



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Report

Legistar File Number: A 12-141

August 28, 2012

Introduced: 6/21/2012

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Agreement

- a) Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute the First Amendment to the Professional Services Agreement (A-12095) with Monterey Bay GI Consultants to provide gastroenterology services at NMC, extending the Agreement to August 31, 2013 and adding \$50,000 for a revised total Agreement amount not to exceed \$300,000 in the aggregate.
- b) Authorize the Purchasing Manager for NMC to execute, within 120 days of the First Amendment, a Second Amendment to this Agreement, in substantially the same form as that which has been presented to the Board, without material change to its content, adding professional services in the Clinic and Outpatient Surgery to the scope of services; increasing the aggregate amount of the agreement by \$150,000 to include the Clinic and Outpatient Surgery Services; and extending the term of the Agreement an additional 12 months from the effective date of the Second Amendment for a revised total Agreement amount not to exceed \$450,000 in the aggregate.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a) Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute the First Amendment to the Professional Services Agreement (A-12095) with Monterey Bay GI Consultants to provide gastroenterology services at NMC, extending the Agreement to August 31, 2013 and adding \$50,000 for a revised total Agreement amount not to exceed \$300,000 in the aggregate.
- b) Authorize the Purchasing Manager for NMC to execute, within 120 days of the First Amendment, a Second Amendment to this Agreement, in substantially the same form as that which has been presented to the Board, without material change to its content, adding professional services in the Clinic and Outpatient Surgery to the scope of services; increasing the aggregate amount of the agreement by \$150,000 to include the Clinic and Outpatient Surgery Services; and extending the term of the Agreement an additional 12 months from the effective date of the Second Amendment for a revised total Agreement amount not to exceed \$450,000 in the aggregate.

SUMMARY/DISCUSSION:

In order to provide 24 hours, 7 days a week gastroenterology call coverage in the Emergency

Department (ED), it is necessary to contract with multiple physician groups to cover the service. NMC currently has an agreement with Monterey Bay GI Consultants to provide ED Call Coverage, Clinic and Outpatient Surgery Services. NMC wishes to amend the agreement with Monterey Bay GI Consultants to extend the term to August 31, 2013 in order to continue to provide emergency gastroenterology services to patients without interruption and remove Clinic and Outpatient Surgery Services, which were not put into place during the original term of the agreement.

The amount of the agreement for the period September 1, 2011 to August 31, 2012 was \$250,000, however, since the services in the Clinic and Outpatient Surgery were not implemented during that period, the budgeted amount was not fully disbursed. The remaining \$100,000 and additional \$50,000 is equal to the compensation times the projected number call coverage that will be provided during the additional twelve months of this Agreement. NMC has obtained an independent opinion of fair market value supporting the payment terms of this Agreement.

The Clinic and Outpatient Surgery services are not included in the First Amendment because the details regarding the additional services are not yet settled between the parties. Federal Stark Law prohibits physician self-referral, the practice of a physician referring a patient to a medical facility in which he has a financial interest, be it ownership, investment, or a structured compensation arrangement. To be in compliance with Federal Stark Law, NMC must ensure that a written agreement with Monterey Bay GI Consultants is in place whenever medical services are rendered. Accordingly, NMC is going to the Board of Supervisors with the First Amendment without the Clinic and Outpatient Surgery detail at this time in order to ensure continuation of services in NMC's emergency department, all in accordance with Federal Stark Law. Once the Clinic and Outpatient Surgery detail has been agreed upon and after receiving Board approval, the parties shall enter into a Second Amendment, in substantially the same form as that which has been presented to the Board, without material change to its content, to include Clinic and Outpatient Surgery in the scope of services and to add \$150,000 to the total liability under the Agreement.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed and approved this Amendment/Agreement as to legal form and risk provisions. Auditor-Controller has reviewed and approved this Amendment/Agreement as to fiscal provisions. The Amendment/Agreement has also been reviewed and approved by Natividad Medical Center's Board of Trustees.

