriate alternate settings;

NOW, THEREFORE, the Parties agree as follows:

A. Revision to SDC's ICF/IID Provider Agreement Termination Date and Limited Continuation of FFP

1. Within ten (10) business days after this Agreement has been executed by all Parties, CDPH shall reconsider the termination of SDC's ICF/IID Provider Agreement and issue a revised determination that modifies the effective termination date to July 1, 2016 (the "Final Termination Date"). Unless CMS determines that the California Parties and CDPH, or any of them, have failed to substantially comply with this Agreement, including but not limited to, meeting the milestones set forth in the Statement of Tasks, Attachment A, and communicates such determination to CDPH by June 1, 2016, CDPH may initiate a second reconsideration and further extend the termination date to July 1, 2017 (the "Revised Final Termination Date"). A copy of the notice of reconsideration and written affirmation of the termination with the Final Termination Date is

attached to this Agreement as Attachment B. The parties agree that, pursuant to ¶ A.7, below, CMS may terminate SDC's ICF/IID Provider Agreement prior to the Final Termination Date or, if applicable, the Revised Final Termination Date.

2. The California Parties and CDPH agree that within five (5) business days of the notice of reconsideration and written affirmation extending termination of SDC's ICF/IID Provider Agreement to July 1, 2016, as set forth in ¶ A.1. of this Agreement, SDC will withdraw its appeal of the termination of its ICF/IID Provider Agreement pending before CDHCS, and request dismissal of the appeal with prejudice. SDC will send a copy of its withdrawal of its appeal and request for dismissal of the appeal with prejudice to CMS. Upon the extension of the termination of SDC's ICF/IID Provider Agreement to July 1, 2016, SDC further agrees to waive any and all right to contest the findings of noncompliance regarding the survey completed on July 25, 2014, or to appeal or otherwise seek further review of those findings in any judicial or administrative forum.

3. The California Parties and CDPH shall not attempt to impede, forestall, or otherwise attempt to extend, modify, or eliminate the agreed-upon Final Termination Date, or, if applicable, the Revised Final Termination Date. However, if after November 1, 2016, CMS finds that the California Parties and CDPH have substantially complied with the terms of this Agreement, CMS, in its sole discretion, may communicate in writing that it waives this condition and allows the California Parties to request an extension which, if approved by CMS in its sole discretion, will allow CDPH to extend the Revised Final Termination Date, if applicable.

4. The California Parties and CDPH further agree not to impede, forestall or otherwise seek to challenge in any court or administrative forum the terms or effect of this Agreement, including any determination made by CMS pursuant to ¶A.3, above.

5. The Parties agree that, consistent with the parameters for providing FFP, including, without limitation, the terms of SDC's ICF/IID Provider Agreement and the provisions of this Agreement, CMS will continue to provide FFP for allowable services to Medicaid enrollees who were residing in the SDC Units as of October 22, 2014. CMS shall not provide FFP for any individual who did not reside on one of those units as of October 22, 2014. SDC shall provide a list of the clients residing in each of the SDC units as of October 22, 2014, a total of approximately 154 clients, (the "Client List") within ten (10) business days of the execution of this Agreement.

6. Consistent with the Final Termination Date for SDC's ICF/IID Provider Agreement, in no event will FFP for the SDC Units continue beyond midnight on June 30, 2016, or, if applicable, consistent with the Revised Final Termination Date, in no event will FFP continue beyond midnight on June 30, 2017. However, if CMS has approved the California Parties' request for an extension or modification of the Revised Final Termination Date, pursuant to ¶A.3, in no event will FFP continue beyond midnight on the date to which the Revised Final Termination Date has been extended or modified with CMS's prior written approval.

