

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 December 1, 2020, by and between COUNTY OF MONTEREY (“**County**”) on behalf of NATIVIDAD MEDICAL CENTER (“**Hospital**”), and BRIAN LUGO, M.D. MEDICAL CORP., a California corporation (“**Contractor**”) with respect to the following:

RECITALS

A. County owns and operates Hospital, a general acute care teaching hospital facility and Level II Trauma Center located in Salinas, California and various outpatient clinics (collectively, the “**Clinic**”) under its acute care license.

B. Contractor and Hospital have entered into that certain Professional and Call Coverage Services Agreement dated effective July 1, 2019 (the “**Agreement**”) pursuant to which Contractor provides general and critical care surgical services to Patients.

C. Hospital and Contractor desire to amend the Agreement to add general surgery and trauma back-up call services and corresponding compensation for such services. This Amendment also extends the terms as set forth below.

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

“**5.1 Term.** This Agreement shall become effective on July 1, 2019 (the “**Effective Date**”), and shall continue until November 30, 2021 (the “**Expiration Date**”), subject to the termination provisions of this Agreement.”
3. **Exhibit 2.1.** Exhibit 2.1 to the Agreement shall be deleted and replaced in its entirety as attached hereto as **Exhibit 2.1.**
4. **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.
5. **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.

6. **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

BRIAN LUGO, M.D. MEDICAL CORP., a
California corporation



Date: 12.30, 2020

NATIVIDAD MEDICAL CENTER



Deputy Purchasing Agent

Date: 12/31/20, 20__

APPROVED AS TO LEGAL PROVISIONS:



Stacy Saetta, Deputy County Counsel

Date: 12/30/2020, 20__

APPROVED AS TO FISCAL PROVISIONS:



Deputy Auditor/Controller

Date: 12-30-2020, 20__

Exhibit 2.1

COMPENSATION

1. Coverage Services.

(a) Hospital shall pay to Contractor an amount equal to Three Thousand Five Hundred Dollars (\$3,500) per Shift of Coverage Services as the primary physician on-call for Hospital's trauma service line ("**Trauma**") rendered under this Agreement, inclusive of follow-up and inpatient rounding as necessary during the Shift ("**Trauma Coverage Services**"); provided, however, that Contractor is in compliance with the terms and conditions of this Agreement. Contractor shall not be simultaneously on-call to any other hospital or health care facility or for any other service line at Hospital, including, without limitation general surgery.

(b) Hospital shall pay to Contractor an amount equal to One Thousand Seven Hundred Fifty Dollars (\$1,750) per Shift of Coverage Services as the primary physician on-call for Hospital's general surgery service line ("**General Surgery**"), inclusive of follow-up and inpatient rounding as necessary during the Shift, and as the back-up physician on-call for Trauma ("**General Surgery/Back-Up Trauma Coverage Services**"); provided, however, that Contractor is in compliance with the terms and conditions of this Agreement. For the avoidance of doubt, Contractor shall not be scheduled to simultaneously provide onsite Trauma Coverage Services and General Surgery/Back-Up Trauma Coverage Services during the same Shift.

(c) Hospital shall pay to Contractor an amount equal to Five Hundred Dollars (\$500) per Shift for Coverage Services as the back-up physician on-call for Trauma rendered under this Agreement ("**Back-Up Trauma Coverage Services**"), plus One Hundred Forty-Five Dollars and Eighty-Three Cents (\$145.83) per hour for each hour that Contractor is required to be physically present at Hospital to provide Professional Services, not to exceed Three Thousand Five Hundred Dollars (\$3,500) per Shift in the aggregate (the "**Back-Up Trauma Coverage Stipend**"); provided, however, that Contractor is in compliance with the terms and conditions of this Agreement. For the avoidance of doubt, Hospital shall only pay the Back-Up Trauma Coverage Stipend if Contractor is not scheduled to provide onsite Trauma Coverage Services or General Surgery/Back-Up Trauma Coverage Services during the same Shift.

(d) The compensation set forth in this Section 1 is inclusive of travel expenses and Contractor shall not receive additional reimbursement for travel expenses.

2. Uninsured Patient Services.

(a) Hospital shall pay to Contractor an amount equal to then-current (as of date of service), facility based Medicare Physician Fee Schedule amount for Uninsured Patient Services that Contractor provides to Uninsured Patients at Hospital pursuant to this Agreement (the "**Uninsured Patient Compensation**"). The Uninsured Patient Compensation shall be Contractor's sole compensation for Uninsured Services and Contractor shall not seek further compensation from any other source. In the event Contractor obtains compensation from another third party payor, including private insurance, Medicare, Medicaid/Medi-Cal and other federal and state healthcare programs, for Contractor's Uninsured Patient Services rendered pursuant to

this Agreement after Hospital has paid Contractor the Uninsured Patient Compensation, Contractor shall immediately notify Hospital of this fact and reimburse Hospital an amount equal to the Uninsured Patient Compensation that was paid to Contractor for such particular patient within thirty (30) days.