FINANCING:

- a) The total cost of the Agreement and First Amendment is \$300,000, an increase of \$50,000 for the two year period. \$125,000 in Fiscal Year 2011/12, \$150,000 is included in the Fiscal Year 2012/2013 Recommended Budget and \$25,000 will be included in the Fiscal Year 2013/14 Recommended Budget. There is no impact to the General Fund.
- b) The total cost of the Agreement, First Amendment and Second Amendment is \$450,000, an increase of \$150,000. \$125,000 in Fiscal Year 2011/12, \$250,000 is included in the Fiscal Year 2012/2013 Recommended Budget and \$75,000 will be included in the

Fiscal Year 2013/14 Recommended Budget.

Prepared by: Jeanne-Ann Balza, Management Analyst, 783.2506

Approved by: Harry Weis, Chief Executive Officer, 783.2553

Attachments:

First Amendment, Second Amendment; Agreement



Harry Weis, CEO
Natividad Medical Center



Monterey County

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Agreement No.: A-12095

Upon motion of Supervisor Salinas, seconded by Supervisor Armenta, and carried by those members present, the Board of Supervisors hereby:

- a. Authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute the First Amendment to the Professional Services Agreement (A-12095) with Monterey Bay GI Consultants to provide gastroenterology services at NMC, extending the Agreement to August 31, 2013 and adding \$50,000 for a revised total Agreement amount not to exceed \$300,000 in the aggregate.
- b. Authorized the Purchasing Manager for NMC to execute, within 120 days of the First Amendment, a Second Amendment to this Agreement, in substantially the same form as that which has been presented to the Board, without material change to its content, adding professional services in the Clinic and Outpatient Surgery to the scope of services; increasing the aggregate amount of the agreement by \$150,000 to include the Clinic and Outpatient Surgery Services; and extending the term of the Agreement an additional 12 months from the effective date of the Second Amendment for a revised total Agreement amount not to exceed \$450,000 in the aggregate.

PASSED AND ADOPTED on this 28th day of August 2012, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, and Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 76 for the meeting on August 28, 2012.

Dated: August 30, 2012
File Number: A 12-141

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

FIRST AMENDMENT TO PROFESSIONAL AND CALL COVERAGE SERVICES AGREEMENT

THIS FIRST AMENDMENT TO PROFESSIONAL AND CALL COVERAGE SERVICES AGREEMENT (the "**Amendment**") is made and entered into as of September 1, 2012, by and between COUNTY OF MONTEREY ("**County**") on behalf of NATIVIDAD MEDICAL CENTER ("**Hospital**"), and MONTEREY BAY GI CONSULTANTS MEDICAL GROUP, INC., a California professional medical corporation ("**Contractor**") with respect to the following:

RECITALS

- A. County owns and operates Hospital, a general acute care teaching hospital facility located in Salinas, California under its acute care license.
- B. Contractor and Hospital have entered into that certain Professional and Call Coverage Services Agreement dated effective as of September 1, 2011 (the "**Agreement**") pursuant to which Contractor provides Professional Services, Coverage Services, Teaching Services and Additional Services (collectively, the "**Services**") to Hospital.
- C. Hospital and Contractor desire to amend the Agreement.

AGREEMENT

IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, Hospital and Contractor agree as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

2. **Exhibit 1.11.** **Exhibit 1.11** to the Agreement is hereby amended to read in its entirety as attached hereto as **Attachment A.**

3. **Section 2.1.** Section 2.1 to the Agreement is hereby amended to read in its entirety as follows:

2.1 Compensation. Hospital shall pay to Contractor the amount determined in accordance with **Exhibit 2.1** (the "**Compensation**"), upon the terms and conditions set forth therein. The total amount payable by Hospital to Contractor under this Agreement shall not exceed the sum of three hundred thousand dollars (\$300,000) in the aggregate."