7. The Parties agree that CMS may, in its sole discretion, terminate SDC's ICF/IID Provider Agreement prior to the Final Termination Date, or, if applicable, the Revised Final Termination Date, with at least fifteen (15) days prior written notice, including, without limitation, in the event that:

i. CMS determines SDC fails to substantially meet the standards specified in the Medicaid CoPs at 42 C.F.R. 483 Subpart I;

ii. Any California Party to this Agreement substantially interferes with any survey or investigation conducted by CMS, CDPH, or any contractor acting on behalf of CMS;

iii. Any California Party to this Agreement or CDPH fails to substantially comply with the terms and conditions of this Agreement, including but not limited to, meeting the milestones set forth in the Statement of Tasks, Attachment A;

iv. CDPH fails to timely and thoroughly conduct surveys and complaint investigations at SDC.

8. In the event that CMS determines that any of the California Parties or CDPH have failed to substantially comply with this Agreement pursuant to ¶A.1, above, or CMS exercises its discretion to (a) not to waive the provisions of ¶A.3, (b) not to allow an extension or modification of the Revised Final Termination Date or (c) terminate SDC's ICF/IID Provider Agreement prior to the Final Termination Date, or, if applicable, the Revised Final Termination Date, pursuant to ¶A.7, above, the California Parties and CDPH, including, without limitation SDC, waive any right to appeal or challenge in any court or administrative forum, the termination of SDC's ICF/IID Provider Agreement and/or the discontinuation of FFP.

B. Provision of Services to Clients at SDC

1. SDC affirms its obligation to comply with all applicable laws, regulations, and requirements, including without limitation, the CoPs at 42 C.F.R. 483, Subpart I.

2. Throughout the term of this Agreement, the California Parties must take all steps within their authority under State or Federal law to ensure the health and safety of each client in the SDC Units and CDPH affirms its obligation to conduct unannounced certification compliance surveys and complaint and entity reported event investigations at SDC in accordance with Federal law. Furthermore, the Parties agree that during the term of this Agreement the provision of services to clients at SDC, including without limitation, efforts to transition these clients to home and community-based or other appropriate alternative settings, must also meet the performance milestones set forth on the Statement of Tasks, Attachment A. The California Parties and CDPH agree that the completion dates for the milestones shall be binding and shall not be modified without prior written agreement by CMS. The California Parties and CDPH further agree that the decision to agree to a requested modification of the completion dates of any milestone is within CMS's sole discretion.

3. The California Parties agree that SDC will not admit any clients to the SDC Units following its execution of this Agreement, except as required by law or by court order, provided, however, that CMS shall not provide FFP for any individual who did not reside on one of the SDC Units as of October 22, 2014, and is not identified on the Client List.

4. Consistent with the California Parties' decision to transition residents of SDC to home and community-based or other appropriate alternate settings, SDC agrees to engage with

stakeholders in best efforts to transition clients who reside in the SDCs Units to appropriate alternate settings where possible, consistent with the client protections in 42 C.F.R. § 483.420 and taking into account client and guardian preferences. SDC remains subject to all Federal and State requirements regarding the discharge and/or transfer of ICF/IID clients.

5. Consistent with obligations under 42 C.F.R. § 483.430, SDC will ensure adequate staffing in all disciplines and areas in the SDC Units to protect the health and safety of the clients residing there.

6. Throughout the term of this Agreement and consistent with obligations under the CoPs, SDC must continue to protect clients from abuse, neglect, or mistreatment and provide continuous active treatment pursuant to 42 C.F.R. § 483.440 with particular emphasis on (a) the provision of daily programs and interactions as necessary to ensure that the client does not experience any avoidable decline in his or her current skills; and (b) the development and implementation of an active program to prepare each client for his or her identified post-discharge setting. Consistent with obligations under the CoPs, SDC further agrees that the services it provides to clients must promote the following objectives: (1) the development and implementation of consistent behavior management plans; (2) the provision of on-going medical assessment and appropriate health services as indicated; and (3) the identification of each client's most appropriate post-discharge settings, and post-discharge needs.

