

SETTLEMENT AGREEMENT

This Settlement Agreement (**Agreement**) is entered into by the Governor of Hawai'i, David Y. Ige (**Governor**), and the United Public Workers, AFSCME, Local 646, AFL-CIO (**UPW**) (collectively, **Parties**), to resolve two pending actions, the first entitled United Public Workers v. Ige, Ninth Circuit Court of Appeals, Case No. 16-15219, U.S. District Court of Hawai'i, Case No. 1:15 cv-0303 (**Federal Suit**), and the second entitled Class Grievance DMN-16-01 (**Class Grievance**).

WHEREAS, the stated purpose of 2015 Haw. Sess. L. Act 103, enacted by the Hawai'i State Legislature and signed into law by the Governor on June 10, 2015 (**Act 103**), was to ensure that the people presently served by the Maui regional system's health care facilities continue to have access to health care services in their communities by discontinuing the Maui regional system's direct delivery of those services and transferring one or more of the system's facilities to a private entity to instead deliver those services.

WHEREAS, the Governor has entered into an agreement for the transfer of the use and exclusive management and operations of the Maui Memorial Medical Center, Kula Hospital, and Lanai Community Hospital (**Hospitals**), from Hawai'i Health Systems Corporation (**HHSC**) to Maui Health System, a Kaiser Foundation Hospitals LLC (**Kaiser**), pursuant to Act 103;

WHEREAS, UPW alleges in the Federal Suit that the implementation of Act 103 to privatize work being performed by employees of HHSC prior to expiration on June 30, 2017 of the collective bargaining agreements for UPW's Bargaining Units 1 and 10 (**UPW Collective Bargaining Agreements**), would violate the Contract Clause of the U.S. Constitution;

WHEREAS, UPW alleges in the Class Grievance that the implementation of Act 103 to privatize work being performed by employees of HHSC violates the terms of the UPW Collective Bargaining Agreements;

WHEREAS, the Governor disagrees with UPW's claims within the Federal Suit and Class Grievance that implementation of Act 103 violates the Contract Clause of the U.S. Constitution or the terms of the UPW Collective Bargaining Agreements;

WHEREAS, the U.S. District Court of Hawai'i held in the Federal Suit that implementation of Act 103 does not violate the Contract Clause of the U.S. Constitution or the terms of the UPW Collective Bargaining Agreement;

WHEREAS, UPW appealed the District Court judgment in the Federal Suit to the Ninth Circuit Court of Appeals;

WHEREAS, during oral arguments before the Ninth Circuit Court of Appeals in the Federal Suit, that Court encouraged both Parties to reach settlement with each other in lieu of continued litigation regarding Act 103;

WHEREAS, on May 17, 2016, the Ninth Circuit Court of Appeals issued an order in the Federal Suit temporarily stopping activities related to the transition of the Hospitals to Kaiser until September 30, 2016, unless earlier terminated by the Court;

WHEREAS, it is the intent of both Parties to fully resolve the Federal Suit and Class Grievance;

NOW, THEREFORE, IT IS HEREBY AGREED AS SET FORTH BELOW:

The Governor agrees to the following:

a. Notwithstanding any transfer or hospital facilities lease of the Hospitals to Kaiser, all affected HHSC — Maui Region employees in UPW's Bargaining Units 1 and 10 (**UPW bargaining unit employees**), except those who voluntarily choose to terminate their HHSC employment, shall, up until the expiration of the UPW Collective Bargaining Agreements on June 30, 2017, (1) remain HHSC employees, (2) remain public employees for purposes of state laws that apply to public officers and employees of the State, and (3) continue to be covered by the UPW Collective Bargaining Agreements, including any amendments or supplemental agreements entered into between HHSC and UPW to implement this Agreement.

b. Prior to any transfer of the management and operations of the Hospitals to Kaiser that occurs before July 1, 2017, the State of Hawai'i (**State**) will enter into an employment lease contract with Kaiser, under which Kaiser will pay a negotiated lump sum amount to HHSC, which provides that: (1) for the duration of the time period between the commencement of the hospital facilities lease between HHSC and Kaiser and the expiration of the UPW Collective Bargaining Agreements on June 30, 2017, HHSC will lease to Kaiser its UPW bargaining unit employees (except those who have voluntarily elected to terminate their HHSC employment), and these employees will work in the Hospitals, under the supervision and direction of Kaiser and subject to Kaiser work rules, while continuing to be paid by HHSC pursuant to the UPW Collective Bargaining Agreements, including any amendments and supplemental agreements entered into

between HHSC and UPW to implement this Agreement, and continuing to receive and accrue the rights and benefits of state employees; (2) Kaiser will offer Kaiser employment to these employees for a period of six months commencing on July 1, 2017 (and not earlier), subject to completion of any legally required employment screening; and (3) Kaiser and HHSC will take all reasonable steps necessary to provide for a smooth transition of these employees from state employment to private employment commencing on July 1, 2017.

c. UPW bargaining unit members who elected to participate in the reduction in force process conducted prior to June 30, 2016 may move to their new positions, if still available, effective no later than on the date of the transfer of the management and operations of the Hospitals to Kaiser. These bargaining unit members will also be offered the choice of remaining as HHSC-Maui employees assigned to work in the Hospitals under Kaiser supervision until June 30, 2017 and receiving the offers of employment to become Kaiser employees on July 1, 2017.

d. Any UPW bargaining unit employees who do not voluntarily elect to terminate their HHSC employment, and instead elect to remain HHSC employees until the expiration of the UPW Collective Bargaining Agreements will be subject to a new reduction in force effective June 30, 2017 so that they have the opportunity to exercise their reduction in force rights if they wish to do so, provided they do not voluntarily elect to terminate their HHSC employment prior to June 30, 2017.