4. **Section 5.1.** Section 5.1 to the Agreement is hereby amended to read in its entirety as follows:

“5.1 Term. This Agreement shall become effective on September 1, 2011 (the **“Effective Date”**), and shall continue until August 31, 2013 (the **“Expiration Date”**), subject to the termination provisions of this Agreement.”

5. **Section 5.7.** Section 5.7 to the Agreement is hereby amended and restated in its entirety to read as follows:

“5.7 Immediate Removal of Group Physicians. Contractor shall immediately remove any Group Physician from furnishing Services under this Agreement who:

(a) has his or her Medical Staff membership or clinical privileges at Hospital terminated, suspended, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(b) has his or her license to practice medicine in the State, DEA registration denied, suspended, restricted, terminated, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto;

(c) is convicted of a felony, a misdemeanor involving fraud, dishonesty, or moral turpitude, or any crime relevant to Professional Services or the practice of medicine;

(d) is debarred, suspended, excluded or otherwise ineligible to participate in any Federal Health Care Program or state equivalent;

(e) fails to satisfy any of the standards and qualifications set forth in Sections 1.7, 1.8, 1.10 and 1.12 of this Agreement; or

(f) fails to be covered by the professional liability insurance required to be maintained under this Agreement.”

6. **New Section 5.8.** Section 5.8 is hereby added to the Agreement to read in its entirety as follows:

“5.8 Removal of Group Physicians upon Hospital Request. Upon written request by Hospital, Contractor shall immediately remove any Group Physician from furnishing Services under this Agreement who:

(a) engages in conduct that, in Hospital’s good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of Hospital;

(b) fails to comply with any other material terms or conditions of this Agreement after being given written notice of that failure and a reasonable opportunity to comply; or

(d) within a twelve (12) month period, has two (2) or more medical malpractice judgments filed against him or her, or he or she becomes the subject of two (2) or more proceedings by the Medical Staff regarding the performance of professional medical services.”

7. **New Section 5.9.** Section 5.9 is hereby added to the Agreement to read in its entirety as follows:

“5.9 Effect of Removal. Upon the removal of a Group Physician pursuant to Section 5.7 or Section 5.8 of this Agreement, Contractor shall employ, contract with, or otherwise engage, at its cost and expense, a qualified substitute for the removed Group Physician, or shall demonstrate to Hospital’s satisfaction Contractor’s ability to continuously perform the Services without such a substitute. Failure to take such action shall constitute a material breach of this Agreement, subject to Section 5.2. Nothing herein shall be construed to limit Hospital’s rights under Section 5.2 or any other provision of this Agreement.”

8. **New Section 5.10.** Section 5.10 is hereby added to the Agreement to read in its entirety as follows:

“5.10 Return of Property. Upon any termination or expiration of this Agreement, Contractor shall immediately return to Hospital all of Hospital’s property, including Hospital’s equipment, supplies, furniture, furnishings and patient records, which is in Contractor’s or any Group Physician’s possession or under Contractor’s or any Group Physician’s control.”

9. **Section 6.3.** Section 6.3 to the Agreement is hereby amended and restated in its entirety as follows:

“6.3. Section left intentionally blank.”

10. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

11. **Continuing Effect of Agreement.** Except as herein provided, all of the terms and conditions of the Agreement remain in full force and effect from the Effective Date of the Agreement.

12. **Reference.** After the date of this Amendment, any reference to the Agreement shall mean the Agreement as amended by this Amendment.

[signature page follows]

IN WITNESS WHEREOF, Hospital and Contractor have executed this Amendment as of the day and year first written above.

