



Monterey County

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5068

Board Report

Legistar File Number: A 13-208

August 27, 2013

Introduced: 8/6/2013

Version: 1

Current Status: Agenda Ready

Matter Type: BoS Agreement

- a) Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute the Second Amendment to the Professional Services Agreement (A-12095) with Monterey Bay GI Consultants to provide gastroenterology services at NMC, extending the Agreement to June 30, 2015 and adding \$220,000 for a revised total Agreement amount not to exceed \$520,000 in the aggregate; and
- b) Authorize the Purchasing Manager for NMC to execute to sign up to three (3) amendments to this agreement where the total amendments do not exceed 10% of the original contract amount, and do not significantly change the scope of work.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a) Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute the Second Amendment to the Professional Services Agreement (A-12095) with Monterey Bay GI Consultants to provide gastroenterology services at NMC, extending the Agreement to June 30, 2015 and adding \$220,000 for a revised total Agreement amount not to exceed \$520,000 in the aggregate; and
- b) Authorize the Purchasing Manager for NMC to execute to sign up to three (3) amendments to this agreement where the total amendments do not exceed 10% of the original contract amount, and do not significantly change the scope of work.

SUMMARY/DISCUSSION:

NMC has an agreement effective September 1, 2011, amended September 1, 2012, with Monterey Bay GI Consultants to provide 24 hour gastroenterology call coverage in the emergency department. A Second Amendment was prepared and presented to the Board of Supervisors on August 28, 2012 to add outpatient surgery and clinic services to the Agreement. That Second Amendment was to be effective within 120 days of the First Amendment, but was never fully executed and outpatient surgery and clinic services were not added. NMC now wishes to amend the Agreement with Monterey Bay GI Consultants and enter into a Second Amendment to extend the term for an additional twenty two (22) months in order to continue to provide 24 hour gastroenterology services to patients without interruption.

Monterey Bay GI Consultants is paid a daily rate for call coverage services. The amount of call coverage provided may increase, but will not exceed the maximum liability of the Agreement or increase the rate of pay for services. NMC has obtained an independent opinion of fair market value supporting the payment terms of this Agreement.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed and approved this Agreement as to legal form and risk

provisions. Auditor-Controller has reviewed and approved this Agreement as to fiscal provisions. The Agreement has also been reviewed and approved by Natividad Medical Center's Board of Trustees.

FINANCING:

The total cost for this Agreement is \$520,000 for the forty eight (46) month period. \$73,613 was disbursed in Fiscal Year 2011/2012 (10 months); \$102,305 was disbursed in Fiscal Year 2012/2013; \$172,041 is included in the Fiscal Year 2013/2014 Adopted Budget and the remaining \$172,041 will be budgeted in subsequent fiscal years. There is no impact to the General Fund.

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

Approved by: Harry Weis, Chief Executive Officer, 783.2553

Attachments: First-Second Amendment, Agreement

Original on File at the Clerk of the Board



8/16/13

Harry Weis, CEO

Date



Monterey County

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

Board Order

Agreement No.: A-12095

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

- a. Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute the Second Amendment to the Professional Services Agreement (A-12095) with Monterey Bay GI Consultants to provide gastroenterology services at NMC, extending the Agreement to June 30, 2015 and adding \$220,000 for a revised total Agreement amount not to exceed \$520,000 in the aggregate; and
- b. Authorize the Purchasing Manager for NMC to execute to sign up to three (3) amendments to this agreement where the total amendments do not exceed 10% of the original contract amount, and do not significantly change the scope of work.

PASSED AND ADOPTED on this 27th day of August 2013, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas and Parker

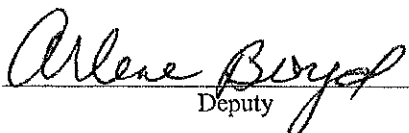
NOES: None

ABSENT: Supervisor Potter

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 27, 2013.

Dated: August 27, 2014
File Number: A 13-208

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

By 
Deputy

SECOND AMENDMENT TO PROFESSIONAL AND CALL COVERAGE SERVICES AGREEMENT

THIS SECOND AMENDMENT TO PROFESSIONAL AND CALL COVERAGE SERVICES AGREEMENT (the "**Amendment**") is made and entered into as of September 1, 2013, 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 effective as of September 1, 2011, and amended effective September 1, 2012 (collectively, the "**Agreement**"), pursuant to which Contractor provides professional services in the Specialty to Hospital Patients.
- C. Hospital and Contractor desire to amend the Agreement to increase the amount payable to the Contractor by an additional Two Hundred Twenty Thousand Dollars (\$220,000) for services provided during the extended term of 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. **Section 1.14.** Subsection (d) of Section 1.14 to the Agreement is hereby amended to read in its entirety as follows:

“(d) any Group Physician voluntarily or involuntarily retires from the practice of medicine;”
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 Five Hundred Twenty Thousand Dollars (\$520,000) for the full term of this Agreement.”

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 June 30, 2015 (the **“Expiration Date”**), subject to the termination provisions of this Agreement.”