In consideration of the Governor's agreement to the above terms, UPW agrees to the following:

a. UPW will not oppose, nor will UPW unreasonably hinder or delay, the transfer of the use and exclusive management and operations of the Hospitals from HHSC to Kaiser, including but not limited to the closing of any and all transactions authorized by Act 103, provided that such transfer occurs no sooner than November 6, 2016 (**Transfer Date**).

b. UPW acknowledges that on and after the Transfer Date, (1) the real property and improvements at the Hospitals will be leased by Kaiser from HHSC in accordance with the Hospital Facilities Lease between HHSC and Kaiser; and (2) the Hospitals will be operated and managed exclusively by Kaiser in accordance with the Transfer Agreement among the State, HHSC and Kaiser, and UPW also acknowledges that during the period from the Transfer Date to June 30, 2017, there will be an employment lease contract between HHSC and Kaiser under which the UPW bargaining unit

employees will work at the Hospitals, under the supervision and direction of Kaiser and subject to Kaiser work rules.

c. UPW acknowledges that UPW bargaining unit employees who continue HHSC employment through June 30, 2017 and who accept job offers from Kaiser effective July 1, 2017 shall be considered to have had their HHSC employment terminated as a consequence of Act 103 and shall become Kaiser employees effective July 1, 2017.

d. UPW will withdraw the Class Grievance within three (3) business days of the entry of the consent decree set forth in this Agreement, with each party to bear its own fees and costs.

In view of the foregoing, the Parties mutually agree to the following:

- 1) The Parties will jointly and immediately request that the Ninth Circuit Court of Appeals temporarily remand the Federal Suit to the District Court for the limited purposes of vacating the District Court judgment and for entry of a consent decree that provides as follows:

“Pursuant to the stipulation of the parties, it is hereby ordered, adjudicated and decreed as follows:

All Hawaii Health Systems Corporation (HHSC) — Maui Region employees in plaintiff United Public Workers (UPW) Bargaining Units 1 and 10 affected by implementation of 2015 Haw. Sess. L. Act 103 (Hawaii Act 103), except those who voluntarily choose to terminate their HHSC employment, shall, up until the expiration on June 30, 2017 of existing applicable collective bargaining agreements with UPW, (1) remain HHSC employees, (2) remain public employees for purposes of state laws that apply to public officers and employees of the State, including but not limited to chapters 76, 89, 89A and 89C, Hawaii Revised Statutes, and (3) continue to be covered by these collective bargaining agreements, including any amendments and supplemental agreements entered into between HHSC and UPW, which will continue to be enforceable under Hawaii state law. Defendant David Ige, in his official capacity as Governor of Hawaii (Governor), is enjoined from implementation or enforcement of Hawaii Act 103 to the sole extent a provision therein, if any, is held to directly contradict or preclude the Governor from complying with the previous sentence.

This consent decree (1) shall expire on its own terms on June 30, 2017 without motion of either party and may not be extended, and (2) is entered into for the sole purpose of settling the underlying disputes between the parties without further litigation based upon the unique existing circumstances before the parties and, as such, may not be cited by either party for its precedential value. Neither party will be considered the prevailing party in this action, nor may a party seek such status. Each of the parties bears its own fees and costs related to this action, including but not limited to District Court proceedings and the appeal, up through the expiration of the consent decree. Any and all other relief sought by any party in the action is denied.”

- 2) If the District Court vacates its judgment and enters the above consent decree, the Parties will jointly and without delay request that the Ninth Circuit lift the existing injunction pending appeal dated May 17, 2016, as modified by its orders on June 2, 2016, June 17, 2016, July 1, 2016, July 18, 2016 and August 2, 2016, and dismiss UPW’s appeal as moot. UPW agrees that the Agreement and the District Court’s above-stated actions provide UPW with all the relief UPW sought in its appeal. The parties agree that if the District Court vacates its original judgment, neither party will rely upon the original judgment or the District Court’s opinion in the future for its precedential value, if any.
- 3) If the Ninth Circuit does not make a temporary remand for the limited purposes of vacating the District Court judgment and entry of the above consent decree, or if the District Court does not vacate its judgment and enter the above consent decree, then this Agreement shall be null and void, and UPW may continue with its appeal in the Ninth Circuit.
- 4) The Parties will, without unreasonable delay, enter into good faith negotiations over the creation of supplemental agreements to the current UPW Collective Bargaining Agreements consistent with the provisions in this Agreement, which supplemental agreements shall be effective only through June 30, 2017.
- 5) The Agreement is not a collective bargaining agreement. Any dispute between the parties about the interpretation or enforcement of the Agreement shall be resolved first through mediation, using a mutually agreed upon, District Court-selected or Ninth Circuit mediator. If mediation is unsuccessful, any dispute shall be resolved by a court of competent jurisdiction.

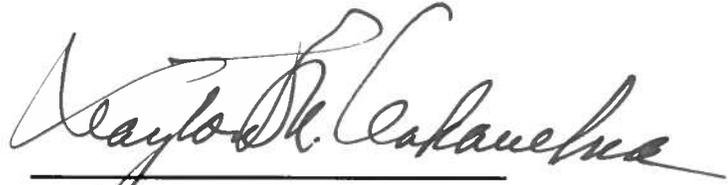
IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.



DAVID Y. IGE

Governor, State of Hawai'i

Date: AUG 12 2016



DAYTON M. NAKANELUA

State Director, UPW

Date: AUG 12 2016