CONTRACTOR

MONTEREY BAY GI CONSULTANTS
MEDICAL GROUP, INC., a California
professional medical corporation

Date: 8/2, 2012

By: *D. Clark*
Its MEDICAL DIRECTOR

By: _____
Its _____

Tax I.D. No. _____

NATIVIDAD MEDICAL CENTER

Purchase Order Number

By: *[Signature]*
Contracts /Purchasing Manager

Date: 9-1, 2012

By: *[Signature]*
Natividad Medical Center Representative

Date: 8/2, 2012

APPROVED AS TO LEGAL FORM:
CHARLES J. MCKEE, County Counsel

Stacy Saetta
Stacy Saetta, Deputy County Counsel

Date: 8/8, 2012

Reviewed as to fiscal provisions

[Signature]
Auditor-Controller
County of Monterey *842*

Attachment A

Exhibit 1.11



MEDICAL STAFF POLICY

Title: Practitioner Code of Conduct	Effective: 05/09 Reviewed/Revised: 08/11
Standard: MSP004-2	Approved: MEC 08/11 BOT 09/11

As a member of the Medical Staff or an Allied Health Professional (AHP) of Natividad Medical Center (NMC) (collectively Practitioners), I acknowledge that the ability of Practitioners and NMC employees to jointly deliver high quality health care depends significantly upon their ability to communicate well, collaborate effectively, and work as a team. I recognize that patients, family members, visitors, colleagues and NMC staff members must be treated in a dignified and respectful manner at all times.

POLICY

In keeping with the accepted standards of the health care profession as evidenced by the Hippocratic Oath, the Code of Ethics of the American Medical Association (AMA) and other professional societies, and the values of NMC, Practitioners are leaders in maintaining professional standards of behavior. In keeping with this responsibility to maintain professional standards of behavior at NMC, Practitioners:

1. Facilitate effective patient care by consistent, active, and cooperative participation as members of the NMC health care team.
2. Recognize the individual and independent responsibilities of all other members of the NMC health care team and their right to independently advocate on behalf of the patient.
3. Maintain respect for the dignity and sensitivities of patients and families, as well as colleagues, NMC employees, and all other health care professionals.
4. Participate in the Medical Staff quality assessment and peer review activities, and in organizational performance improvement activities.
5. Contribute to the overall educational mission of NMC.
6. Reflect positively upon the reputation of the health care profession, the Medical Staff, and NMC in their language, action, attitude, and behavior.

Behaviors of Practitioners which do not meet the professional behavior standards established in this Code of Conduct (Code) shall be referred to as Disruptive or Unprofessional Behavior. Disruptive or Unprofessional Behavior by Practitioners exhibited on the premises of NMC, whether or not the Practitioner is on duty or functioning in his/her professional capacity, are subject to this Code.

EXAMPLES OF PROFESSIONAL BEHAVIOR

Practitioners are expected to exhibit professional behavior at NMC, consistent with this Code, as follows:

1. Be consistently available with cooperative and timely responsiveness to appropriate requests from physicians, nurses, and all other members of the NMC health care team in patient care and other professional responsibilities.
2. Provide for and communicate alternate coverage arrangements to assure the continuity and quality of care.
3. Demonstrate language, action, attitude and behavior which consistently convey to patients, families, colleagues, and all other members of the NMC health care team a sense of compassion and respect for human dignity.
4. Understand and accept individual cultural differences.
5. Maintain appropriate, timely, and legible medical record entries which enable all NMC professionals to understand and effectively participate in a cohesive plan of management to assure continuity, quality, and efficiency of care and effective post-discharge planning and follow-up.
6. Respect the right of patients, families or other designated surrogates to participate in an informed manner in decisions pertaining to patient care.
7. Treat patients and all persons functioning in any capacity within NMC with courtesy, respect, and human dignity.
8. Conduct one's practice at NMC in a manner that will facilitate timely commencement of medical/surgical procedures at NMC, including but not limited to, timely arrival at the hospital, pre-ordering all needed special equipment and/or supplies, and timely notification of required staff.

EXAMPLES OF DISRUPTIVE OR UNPROFESSIONAL BEHAVIOR

Disruptive or Unprofessional Behavior, as characterized in this Code, includes but is not limited to:

1. Misappropriation or unauthorized removal or possession of NMC owned property.
2. Falsification of medical records, including timekeeping records and other NMC documents.