5. **Exhibit 6.4.** Exhibit 6.4 to the Agreement is hereby replaced in its entirety and incorporated by this reference with the attached Exhibit 6.4.

6. **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.

7. **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.

8. **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: July 23, 2013

By: [Signature]
Its President

By: _____
Its _____

NATIVIDAD MEDICAL CENTER

Purchase Order Number

By: [Signature]
Contracts /Purchasing Manager

Date: 8-29, 2013

By: [Signature]
Natividad Medical Center Representative

Date: 7/30, 2013

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

[Signature]
Stacy Saetta, Deputy County Counsel

Date: 8/1, 2013

Reviewed as to fiscal provisions

[Signature]
Auditor-Controller
County of Monterey

8-1-13

Exhibit 6.4

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“**Exhibit**”) supplements and is made a part of this Agreement by and between Hospital (“**Covered Entity**” or “**CE**”) and Contractor (“**Business Associate**” or “**BA**”).

(A) Unless otherwise specified in this Exhibit, all capitalized terms used in this Exhibit shall have the meanings established for purposes of HIPAA or HITECH, as applicable. Specific statutory or regulatory citations used in this Exhibit shall mean such citations as amended and in effect from time to time.

1. “**Electronic Protected Health Information**” shall mean Protected Health Information that is transmitted or maintained in electronic media.
2. “**HIPAA**” shall mean the Health Insurance Portability and Accountability Act, 42 U.S.C. §§ 1320d through 1320d-8, as amended from time to time, and all associated existing and future implementing regulations, when effective and as amended from time to time.
3. “**HITECH**” shall mean Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921-17954, as amended from time to time, and all associated existing and future implementing regulations, when effective and as amended from time to time.
4. “**Protected Health Information**” shall mean the term as defined in 45 C.F.R. § 160.103, and is limited to the Protected Health Information received from, or received or created on behalf of, the CE by BA pursuant to performance of the Services.
5. “**Privacy Rule**” shall mean the federal privacy regulations issued pursuant to HIPAA, as amended from time to time, codified at 45 C.F.R. Part 164 (Subparts A and E).
6. “**Security Rule**” shall mean the federal security regulations issued pursuant to HIPAA, as amended from time to time, codified at 45 C.F.R. Part 164 (Subparts A and C).
7. “**Services**” shall mean the Professional Services, the Teaching Services, and the Additional Services, collectively, as defined in the Agreement.
8. “**Unsecured Protected Health Information**” shall mean Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the regulations or guidance issued pursuant to 42 U.S.C. § 17932(h)(2).

(B) With regard to BA's use and disclosure of Protected Health Information:

1. BA may use and disclose Protected Health Information as reasonably required or contemplated in connection with the performance of the Services, excluding the use or further disclosure of Protected Health Information in a manner that would violate the requirements of the Privacy Rule, if done by the CE. Notwithstanding the foregoing, BA may use and disclose Protected Health Information for the proper management and administration of BA as provided in 45 C.F.R. § 164.504(e)(4).
2. BA will not use or further disclose Protected Health Information other than as permitted or required by this Exhibit, and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e), or as otherwise Required by Law.
3. BA will implement and use appropriate administrative, physical, and technical safeguards to (1) prevent use or disclosure of Protected Health Information other than as permitted or required by this Exhibit; (2) reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that BA creates, receives, maintains, or transmits on behalf of the CE; and (3) comply with the Security Rule requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316.
4. BA will, without unreasonable delay, report to the CE (1) any use or disclosure of Protected Health Information not provided for by this Exhibit of which it becomes aware in accordance with 45 C.F.R. § 164.504(e)(2)(ii)(C); and/or (2) any Security Incident affecting Electronic Protected Health Information of which BA becomes aware in accordance with 45 C.F.R. § 164.314(a)(2)(C).
5. BA will, without unreasonable delay, and in any event no later than sixty (60) calendar days after Discovery, notify the CE of any Breach of Unsecured Protected Health Information. The notification shall include, to the extent possible (and subsequently as the information becomes available), the identification of all individuals whose Unsecured Protected Health Information is reasonably believed by BA to have been Breached along with any other available information that is required to be included in the notification to the Individual, the Secretary, and/or the media, all in accordance with the data breach notification requirements set forth in 42 U.S.C. § 17932 and 45 C.F.R. Parts 160 and 164 (Subparts A, D, and E).
6. BA will ensure that any subcontractors or agents to whom BA provides Protected Health Information agree to the same restrictions and conditions that apply to BA with respect to such Protected Health Information. To the extent that BA provides Electronic Protected Health Information to a subcontractor or agent, it will require the subcontractor or agent to implement reasonable and appropriate safeguards to protect the Electronic Protected Health Information consistent with the requirements of this Exhibit.
7. BA will, to the extent that Protected Health Information in BA's possession constitutes a Designated Record Set, make available such Protected Health Information in accordance with 45 C.F.R. § 164.524.


