

A regular meeting of the Board of Directors of the Washington Township Health Care District was held on Wednesday, October 27, 2021 via Teleconference. Director Nicholson called the meeting to order at 6:04 p.m. and led those present in the Pledge of Allegiance.

CALL TO ORDER

Roll call was taken. Directors present: William Nicholson, MD; Jeannie Yee; Bernard Stewart, DDS; Jacob Eapen, MD; Michael Wallace

ROLL CALL

Also present: Kimberly Hartz, Chief Executive Officer; Ed Fayen, Chief Operating Officer; Chris Henry, Chief Financial Officer; Larry LaBossiere, Chief Nursing Officer; Tina Nunez, Vice President Ambulatory Services; Paul Kozachenko, Legal Counsel; Dee Antonio, District Clerk

Director Nicholson welcomed any members of the general public to the meeting. He noted that in order to continue to protect the health and safety of the members of the Board, District staff, and members of the public from the dangers posed by the SARS-CoV-2 virus, the Brown Act allows a local agency to continue to hold its meetings remotely as opposed to being required to meet in-person. Section 54953(e)(3) of the Government Code requires that the Board make certain findings every 30 days to continue meeting remotely. One such finding is that “state or local officials continue to impose or recommend measures to promote social distancing.” The Alameda County Health Officer continues to recommend social distancing and the wearing of masks indoors, as referenced by the Alameda County Health Care Services Public Health Department COVID-19 website at www.covid-19.acgov.org. The Board made such a finding at its meeting earlier in the month.

OPENING REMARKS

There were no oral communications.

COMMUNICATIONS

There were no written communications.

Paul Kozachenko gave a history and overview of the District’s affiliation with the University of California, San Francisco. In accordance with District law, policies, and procedures, Director Wallace moved that the Board of Directors approve the Resolution No. 1231 to authorize the Chief Executive Officer to execute the Amended and Restated Tenancy in Common Agreement. Director Eapen seconded the motion.

*RESOLUTION NO. 1231:
TO AUTHORIZE THE
CHIEF EXECUTIVE
OFFICER TO ENTER
INTO AN AMENDED
AND RESTATED
TENANCY IN COMMON
AGREEMENT WITH
THE UNIVERSITY OF
CALIFORNIA, SAN
FRANCISCO*

Roll call was taken:

- William Nicholson, MD – aye
- Jeannie Yee – aye
- Bernard Stewart, DDS – aye
- Jacob Eapen, MD – aye
- Michael Wallace – aye

The motion unanimously carried.

Ed Fayen reviewed the history of, and the proposed budget for, the proposed Bridge Connection Project and the construction Change Order to the contract for construction of the Morris Hyman Critical Care Pavilion. In accordance with District law, policies, and procedures, Director Wallace moved that the Board of Directors approve the Resolution No.1232 to authorize the Bridge Connection

*RESOLUTION NO. 1232:
TO APPROVE AND
AUTHORIZE A CHANGE
ORDER TO THE
CONTRACT FOR
CONSTRUCTION OF*

Board of Directors' Meeting

October 27, 2021

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change order with terms consistent with this Resolution, the adjustment of the Project Budget to be \$14,330.506. Director Eapen seconded the motion.

*THE WASHINGTON
HOSPITAL BRIDGE
CONNECTION
PROJECT*

Roll call was taken:

- William Nicholson, MD – aye
- Jeannie Yee – aye
- Bernard Stewart, DDS – aye
- Jacob Eapen, MD – aye
- Michael Wallace – aye

The motion unanimously carried.

Kimberly Hartz announced that the Top Hat event raised \$470,000 for the Inpatient Acute Rehabilitation Unit.

ANNOUNCEMENTS

In accordance with Health & Safety Code Sections 32106 and 32155, and California Government Code 54956.9(d)(2), Director Nicholson adjourned the meeting to closed session at 6:20 p.m., as the discussion pertained to a Report of Medical Staff and Quality Assurance pursuant to Health & Safety Code Section 32155, Conference with Legal Counsel – Anticipated Litigation pursuant to Government Code section 54956.9(d)(2), and a Conference involving Personnel Matters. Director Nicholson stated that the public has a right to know what, if any, reportable action takes place during closed session. Since this is a Teleconference call and we have no way of knowing when the closed session will end, the public was informed they could contact the District Clerk for the Board's report beginning October 28, 2021. He indicated that the minutes of this meeting will reflect any reportable actions.