7. The California Parties affirm and agree that any closure of SDC during the term of this Agreement shall be in compliance with all Federal and State requirements, including, without limitation, 42 C.F.R. § 483.440(b) and California Health and Safety Code, Division 2, Article 8.5 (§1336, et seq.).

C. Monitoring the Welfare of Medicaid Enrollees at SDC

1. CDPH affirms its obligation to conduct unannounced certification compliance surveys and complaint and entity reported event investigations at SDC in accordance with State and Federal law. Throughout the term of this Agreement, CDPH agrees to provide fifteen (15) business days' notice to CMS in advance of each certification survey. In addition, CDPH agrees to provide two (2) days' notice to CMS in advance of each entity reported event investigation of SDC that involves an allegation of immediate jeopardy (as that term is defined in 42 C.F.R. § 489.3) and ten (10) days' notice to CMS in advance of each investigation that does not involve an allegation of immediate jeopardy. CDPH further agrees to initiate the next certification compliance survey on or before a date specified in advance by CMS. CDPH shall report the results of each certification survey to CMS within ten (10) business days. CDPH shall initiate an investigation within two (2) business days of receiving a report of possible immediate jeopardy. CDPH shall initiate each investigation within ten (10) business days of receiving a report that does not involve possible immediate jeopardy. CPDH shall complete the investigation and report the results of each complaint investigation to CMS within thirty (30) days of initiating its investigation. If CDPH has a reasonable belief that there is immediate jeopardy based on any survey or complaint investigation it has initiated, CPDH shall notify CMS within one (1) business day. In addition to the surveys and investigations to be performed by CDPH, SDC will retain an independent monitor as provided in the Statement of Tasks.

2. The Parties agree that CMS and its contractors are entitled to independently conduct and participate in CDPH initiated certification compliance surveys and complaint and entity reported event investigations, to carry out other investigations or authorized enforcement efforts and processes, and to otherwise perform its duties in accordance with Federal law. Nothing in this Agreement shall be construed to limit, interfere with, or forestall CMS from carrying out those duties.

3. On the fifteenth (15^{th}) day of each month CDPH will provide copies of all complaints and entity reported events to CMS and the California Parties together with a summary report, in a format agreed to by CMS, CDPH, and the California Parties, that includes analysis of the types and outcomes of the complaints and entity reported events for the preceding month.

4. Beginning October 15, 2015, by the fifteenth (15^{th}) day of each calendar quarter, SDC will submit a report to CMS and CDPH explaining the types of potential alternate settings that the California Parties are developing for SDC clients identified on the Client List, the number of potential placements available in each alternate setting for SDC clients on the Client List, and the current status of development efforts for each type of setting. In addition, SDC will include in the report the following information for each client on the Client List:

(a) The client's current residence;

(b) For each client residing in the SDC Units, the client's transition planning status, including:

(i) The date the Transition Review Meeting process was completed or, if not completed, the current status;

(ii) The date the Specialized Behavior Plan was completed or, if not completed, the current status; and

(iii) The date the Safety Plan was completed or, if not completed, the current status;

(c) For each discharged client on the Client List, the date of discharge, the type of alternate setting to which the individual was transitioned, and the address of the alternate setting.

(d) The information contained in the report will reflect status as of the first (1^{st}) day of each calendar quarter.

D. Miscellaneous

1. Failure by CMS to enforce any provision of this Agreement or CMS's decision to refrain from terminating this Agreement in the event of a breach or failure to meet one or more milestones by one or more of the California Parties or CDPH will not be deemed a waiver or consent to a subsequent breach or failure, unless such waiver is made in writing.