(b) **“Uninsured Patient Services”** shall mean Professional Services rendered by Contractor to Uninsured Patients during the term of this Agreement. Excluded from Uninsured Patient Services, and not eligible for Uninsured Patient Compensation under this Agreement, are procedures that are typically classified as non-payable by a payor (e.g., it is considered experimental, represents non-covered services, is categorized as medically unnecessary, or is otherwise excluded from coverage), or if Contractor is found to have breached a necessary reimbursement procedure (e.g., scheduling a procedure from its office and not obtaining the authorization for the procedure to be performed at Hospital).

(c) **“Uninsured Patients”** shall mean those patients who have been identified by Hospital as patients who are not insured for medical care by any third-party payor and ineligible for federal or state assistance under Medicare, Medi-Cal and other federal and state healthcare programs and have no other means of paying for services (e.g., independent wealth), at the time Contractor provided Professional Services (**“Date of Service”**); and for whom Contractor submits a Claim to Hospital.

(d) For each Uninsured Patient for whom Hospital shall pay to Contractor the Uninsured Patient Compensation, Contractor shall submit to Hospital a **“Uninsured Patient Compensation Claim,”** attached hereto as **Attachment B**, with information relating to patient encounters as follows:

- (i) It has been no more than sixty (60) days since the Date of Service;
- (ii) Contractor has completed documentation to support a Claim (dictation);
- (iii) Contractor has verified Patient who received the Professional Services to be an Uninsured Patient; and
- (iv) Contractor has completed a Centers for Medicare and Medicaid Services Form 1500 and provided Hospital a copy of any other billing forms, financial data, or other data necessary to assist Hospital, as requested by Hospital (**“Claim”**).
- (v) If Contractor submits a Claim more than sixty (60) days after the Date of Service, Hospital shall have no obligation to pay Contractor for such Professional Services. Therefore, it is within the Contractor’s best interest to perform verification of coverage for an Uninsured Patient as soon as possible after services have been rendered. Hospital shall pay the Uninsured Patient Compensation to Contractor according to the payment terms of this **Exhibit 2.1**, after Hospital receives a complete, true and accurate Claim and the foregoing information from Contractor.

(e) **Billing and Collection.**

(i) Hospital shall have the sole and exclusive authority to bill and collect for Uninsured Services provided by Contractor to those Uninsured Patients for whom Contractor submits a Claim pursuant to the terms of this Agreement, and shall have the sole and exclusive right, title and interest in and to all accounts receivable with respect to such Uninsured Patient Services.

(ii) Contractor hereby assigns (or reassigns, as the case may be) to Hospital all claims, demands and rights of Contractor for any and all Uninsured Patient Services provided by Contractor to those Uninsured Patients for whom Contractor submits a Claim pursuant to the terms of this Agreement. Contractor shall take such action and execute such documents as may be reasonably necessary or appropriate to effectuate the assignment (or reassignment, as the case may be) to Hospital of all claims, demands and rights of Contractor for any and all Uninsured Patient Services provided by Contractor to those Uninsured Patients for whom Contractor submits a Claim pursuant to the terms of this Agreement.

(iii) In order to defray the costs of the Uninsured Patient Compensation paid by Hospital to Contractor and the billing and collecting services provided by Hospital, Contractor hereby grants Hospital the right to retain any and all collections received by Hospital for Uninsured Patient Services provided to Uninsured Patients. Contractor, by the power-of-attorney attached as **Attachment C**, designates Hospital as Contractor's true and lawful attorney-in-fact for billing for Uninsured Patient Services provided by Contractor to Uninsured Patients pursuant to this Agreement.

(iv) Contractor shall cooperate with Hospital in the billing and collection of fees with respect to Uninsured Patient Services furnished by Contractor to Uninsured Patients. Without limiting the generality of the foregoing, Contractor shall cooperate with Hospital in completing such claim forms with respect to Uninsured Patient Services furnished by Contractor to Uninsured Patients pursuant to this Agreement as may be required by insurance carriers, health care service plans, governmental agencies, or other third party payors.

3. **Clinic Services.** Contractor shall provide Professional Services in the Clinics ("**Clinic Services**") as requested by Hospital from time to time. In recognition of the mutual obligations of the Parties hereunder, Hospital and Contractor acknowledge that there shall be no monetary compensation to Contractor for the Clinic Services furnished by Contractor hereunder.

4. **Professional Liability Reimbursement.** In the event that Contractor does not purchase the professional liability insurance set forth in the Agreement, Hospital will deduct Twenty Dollars and Fifty-Two Cents (\$20.52) per Shift worked by Contractor to compensate for Hospital's payment of professional liability insurance premiums on behalf of Contractor.

5. **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".