*ADJOURN TO CLOSED
SESSION*

Director Nicholson reconvened the meeting to open session at 8:40 pm. The District Clerk reported that the Board approved the Medical Staff Credentials Report in closed session by unanimous vote of all Directors present:

*RECONVENE TO OPEN
SESSION & REPORT ON
CLOSED SESSION*

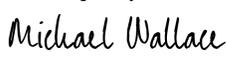
- William Nicholson, MD
- Jeannie Yee
- Bernard Stewart, DDS
- Jacob Eapen, MD
- Michael Wallace

There being no further business, Director Nicholson adjourned the meeting at 8:40 pm.

ADJOURNMENT

DocuSigned by:

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 William Nicholson, M.D.
 President

DocuSigned by:

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 Michael J. Wallace
 Secretary

RESOLUTION NO. 1231

**RESOLUTION OF THE BOARD OF DIRECTORS OF WASHINGTON
TOWNSHIP HEALTH CARE DISTRICT TO AUTHORIZE THE CHIEF
EXECUTIVE OFFICER TO ENTER INTO AN AMENDED AND RESTATED
TENANCY IN COMMON AGREEMENT WITH THE UNIVERSITY OF
CALIFORNIA, SAN FRANCISCO**

WHEREAS, Washington Township Health Care District is a local health care district (“District”) which owns and operates a general acute care hospital and provides essential healthcare services to the population residing within the District’s political boundaries, including the cities of Fremont, Newark, Union City, parts of South Hayward and Sunol;

WHEREAS, in connection with its affiliation with the University of California, San Francisco (“UCSF”), on March 18, 2020, the District purchased a 51% undivided interest and UCSF purchased a 49% undivided interest in real property located at 45388 Warm Springs Boulevard in the Warm Springs area of Fremont, California (the “Warm Springs Property”) with the goal of opening an outpatient care center (“Outpatient Center”) to expand the services offered by both the District and UCSF;

WHEREAS, the District and UCSF entered into a Tenancy in Common Agreement concurrently with the purchase of the Warm Springs Property, which governed the parties’ joint ownership and operation of the Warm Springs Property;

WHEREAS, on September 27, 2021, the Board approved Resolution No. 1230 authorizing the Chief Executive Officer to enter into a revised joint venture agreement with the UCSF concerning the development of the Warm Springs Property through the use of a limited liability company (the “JV LLC”) formed for this purpose;

WHEREAS, the District and UCSF have determined that it is in their best interests to enter into an Amended and Restated Tenancy in Common Agreement, which will replace the existing Tenancy in Common Agreement, to ensure the consistency between the various provisions of the revised joint venture agreement and the Tenancy in Common Agreement;

NOW, THEREFORE, be it resolved that:

1. The Board of Directors authorizes the Chief Executive Officer to execute the Amended and Restated Tenancy in Common Agreement in substantially the form attached hereto as Exhibit A.
2. The Chief Executive Officer is authorized to accept, on behalf of the District, non-material modifications to the Amended and Restated Tenancy in Common Agreement that in her judgment are consistent with the intent and purpose of the foregoing recitals and that are in the

best interests of the District, and take any and all other actions that are necessary or proper to fulfill the District's obligations under the Tenancy in Common Agreement.

3. The Chief Executive Officer is hereby authorized to enter into any agreement or contract document necessary to carry out the intent of this Resolution and to take any and all further actions, which in the determination of the Chief Executive Officer, are necessary and proper to effectuate the intent of this Resolution.

Passed and adopted by the Board of Directors of the Washington Township Health Care District this 27th day of October, 2021 by the following vote:

AYES: Directors Nicholson, Yee, Stewart, Eapen, and Wallace

NOES:

ABSENT:

DocuSigned by:

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William F. Nicholson, MD
President, Board of Directors
Washington Township Health Care District

DocuSigned by:

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Michael J. Wallace
Secretary, Board of Directors
Washington Township Health Care District

EXHIBIT A
AMENDED AND RESTATED TENANCY IN COMMON AGREEMENT

See attached.

PRELIMINARY DRAFT

WASHINGTON TOWNSHIP HEALTH CARE DISTRICT
RESOLUTION NO. 1232

**AUTHORIZING A CHANGE ORDER TO THE CONTRACT FOR
CONSTRUCTION OF THE MORRIS HYMAN CRITICAL CARE PAVILION
FOR THE CONSTRUCTION OF THE PEDESTRIAN BRIDGE CONNECTION
TO THE MAIN HOSPITAL AND CENTER FOR JOINT REPLACEMENT.**

SECTION 1.