2. All documents, reports, and notices to be provided to CMS pursuant to this Agreement shall be sent via hard copy and e-mail to:

Steven Chickering
Associate Regional Administrator
Western Consortium Division of Survey and Certification

Centers for Medicare & Medicaid Services
90 Seventh Street, Suite 5-300
San Francisco, CA 94103
E-mail: steven.chickering@cms.hhs.gov

and

Peggye Wilkerson
Survey and Certification Group
Centers for Medicare & Medicaid Services
7500 Security Blvd
Mailstop C2-21-16
Baltimore, MD 21244
E-mail: Peggye.Wilkerson@cms.hhs.gov

3. All documents, reports, and notices to be provided to CHHS pursuant to this Agreement shall be sent via hard copy and email to:

Kristopher Kent
Assistant Secretary
California Health and Human Services Agency
1600 9th Street, Rm 460
Sacramento, CA 95814
E-mail: kkent@chhs.ca.gov

4. All documents, reports, and notices to be provided to CDDS pursuant to this Agreement shall be sent via hard copy and email to:

John Doyle
Chief Deputy Director
Department of Developmental Services
1600 9th Street, Rm 240
Sacramento, CA 95814
E-mail: john.doyle@dds.ca.gov

5. All documents, reports, and notices to be provided to CDPH pursuant to this Agreement shall be sent via hard copy and email to:

T. Scott Vivona, Chief of Field Operations
Licensing and Certification Program
California Department of Public Health
1615 Capitol Avenue
P.O. Box 997377, MS 3500
Sacramento, CA 95899-7377
E-mail: scott.vivona@cdph.ca.gov

6. All documents, reports, and notices to be provided to SDC pursuant to this Agreement shall be sent via hard copy and email to:

Karen Faria
Executive Director
Sonoma Developmental Center
15000 Arnold Drive
Eldridge, CA 95431
E-mail: karen.faria@sonoma.dds.ca.gov

7. All time periods in this Agreement are to be measured by calendar days unless specified otherwise. If a deadline or date falls on a weekend or State or Federal holiday, the deadline or date is extended to the next working day.

8. The Parties each represent that they have entered into this Agreement voluntarily with knowledge of the facts and upon the advice of their legal counsel. Each party agrees to bear its own costs, including attorney's fees and costs.

9. Each person executing this Agreement on behalf of a party hereto represents and warrants that he or she has been duly authorized by that party to execute this Agreement. Such other parties are expressly relying upon the aforesaid representations and warranties.

10. Nothing in this Agreement is binding on any other component of the United States government nor does it in any way define, limit, or circumscribe Federal civil or criminal authority.

11. This Agreement may be executed in counterparts by facsimile copy, and facsimile signatures will be treated as original signatures.

12. The foregoing, which incorporates herein by reference Attachment A (Statement of Tasks) to be fulfilled by the California Parties and CDPH, as though set forth in full, constitutes the entire agreement of the Parties and supersedes any prior agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the specific subject matter hereof, and cannot be varied or amended except pursuant to a writing signed by all the signatories hereto, or their successors or assigns.

13. If SDC's ICF/IID Provider Agreement is terminated for any reason, FFP will be discontinued as of the date SDC's ICF/IID Provider Agreement is terminated. At such time that SDC no longer receives FFP pursuant to the provisions of this Agreement, the terms, and obligations established by the terms, of this Agreement shall cease at the same time that the provision of FFP for SDC ceases.

//
//
//
//
//

On behalf of the California Health & Human Services Agency:

June 30, 2015

Diana S. Dooley
Secretary of Health & Human Services

On behalf of the California Department of Developmental Services:

June 30, 2015

Santi J. Rogers, Director

On behalf of the California Department of Health Care Services:

June 30, 2015

Jennifer Kent, Director

On behalf of Sonoma Developmental Center:

June 30, 2015

Karen Faria, Executive Director

On behalf of the California Department of Public Health:

June 30, 2015

for: Karen Smith, M.D., MPH, Director
and State Public Health Officer

On behalf of the U.S. Department of Health & Human Services
Centers for Medicare & Medicaid Services

June 30 2015

Steven Chickering
Associate Regional Administrator
Western Consortium Division of Survey and Certification
Centers for Medicare & Medicaid Services