8. In the event that BA, in connection with the Services, uses or maintains an Electronic Health Record of Protected Health Information of or about an Individual, BA will provide an electronic copy of such Protected Health Information in accordance with 42 U.S.C. § 17935(e).
9. BA will, to the extent that Protected Health Information in BA's possession constitutes a Designated Record Set, make available such Protected Health Information for amendment and incorporate any amendments to such information as directed by the CE, all in accordance with 45 C.F.R. § 164.526.
10. BA will document and make available the information required to provide an accounting of disclosures of Protected Health Information, in accordance with 45 C.F.R. § 164.528.
11. In the event that BA, in connection with the Services, uses or maintains an Electronic Health Record of Protected Health Information of or about an Individual, BA will make an accounting of disclosures of such Protected Health Information in accordance with the requirements for accounting of disclosures made through an Electronic Health Record in 42 U.S.C. § 17935(e).
12. BA will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary for purposes of determining the CE's compliance with the Privacy Rule.
13. BA will limit any request, use, or disclosure by BA of Protected Health Information, to the extent practicable, to the Limited Data Set of such Protected Health Information (as defined in 45 C.F.R. § 164.514(e)(2)), or, if the request, use, or disclosure by BA of Protected Health Information, not in a Limited Data Set, is necessary for BA's performance of the Services, BA will limit the amount of such Protected Health Information requested, used, or disclosed by BA to the minimum necessary to accomplish the intended purpose of such request, use, or disclosure, respectively as set forth by the Secretary (pursuant to 42 U.S.C. § 17935(b)(1)(B)).
14. BA will not directly or indirectly receive remuneration in exchange for any Protected Health Information as prohibited by 42 U.S.C. § 17935(d).
15. BA will not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a).
16. BA will not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b).

- (C) In addition to any other obligation set forth in this Agreement, including this Exhibit, the CE agrees that it will: (1) not make any disclosure of Protected Health Information to BA if such disclosure would violate HIPAA, HITECH, or any applicable federal or state law or regulation; (2) not request BA to use or make any disclosure of Protected Health Information in any manner that would not be permissible under HIPAA, HITECH, or any applicable federal or state law or regulation if such use or disclosure were done by the CE; and (3) limit any disclosure of Protected Health Information to BA, to the extent practicable, to the Limited Data Set of such Protected Health Information, or, if the disclosure of Protected Health Information that is not in a Limited Data Set is necessary for BA's performance of the Services, to limit the disclosure of such Protected Health Information to the minimum necessary to accomplish the intended purpose of such disclosure, as set forth by the Secretary (pursuant to 42 U.S.C. § 17935(b)(1)(B)).
- (D) If either the CE or BA knows of either a violation of a material term of this Exhibit by the other party or a pattern of activity or practice of the other party that constitutes a material breach or violation of this Exhibit, the non-breaching party will provide written notice of the breach or violation to the other party that specifies the nature of the breach or violation. In the event that the breaching party does not cure the breach or end the violation on or before thirty (30) days after receipt of the written notice, the non-breaching party may do the following:
- (i) if feasible, terminate this Agreement; or
 - (ii) if termination of this Agreement is infeasible, report the issue to the Secretary.
- (E) BA will, at termination of this Agreement, if feasible, return or destroy all Protected Health Information that BA still maintains in any form and retain no copies of Protected Health Information or, if such return or destruction is not feasible (such as in the event that the retention of Protected Health Information is required for archival purposes to evidence the Services), BA may retain such Protected Health Information and shall thereupon extend the protections of this Exhibit to such Protected Health Information and limit further uses and disclosures to those purposes that make the return or destruction of such Protected Health Information infeasible.
- (F) Any other provision of this Agreement that is directly contradictory to one or more terms of this Exhibit shall be superseded by the terms of this Exhibit to the extent and only to the extent of the contradiction and only for the purpose of the CE's and BA's compliance with HIPAA and HITECH. The terms of this Exhibit, to the extent they are unclear, shall be construed to allow for compliance by the CE and BA with HIPAA and HITECH.
- (G) **Indemnification.** Each party, CE and BA, will indemnify, hold harmless and defend the other party to this Exhibit from and against any and all claims, losses, liabilities, costs, and other expenses incurred as a result or arising directly or indirectly out of or in connection with (a) any misrepresentation, active or passive negligence, breach of warranty or non-fulfillment of any undertaking on the part of the party under this Exhibit; and (b) any claims, demands, awards, judgments, actions and proceedings made by any person or organization, arising out of or in any way connected with the party's performance under this Exhibit.

In addition, the CE agrees to compensate BA for any time and expenses that BA may incur in responding to requests for documents or information under HIPAA, HITECH, or any regulations promulgated under HIPAA or HITECH.

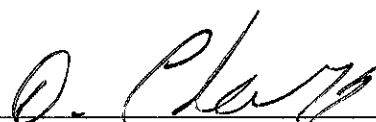
Nothing contained in this Exhibit is intended to confer upon any person (other than the parties hereto) any rights, benefits, or remedies of any kind or character whatsoever, whether in contract, statute, tort (such as negligence), or otherwise, and no person shall be deemed a third-party beneficiary under or by reason of this Exhibit.

Hospital

Signature: 

Date: 7/20/13

Contractor

Signature: 

Date: 07/23/2013

Contractor

Signature: _____

Date: _____