WHEREAS:

1. The design and construction of the Morris Hyman Critical Care Pavilion (the “Project”) is funded by Measure FF and Measure Z, of which the Board of Directors (“Board”) has available \$289,290,136 of bonds.
2. On March 13, 2013, after advertisement and award in conformance with the requirements of Health & Safety Code Section 32132 and pursuant to lawful action of this Board by Resolution 1125, the District awarded to Hensel Phelps Construction, Inc. (“Hensel-Phelps”), a contract for construction of the Project, inclusive of preconstruction services and construction services, with a construction budget target of \$221,082,000. and a contract completion date in 2017 (the “Contract”). Resolution 1125 is incorporated herein.
3. On September 10, 2014, pursuant to Board Resolution 1148, in conformance with the Contract and law, and in resolution of disputed issues between the District and Hensel-Phelps recited in Board Resolution 1148, the District, Hensel Phelps and Rudolph & Sletten, Inc., (“Rudolph & Sletten”), agreed upon an Assignment and Novation of the Contract to Rudolph & Sletten, Inc., (“Rudolph & Sletten”). The Contract with Rudolph & Sletten had a contract value of \$234,435,805. Resolution 1148 is incorporated herein.
4. In November 2018, Rudolph & Sletten achieved substantial completion of the work of the Project, which opened and commenced operations, with Rudolph & Sletten continuing thereafter performing work nonessential to Project operations until June 2021, at which time Rudolph & Sletten applied for and received its final payment; subject, however, to continuing prime contractor services including insurance administration and prime contractor warranty services and the Pedestrian Bridge Connection work authorized by this Resolution.
5. The Pedestrian Bridge Connection, subject of this Resolution, is and was at the time of the Assignment and Novation of the Contract, a planned element of the

Resolution # 1232

Project. Along with the build out of the current shell space on the Project's first floor, however, the Pedestrian Bridge Connection was not included in the Project construction contract due to funding limitations.

6. In 2019, the District and Rudolph & Sletten entered into preliminary planning and change order negotiations for the procurement, installation and incidental construction work of the Pedestrian Bridge Connection. With the onset of COVID-19 pandemic, however, negotiations and construction planning were suspended until 2021.
7. Rudolf & Sletten and the District have now reached agreement on substantially all terms of the change order for Pedestrian Bridge Connection. The scope of work has three elements:
 - a. The Pedestrian Bridge is expected to consist of two bridge units: a 120-foot span across the Loading Dock drive between the Pavilion building to the corner of the existing Hospital; a 55-foot span continuing alongside the existing hospital to connect to the access corridor between the existing Hospital and the CJR at first floor level. The Bridge is prefabricated and delivered to the site in parts, assembled on site, and then installed.
 - b. At the Pavilion exterior, there will be exterior demolition, bridge installation, connection of the bridge to the structure, and waterproofing.
8. The Rudolph & Sletten construction warranty will cover the work of the Pedestrian Bridge Connection to the Project, including preparatory destructive work, installation and connection of the Bridge, waterproofing, and the interior corridor.
9. The change order value is expected to be \$10 Million.
10. The change order is authorized by the governing statute that applies to the District's construction contracts, Section 32132 of the Local Hospital District Act, California Health & Safety Code ("Section 32132").
11. Section 32132 requires the District to competitively bid construction contracts having a value in excess of \$25,000 and permits change orders within the scope of lawfully awarded contracts up to 5% of the value, providing under Section 32132(c), that "each individual change order [must] not total more than 5 percent of the contract", and "change orders [must] not materially change the scope of the work."
12. The change order for the work of the Pedestrian Bridge Connection has a value of \$10 Million, which is less than 5% of the \$234,435,805 contract with Rudolph & Sletten.