3. Working under the influence of alcohol or illegal drugs.
4. Working under the influence of prescription or over-the-counter medications when use of such medications significantly affects the practitioner's level of cognitive functioning.
5. Possession, distribution, purchase, sale, transfer, transport or use of illegal drugs in the workplace.
6. Possession of dangerous or unauthorized materials such as explosives, firearms, or other weapons in the workplace.
7. Writing derogatory and/or accusatory notes in the medical record which are not necessary for the provision of quality patient care services. Concerns regarding the performance of other Practitioners or NMC employees should be reported on a NMC Quality Review Report form and submitted pursuant to NMC policy and should not be entered into the patient's medical record.
8. Harassment
 - a. Harassment is verbal or physical contact that denigrates or shows hostility or aversion toward an individual based on race, religion, color, national origin, ancestry, age, disability, marital status, gender, sexual orientation, or any other basis protected by federal, state, or local law or ordinance, and that:
 1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment, or;
 2. Has the purpose or effect of unreasonably interfering with an individual's work performance, or;
 3. Otherwise adversely affects an individual's employment opportunity.
 - b. Harassing conduct includes, but is not limited to:
 1. Epithets, slurs, negative stereotyping, threatening, intimidating, or hostile acts that relate to race, religion, color, national origin, ancestry, age, disability, marital status, gender, or sexual orientation.
 2. Written material or illustrations that denigrate or show hostility or aversion toward an individual or group because of race, religion, color, national origin, ancestry, age, disability, marital status, gender, or sexual orientation, and is placed on walls; bulletin boards, or elsewhere on NMC's premises or circulated in the workplace.
9. Physical behavior that is harassing, intimidating, or threatening, from the viewpoint of the recipient, including touching, obscene or intimidating gestures, or throwing of objects;

10. Passive behaviors, such as refusing to perform assigned tasks or to answer questions, return phone calls, or pages;
11. Language that is a reasonable adult would consider to be foul, abusive, degrading, demeaning, or threatening, such as crude comments, degrading jokes or comments, yelling or shouting at a person, or threatening violence or retribution;
12. Single incident of egregious behavior, such as an assault or other criminal act.
13. Criticism of NMC staff in front of patients, families, or other staff.

PROCEDURE

1. Any person who functions in any capacity at NMC who observes Practitioner language, action, attitude, or behavior which may be unprofessional, harassing, or disruptive to the provision of quality patient care services should document the incident on a NMC Quality Review Report form.
2. Identified incidents involving Practitioners shall be reviewed pursuant to the current Road Map for Handling Reports of Disruptive or Unprofessional Behavior or the County Sexual Harassment Policy, as determined by the nature of the behavior and the person who exhibits it.

I acknowledge that I have received and read this Practitioner Code of Conduct. I acknowledge that hospitals are required to define and address disruptive and inappropriate conduct to comply with The Joint Commission standards for accreditation. I agree to adhere to the guidelines in this Code and conduct myself in a professional manner. I further understand that failure to behave in a professional fashion may result in disciplinary actions set forth in the RoadMap for Handling Reports of Disruptive or Unprofessional Behavior or as determined by the Medical Executive Committee pursuant to the Medical Staff Bylaws.

Exhibit 2.1

COMPENSATION

1. **Stipend Compensation.** Hospital shall pay to Contractor an amount equal to One Thousand Four Hundred Eighteen Dollars (\$1418.00) per twenty-four (24) hour period for Hospital Consults and ED Services provided pursuant to this Agreement.

2. **Timing.** Hospital shall pay the compensation due for Services performed by Contractor after Contractor's submission of the monthly invoice of preceding month's activity and time report in accordance with this Agreement; provided, however, that if Contractor does not submit an invoice and time sheet within sixty (60) days of the end of the month during which Services were performed, Hospital shall not be obligated to pay Contractor for Services performed during that month. The County of Monterey Standard Payment Terms for contracts/PSAs and paying invoices is "30 days after receipt of the certified invoice in the Auditor-Controller's Office".