Resolution # 1232

13. The work of the Pedestrian Bridge Connection does not “materially change the scope of the work” of the Pavilion Project. A material alteration is a change that materially alters the fundamental object of the contract. (*Boomer v. Abbett* (1957) 154 Cal.App.2d 218, 224, 227.). The fundamental object of the Contract is the construction and delivery of the Project, an operational critical care facility. As reflected in the planning of the Project, a natural element of a critical care facility is the unimpeded flow and access of patients and staff between and among the critical care facility and supporting and ancillary hospital facilities and the critical facilities within the Project.
14. The Pedestrian Bridge was naturally part of Phase 2 for a second reason, being redundancy of means of ingress and egress, particularly following an earthquake. Currently the Project has one pedestrian corridor access point. Having two pedestrian access points increases the likelihood of access following an earthquake. Consistent with the Project’s emergency power and base isolation features, the bridge will advance of the fundamental goal of the Pavilion to operate continuously during and after an earthquake.
15. Thus, there are sufficient facts to warrant and justify performing the Pedestrian Bridge Connection by change order to the Contract as doing so is authorized by Section 32132.
16. Further, independent of Section 32132, it is prudent and necessary to have Rudolph & Sletten perform and manage this work due to:
 - a. Rudolph & Sletten has personal, firsthand knowledge of the Project, the construction, the hospital facilities, and traffic management, making Rudolph & Sletten uniquely qualified to perform this work.
 - b. Rudolph & Sletten is currently the single point of contractual responsibility for construction of the Project and delivery of the physical building and building envelop. There is significant benefit to the District that Rudolph & Sletten remain this single point of contractual responsibility.
 - c. Hiring other contractors to perform destructive demolition, installation, connection and waterproofing to the Project could prejudice contract warranties.
17. For these reasons, any effort to terminate the change order negotiations, or repackage the drawings and specifications for rebid, would cause delay, not be useful, and would not produce a public advantage.

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SECTION 2.

NOW, THEREFORE, IT IS RESOLVED as follows:

1. The above-recited facts are true and correct.
2. Under Section 32132, the proposed change order for the construction of the Pedestrian Bridge Connection, in the amount of \$10 Million is authorized.
3. In the event that it is ever contended that the Pedestrian Bridge Connection should be bid as a separate contract, the Board makes the findings as stated in the recitals. Further, the Board finds that the purposes of the competitive bidding requirements are to guard against favoritism, improvidence, extravagance, fraud and corruption; to prevent waste of public funds; and to obtain the best economic results for the public. The Contract requires Rudolph & Sletten to procure subcontracts using competitive procedures recognized in California statutes, thus meeting the purposes of the competitive bidding laws. Finally, the Board finds that the change order authority in the Contract permits these changes.
4. Based upon the foregoing facts, this Board finds that the Pedestrian Bridge Connection change order is in the best interest of the District, and the most prudent method of expenditure of bond funds towards completion of the Project.
5. Based upon the foregoing facts, this Board finds that, for this Project, any effort to bid the Pedestrian Bridge Connection change order would work an incongruity, run contrary to the public interests usually protected by the public bidding and competitive bidding process, and be undesirable and impractical. It is in the public interest for the District to move forward with the Pedestrian Bridge Connection change order set forth above.
6. This Board further finds that it is in the best interest of both the District and the taxpayers that the Pedestrian Bridge Connection change order is approved and that any bidding requirements that may be contended at any time to apply may be dispensed with because doing so in this instance is in the best interest of the District and the taxpayers.

Therefore, this Board hereby authorizes the following:

- a. The Pedestrian Bridge Connection change order with terms consistent with this Resolution. In such final negotiations, staff shall have authority to negotiate final changes and revisions as staff may deem reasonably necessary for final execution of the change order, and amounts and definitions of scope, allowances, and pricing, as staff deems reasonably necessary to include the maximum amount of base and alternate scope into the District's construction budget adjusted for construction cost

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inflation, provided the resulting final Contract remains consistent with this Resolution.

- b. Adjustment of the Project Budget by \$14,330,506.

PASSED AND ADOPTED by the Board of Directors of the WASHINGTON TOWNSHIP HEALTH CARE DISTRICT this 27th day of October 2021, by the following votes:

AYES: Directors Nicholson, Yee, Stewart, Eapen, Wallace

NOES:

ABSENT:

DocuSigned by:

William Nicholson

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Name: William F. Nicholson, MD
President of the Board of Directors
Washington Township Health Care District

DocuSigned by:

Michael Wallace

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Name: Michael J. Wallace
Secretary of the Board of Directors
Washington Township Health Care District



Washington Township Health Care District

2000 Mowry Avenue, Fremont, California 94538-1716 | 510.797.1111

Kimberly Hartz, Chief Executive Officer

Board of Directors

Jacob Eapen, MD
William F. Nicholson, MD
Bernard Stewart, DDS
Michael J. Wallace
Jeannie Yee

Washington Hospital Bridge Project Budget October 27, 2021

Design	\$1,091,740
Inspection and Testing	\$271,934
Project Management	\$508,918
OSHPD & Permit Fees	<u>\$204,255</u>
Sub-Total	\$985,077
Construction	\$9,957,935
Design Contingency	\$50,000
Construction Contingency	\$945,754
Owner's Contingency	<u>\$1,300,000</u>
Total Project Cost	\$14,330,506